

# 2003 IOWA CODE SUPPLEMENT

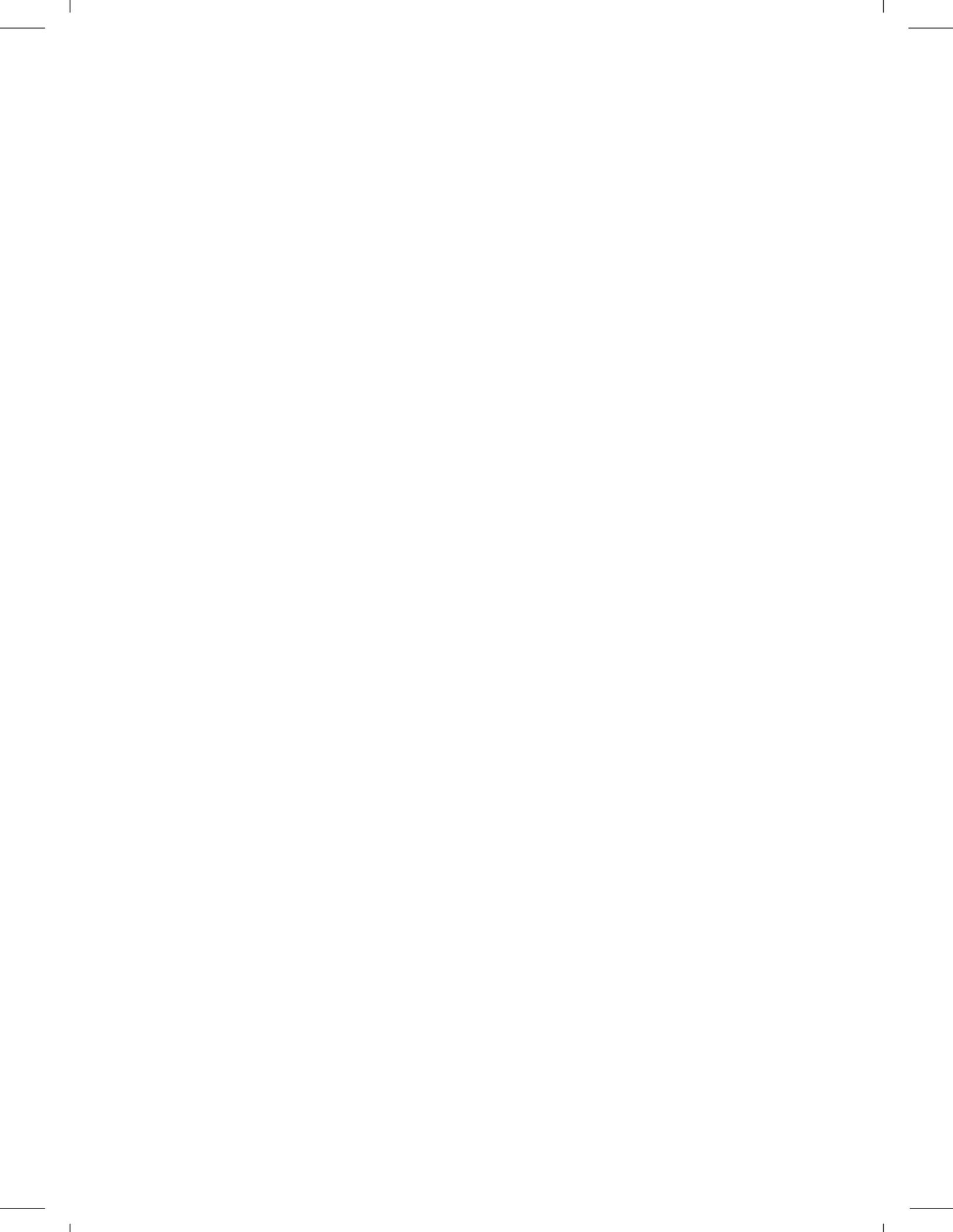
Containing

Sections of the Laws of Iowa  
of a General and Permanent Nature  
Enacted, Amended, Repealed or  
otherwise affected by the  
2003 Regular and First Extraordinary Sessions  
of the

GENERAL ASSEMBLY OF THE  
STATE OF IOWA



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by the  
Legislative Services Agency  
GENERAL ASSEMBLY OF IOWA  
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2003



## PREFACE TO 2003 IOWA CODE SUPPLEMENT

This 2003 Iowa Code Supplement is published pursuant to Code chapter 2B. The Supplement includes sections of the laws of Iowa enacted, amended, repealed, or otherwise affected by the 2003 regular and first extraordinary sessions of the Eightieth Iowa General Assembly or by an earlier session if the effective date was deferred, arranged in the numerical sequence of the 2003 Iowa Code. The Supplement does not include temporary sections, such as appropriation sections, which are not to be codified.

**EFFECTIVE DATES.** Except as otherwise indicated in the text or in a footnote, the new sections, amendments, and repeals were effective on or before July 1, 2003. See the 2003 Iowa Acts to determine specific effective dates not shown.

**NOTES.** A source note following each new or amended section refers to the appropriate chapter and section number in the Iowa Acts where the new section or amendment can be found in the form it had upon passage. Repeals are indicated in the form used in the 2003 Code. A footnote may follow the source note or repeal. A footnote to an amended section usually refers only to the amended part and not necessarily to the entire section as printed. Many of the footnotes from the 2003 Code are not included but will be corrected as necessary and appear in the 2005 Code. Following the source note or footnote for a new or amended section is an explanatory note to indicate whether the section or a part of it is new, or was amended, stricken, stricken and rewritten, or renumbered.

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

**INDEX AND TABLES.** A subject matter index to new or amended sections, a table of the disposition of the 2003 Acts and any previous years' Acts codified in this Supplement, and a table of corresponding sections from the 2003 Code to the 2003 Code Supplement also appear at the end of this Supplement.

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

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

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# IOWA CODE SUPPLEMENT

## 2003

### CHAPTER 1

#### SOVEREIGNTY AND JURISDICTION OF THE STATE

##### **1.15 Attorney appointed by state in civil actions.**

In all civil causes of action where the state of Iowa or any of its subdivisions or departments is a party, and a member of the Sac and Fox Indian settlement is a party, the district court of Iowa shall appoint competent legal counsel at all stages of hearing, appeal, and final determination for any Indian not otherwise represented by legal counsel, in any domestic relations matter, including, but not limited to, matters pertaining to dependency,

neglect, delinquency, care, or custody of minors. The court shall fix and allow reasonable compensation for the services of the attorney, costs of transcripts and depositions, and investigative expense, which shall be paid as a claim out of any funds in the state treasury not otherwise appropriated, upon filing the claim with the director of the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

### CHAPTER 2

#### GENERAL ASSEMBLY

##### **2.9 Journals — bills and amendments.**

1. *a.* The senate and house of representatives shall each publish a daily journal of the transactions of their respective bodies. The secretary of the senate and the chief clerk of the house shall each determine the format and manner of the journal's publication, the procurement procedures for the journal's publication, and the journal's distribution for their respective bodies.

*b.* The secretary of the senate and the clerk of the house of representatives shall each preserve copies of the printed daily journals of their respective bodies, as corrected, certify to their correctness, and file them with the secretary of state at the adjournment of each session of the general assembly. The secretary of state shall preserve the original journals of the senate and the house in the manner specified by the majority leader of the senate and speaker of the house.

2. *a.* The senate and house of representatives shall each publish bills and amendments of their respective bodies. The secretary of the senate and the chief clerk of the house shall each determine the procurement procedures for the publication of the bills and amendments and the distribution of

the bills and amendments for their respective bodies.

*b.* A bill that seeks to legalize the acts of any official or board or other official body, in regard to any matter of public nature or for any person or persons, company, or corporation, shall not be considered by the senate or house of representatives until the bill is published and distributed to members of the general assembly, and the publication shall be without expense to the state. The senate and house shall not order any such bill published until the secretary of the senate or chief clerk of the house has received a deposit to cover the cost of the publication. The newspaper publication of such bill shall be without expense to the state, and the bill shall not be published in a newspaper until the costs of the newspaper publication have been paid to the secretary of state.

2003 Acts, ch 35, §9, 49; 2003 Acts, ch 145, §102  
See Code editor's note  
Section amended

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

Members of the general assembly shall receive

salaries and expenses as provided by this section.

1. Every member of the general assembly except the presiding officer of the senate, the speaker of the house, the majority and minority floor leader of each house, and the president pro tempore of the senate and speaker pro tempore of the house, shall receive an annual salary of twenty thousand one hundred twenty dollars for the year 1997 and subsequent years while serving as a member of the general assembly. In addition, each such member shall receive the sum of eighty-six dollars per day for expenses of office, except travel, for each day the general assembly is in session commencing with the first day of a legislative session and ending with the day of final adjournment of each legislative session as indicated by the journals of the house and senate, except that if the length of the first regular session of the general assembly exceeds one hundred ten calendar days and the second regular session exceeds one hundred calendar days, the payments shall be made only for one hundred ten calendar days for the first session and one hundred calendar days for the second session. Members from Polk county shall receive sixty-five dollars per day. Each member shall receive a two hundred dollar per month allowance for legislative district constituency postage, travel, telephone costs, and other expenses. Travel expenses shall be paid at the rate established by section 8A.363 for actual travel in going to and returning from the seat of government by the nearest traveled route for not more than one time per week during a legislative session unless the general assembly otherwise provides.

2. The speaker of the house, presiding officer of the senate, and the majority and minority floor leader of each house shall each receive an annual salary of thirty-one thousand thirty dollars for the year 1997 and subsequent years while serving in that capacity. The president pro tempore of the senate and the speaker pro tempore of the house shall receive an annual salary of twenty-one thousand two hundred ninety dollars for the year 1997 and subsequent years while serving in that capacity. Expense and travel allowances shall be the same for the speaker of the house and the presiding officer of the senate, the president pro tempore of the senate and the speaker pro tempore of the house, and the majority and minority leader of each house as provided for other members of the general assembly.

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

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

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

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

c. During the first six months of each calendar year by allocating two-thirds of the annual salary to the pay periods during those six months and one-third of the annual salary to the pay periods during the second six months of a calendar year. Each member of the general assembly shall file with the director of the department of administrative services a statement as to the method the member selects for receiving payment of salary. The presiding officers of the two houses of the general assembly shall jointly certify to the director of the department of administrative services the names of the members, officers, and employees of their respective houses and the salaries and mileage to which each is entitled. Travel and expense allowances shall be paid upon the submission of vouchers to the director of the department of administrative services indicating a claim for the same.

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

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

7. A member of the general assembly may re-

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

8. Commencing upon the convening of the Seventy-eighth General Assembly in January 1999, the annual salaries of members and officers of the general assembly, as the annual salaries existed during the preceding calendar year, shall be adjusted by an amount equal to the average of the annual cost-of-living pay adjustments negotiated for the members of the collective bargaining units represented by the state police officers council labor union, the American federation of state, county, and municipal employees, and the Iowa united professionals for the fiscal year beginning July 1, 1997. For the calendar year 2000, during the month of January, the annual salaries of members and officers of the general assembly shall be adjusted by an amount equal to the average of the annual cost-of-living pay adjustments received by the members of those collective bargaining units for the fiscal year beginning July 1, 1998. The annual salaries determined for the members and officers as provided in this section for the calendar year 2000 shall remain in effect for subsequent calendar years until otherwise provided by the general assembly.

2003 Acts, ch 145, §103, 286  
See Constitution, Art. III, §25  
Terminology change applied  
Subsection 1 amended

### **2.12 Expenses of general assembly and legislative agencies — budgets.**

There is appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to pay for legislative printing and all current and miscellaneous expenses of the general assembly, authorized by either the senate or the house, and the director of the department of administrative services shall issue warrants for such items of expense upon requisition of the president, majority leader, and secretary of the senate or the speaker and chief clerk of the house.

There is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as are necessary, for each house of the general assembly for the payment of any unpaid expense of the general assembly incurred during or in the interim between sessions of the general assembly, including but not limited to salaries and necessary travel and actual expenses of members, expenses of standing and interim committees or subcommittees, and per diem or expenses for

members of the general assembly who serve on statutory boards, commissions, or councils for which per diem or expenses are authorized by law. The director of the department of administrative services shall issue warrants for such items of expense upon requisition of the president, majority leader, and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense.

There is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as are necessary for the renovation, remodeling, or preparation of the legislative chambers, legislative offices, or other areas or facilities used or to be used by the legislative branch of government, and for the purchase of legislative equipment and supplies deemed necessary to properly carry out the functions of the general assembly. The director of the department of administrative services shall issue warrants for such items of expense, whether incurred during or between sessions of the general assembly, upon requisition of the president, majority leader, and secretary of the senate for senate expense or the speaker and chief clerk of the house for house expense.

There is appropriated out of any funds in the state treasury not otherwise appropriated such sums as may be necessary for the fiscal year budgets of the legislative services agency and the citizens' aide office for salaries, support, maintenance, and miscellaneous purposes to carry out their statutory responsibilities. The legislative services agency and the citizens' aide office shall submit their proposed budgets to the legislative council not later than September 1 of each year. The legislative council shall review and approve the proposed budgets not later than December 1 of each year. The budget approved by the legislative council for each of its statutory legislative agencies shall be transmitted by the legislative council to the department of management on or before December 1 of each year for the fiscal year beginning July 1 of the following year. The department of management shall submit the approved budgets received from the legislative council to the governor for inclusion in the governor's proposed budget for the succeeding fiscal year. The approved budgets shall also be submitted to the chairpersons of the committees on appropriations. The committees on appropriations may allocate from the funds appropriated by this section the funds contained in the approved budgets, or such other amounts as specified, pursuant to a concurrent resolution to be approved by both houses of the general assembly. The director of the department of administrative services shall issue warrants for salaries, support, maintenance, and miscellaneous purposes upon requisition by the administrative head of each statutory legislative agency. If the legislative council elects to change the approved budget for a legislative agency prior to July

1, the legislative council shall transmit the amount of the budget revision to the department of management prior to July 1 of the fiscal year, however, if the general assembly approved the budget it cannot be changed except pursuant to a concurrent resolution approved by the general assembly.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §286  
Terminology changes applied

### 2.13 Issuance of warrants.

The director of the department of administrative services shall also issue to each officer and employee of the general assembly, during legislative sessions or interim periods, upon vouchers signed by the president, majority leader, and secretary of the senate or the speaker and chief clerk of the house, warrants for the amount due for services rendered. The warrants shall be paid out of any moneys in the treasury not otherwise appropriated.

2003 Acts, ch 145, §286  
Terminology change applied

### 2.14 Meetings of standing committees.

1. A standing committee of either house or a subcommittee when authorized by the chairperson of the standing committee, may meet when the general assembly is not in session in the manner provided in this section and upon call pursuant to the rules of the house or senate. In case of vacancy in the chair or in the chairperson's absence, the ranking member shall act as chairperson. A standing committee or subcommittee may act on bills and resolutions in the interim between the first and second regular sessions of a general assembly. The date, time, and place of any meeting of a standing committee shall, by the person or persons calling the meeting, be reported to and be available to the public in the office of the director of the legislative services agency at least five days prior to the meeting.

2. The legislative services agency shall provide staff assistance for standing committees when authorized by the legislative council. The chairperson of the committee or subcommittee shall notify the legislative services agency in advance of each meeting.

3. Interim studies utilizing the services of the legislative services agency must be authorized by the general assembly or the legislative council. A standing committee may also study and draft proposed committee bills. However, unless the subject matter of a study or proposed committee bill has been assigned to a standing committee for study by the general assembly or legislative council, the services of the legislative services agency cannot be utilized. Nonlegislative members shall not serve upon any study committee, unless approved by the legislative council. A standing committee may hold public hearings and receive testi-

mony upon any subject matter within its jurisdiction.

Nonlegislative members of study committees shall be paid their necessary travel and actual expenses incurred in attending committee or subcommittee meetings for the purposes of the study.

4. Standing committees and subcommittees of standing committees may meet when the general assembly is not in session under the following conditions:

a. A standing committee may meet one time at the discretion of the chairperson.

b. Additional meetings of standing committees or their subcommittees shall be authorized by the legislative council; however, such authorization may be given at any one time for as many meetings as deemed necessary by the legislative council.

c. Any study committee, other than an interim committee provided for in subsection 3 of this section, which utilizes staff of the legislative services agency may meet at such times as authorized by the legislative council.

5. When the general assembly is not in session, a member of the general assembly shall be paid the per diem and necessary travel and actual expenses, as specified in section 2.10, subsection 5, incurred in attending meetings of a standing committee or subcommittee of which the legislator is a member in addition to regular compensation. However, the per diem and expenses shall be allowed only if the member attends a meeting of the committee or subcommittee for at least four hours.

2003 Acts, ch 35, §44, 49  
Terminology changes applied

### 2.16 Prefiling legislative bills.

Any member of the general assembly or any person elected to serve in the general assembly, or any standing committee, may sponsor and submit legislative bills and joint resolutions for consideration by the general assembly, before the convening of any session of the general assembly. Each house may approve rules for placing prefiled standing committee bills or joint resolutions on its calendar. Such bills and resolutions shall be numbered, printed, and distributed in a manner to be determined by joint rule of the general assembly or, in the absence of such rule, by the legislative council. All such bills and resolutions, except those sponsored by standing committees, shall be assigned to regular standing committees by the presiding officers of the houses when the general assembly convenes.

Departments and agencies of state government shall, at least forty-five days prior to the convening of each session of the general assembly, submit copies to the legislative services agency of proposed legislative bills and joint resolutions which such departments desire to be considered by the general assembly. The proposed legislative bills and joint resolutions of the governor must be sub-

mitted by the Friday prior to the convening of the session of the general assembly, except in the year of the governor's initial inauguration. The legislative services agency shall review such proposals and submit them in proper form to the presiding officer in each house of the general assembly for referral to the proper standing committee. Before submitting any proposal prepared under this section to the presiding officers, the legislative services agency shall return it for review to, as appropriate, the relevant department or agency or the governor's office and such department or agency or the governor's office shall review and return it within seven days of such delivery.

The costs of carrying out the provisions of this section shall be paid pursuant to section 2.12.

2003 Acts, ch 35, §44, 49  
Terminology change applied

### **2.35 Communications review committee established.**

A communications review committee is established, consisting of three members of the senate appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and three members of the house of representatives appointed by the speaker of the house. The committee shall select a chairperson and vice chairperson. Meetings may be called by the chairperson or a majority of the members.

Members shall be appointed prior to the adjournment of the first regular session of each general assembly and shall serve for terms ending upon the convening of the following general assembly or when their successors are appointed, whichever is later. Vacancies shall be filled in the same manner as original appointments are made and shall be for the remainder of the unexpired term of the vacancy. The members of the committee shall be reimbursed for actual and necessary expenses incurred in the performance of their duties and shall be paid the per diem specified in section 2.10, subsection 5, for each day in which engaged in the performance of their duties. However, per diem compensation and expenses shall not be paid when the general assembly is actually in session at the seat of government. Expenses and per diem shall be paid from funds appropriated pursuant to section 2.12.

Administrative assistance shall be provided by the legislative services agency to the extent possible.

2003 Acts, ch 35, §44, 49  
Terminology change applied

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

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

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

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

*c.* The member shall authorize a payroll deduction of the premium due according to the member's pay plan selected pursuant to section 2.10, subsection 4.

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

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

grams or coverage as state employees. In the event of the death of a former member of the general assembly who has elected to continue to be a member of a state health or medical group insurance plan, the surviving spouse of the former member whose insurance would otherwise terminate because of the death of the former member may elect to continue to be a member of such state health or medical group insurance plan by requesting continuation in writing to the finance officer within thirty-one days after the death of the former member. The surviving spouse of the former member shall pay the total premium for the state plan and shall have the same rights to change programs or coverage as state employees.

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

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

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

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

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

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

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

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

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

2003 Acts, ch 145, §286  
Terminology change applied

#### 2.42 Powers and duties of council.

The legislative council shall select its officers and prescribe its rules and procedure. The powers and duties of the council shall include, but not be limited to, the following:

1. To establish policies for the operation of the legislative services agency.

2. To appoint the director of the legislative services agency for such term of office as may be set by the council.

3. To prepare reports to be submitted to the general assembly at its regular sessions.

4. To appoint interim study committees consisting of members of the legislative council and members of the general assembly of such number as the council shall determine. Nonlegislative members may be included on such committees when the council deems the participation of such members advantageous to the conduct of the study.

5. To conduct studies and evaluate reports of studies assigned to study committees and make recommendations for legislative or administrative action thereon. Recommendations shall include such bills as the legislative council may deem advisable.

6. To cooperate with other states to discuss mutual legislative and governmental problems.

7. To recommend staff for the legislative council and the standing committees in cooperation with the chairperson of such standing committees.

8. To recommend changes or revisions in the senate and house rules and the joint rules for more efficient operation of the general assembly and draft proposed rule amendments, resolutions, and bills as may be required to carry out such recommendations, for consideration by the general assembly.

9. To recommend to the general assembly the names and numbers of standing committees of both houses.

10. To establish rules for the style and format for drafting and preparing of legislative bills and resolutions.

11. To approve the appointment of the Iowa Code editor and the administrative code editor.

12. To establish policies for the distribution of information which is stored by the general assembly in an electronic format, including the contents of statutes or rules, other than value-added electronic publications as provided in section 2A.5. The legislative council shall establish payment

rates that encourage the distribution of such information to the public, including private vendors reselling that information. The legislative council shall not establish a price that attempts to recover more than is attributable to costs related to reproducing and delivering the information.

13. To establish policies with regard to the publishing of printed and electronic versions of the Iowa administrative code, the Iowa administrative bulletin, the Iowa Code, the Iowa Code Supplement, and the Iowa Acts, or any part of those publications. The publishing policies may include, but are not limited to: the style and format to be used; the frequency of publication; the contents of the publications; the numbering system to be used in the Iowa Code, the Iowa Code Supplement, and the Iowa Acts; the preparation of editorial comments or notations; the correction of errors; the type of print or electronic media and data processing software to be used; the number of printed volumes to be published; recommended revisions of the Iowa Code, the Iowa Code Supplement, and the Iowa Acts; the letting of contracts for the publication of the Iowa administrative code, the Iowa administrative bulletin, the Iowa court rules, the Iowa Code, the Iowa Code Supplement, and the Iowa Acts; the pricing of the publications to which section 22.3 does not apply; access to, and the use, reproduction, legal protection, sale or distribution, and pricing of related data processing software consistent with chapter 22; and any other matters deemed necessary to the publication of uniform and understandable publications.

14. To hear and act upon appeals of aggrieved employees of the legislative services agency and the office of the citizens' aide pursuant to rules of procedure established by the council.

15. Authority to review and delay the effective dates of rules and forms submitted by the supreme court pursuant to section 602.4202.

16. To implement the sexual harassment prohibitions and grievance, violation, and disposition procedures of section 19B.12 with respect to full-time, part-time, and temporary central legislative staff agency employees and to develop and distribute, at the time of hiring or orientation, a guide that describes for its employees the applicable sexual harassment prohibitions and grievance, violation, and disposition procedures. This subsection does not supersede the remedies provided under chapter 216.

2003 Acts, ch 35, §10, 49  
Subsections 1, 2, and 11 – 13 amended  
Subsections 14 and 15 stricken  
Subsection 16 amended and renumbered as 14  
Subsection 17 renumbered as 15  
Subsections 18 and 19 stricken and former subsection 20 renumbered as

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### **2.43 General supervision over legislative facilities, equipment, and arrangements.**

The legislative council in cooperation with the officers of the senate and house shall have the duty

and responsibility for preparing for each session of the general assembly. Pursuant to such duty and responsibility, the legislative council shall assign the use of areas in the state capitol except for the areas used by the governor as of January 1, 1986, and by the courts as of July 1, 2003, and, in consultation with the director of the department of administrative services and the capitol planning commission, may assign areas in other state office buildings for use of the general assembly or legislative agencies. The legislative council may authorize the renovation, remodeling and preparation of the physical facilities used or to be used by the general assembly or legislative agencies subject to the jurisdiction of the legislative council and award contracts pursuant to such authority to carry out such preparation. The legislative council may purchase supplies and equipment deemed necessary for the proper functioning of the legislative branch of government.

In carrying out its duties under this section, the legislative council shall consult with the director of the department of administrative services and the capitol planning commission, but shall not be bound by any decision of the director in respect to the responsibilities and duties provided for in this section. The legislative council may direct the director of the department of administrative services or other state employees to carry out its directives in regard to the physical facilities of the general assembly, or may employ other personnel to carry out such functions.

The costs of carrying out the provisions of this section shall be paid pursuant to section 2.12.

2003 Acts, ch 145, §104, 286  
Capitol space allocation; see also §8A.322  
Terminology change applied  
Unnumbered paragraph 1 amended

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

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

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

2. The legislative fiscal committee, composed of the chairpersons or their designated committee member and the ranking minority party members or their designated committee member of the committees of the house and senate responsible for developing a state budget and appropriating funds, the chairpersons or their designated committee member and the ranking minority party members or their designated committee member of the committees on ways and means, and two members,

one appointed from the majority party of the senate by the majority leader of the senate and one appointed from the majority party of the house by the speaker of the house of representatives. In each house, unless one of the members who represent the committee on ways and means is also a member of the legislative council, the person appointed from the membership of the majority party in that house shall also be appointed from the membership of the legislative council.

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

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

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

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

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

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

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

5. *a.* The legislative oversight committee composed of members designated by the legislative council. In addition to the duties assigned by the legislative council, the committee shall systematically review the programs, agencies, and functions of the executive and judicial branches of government to ensure that public resources are used in the most efficient manner to benefit the people of Iowa.

*b.* The committee shall implement a systematic process of assessing the programs, agencies, and functions. Annually, by October 1, the committee shall identify the programs, agencies, and functions that will be subject to review and evaluation in the succeeding calendar year. An agency of state government selected by the committee for review and evaluation shall provide information as required by the committee, which may include but is not limited to the following:

(1) Identifying the activities, services, products, and functions of the agency, including identi-

fying those that are required and the source of the requirement. At minimum, the sources identified shall include state law, state administrative rule, federal law, and federal regulation.

(2) Specifying for all activities, services, products, and functions, the users or clientele, and the current level of need for and the level of satisfaction with the activity, service, product, or function.

(3) Listing each discretionary activity, service, product, or function of the agency that is not required by state law, state administrative rule, federal law, or federal regulation.

(4) Identifying the degree of alignment between the agency strategic plan adopted pursuant to section 8E.206 and the requirements of the agency in state law and administrative rule.

(5) Identifying alternative methods of providing the agency's existing activities, services, products, and functions, and quantifying the impact to Iowans if such activities, services, products, or functions are no longer provided by the agency.

2003 Acts, ch 35, §11, 44, 49  
Terminology change applied  
Subsection 2 amended

#### **2.46 Powers of legislative fiscal committee.**

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

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

2. *Examination.* Examine the reports and official acts of the executive council and of each officer, board, commission, and department of the state, in respect to the conduct and expenditures thereof and the receipts and disbursements of public funds thereby. All state departments and agencies are required to immediately notify the legislative fiscal committee of the legislative council and the director of the legislative services agency if any state facilities within their jurisdiction have been cited for violations of any federal, state, or local laws or regulations or have been decertified or notified of the threat of decertification from compliance with any state, federal, or other nationally recognized certification or accreditation agency or organization.

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

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

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

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

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

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

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

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

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286  
Terminology changes applied

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

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

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

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

c. Receive annual status reports for all ongoing capital projects of state agencies, pursuant to section 8A.321, subsection 10.

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

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

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

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

c. Establish advisory bodies to the committee in areas where technical expertise is not otherwise readily available to the committee. Advisory body members may be reimbursed for actual and necessary expenses from funds appropriated pursuant

to section 2.12, but only if the reimbursement is approved by the legislative council.

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

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

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

2003 Acts, ch 145, §105  
Subsection 1, paragraph c amended

**2.48 through 2.50** Repealed by 2003 Acts, ch 35, § 47, 49. See chapter 2A.

With respect to proposed amendment to §2.49 in 2003 Acts, ch 145, §286, see Code editor's note to §2.9

#### **2.51 Visitations.**

The legislative fiscal committee, with the approval of the legislative council, may direct a subcommittee, which shall be composed of the chairpersons and minority party ranking members of the appropriate subcommittees of the committees on budget of the senate and the house of representatives and the chairpersons of the appropriate standing committees of the general assembly, to visit the offices and facilities of any state office, department, agency, board, bureau, or commission to review programs authorized by the general assembly and the administration of the programs. When the legislative fiscal committee visits the offices and facilities of any state office, department, agency, board, bureau, or commission to review programs authorized by the general assembly and the administration of the programs, there shall be included the chairpersons and minority party ranking members of the appropriate subcommittees of the committees on budget of the senate and the house of representatives. The legislative council may appoint a member of the subcommittee or standing committee to serve in place of that subcommittee's or standing committee's chairperson or minority party ranking member on the legislative fiscal visitation committee or subcommittee if that person will be absent. The subcommittee and the legislative fiscal committee shall be provided with information by the legislative services agency concerning budgets, programs, and legislation authorizing programs prior to any visitation. Members of a committee shall be compensated pursuant to section 2.10, subsection 5. The subcommittee shall make reports and recommen-

dations as required by the legislative fiscal committee.

2003 Acts, ch 35, §45, 49  
Terminology change applied

**2.52 Access — subpoenas.** Repealed by 2003 Acts, ch 35, § 47, 49. See § 2A.3.

**2.55 Government accountability.** Repealed by 2003 Acts, ch 35, § 47, 49. See § 2A.7.

**2.55A Departmental information required.** Repealed by 2003 Acts, ch 35, § 47, 49.

#### CORRECTIONAL IMPACT STATEMENTS

##### **2.56 Correctional impact statements.**

1. Prior to debate on the floor of a chamber of the general assembly, a correctional impact statement shall be attached to any bill, joint resolution, or amendment which proposes a change in the law which creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures. The statement shall include information concerning the estimated number of criminal cases per year that the legislation will impact, the fiscal impact of confining persons pursuant to the legislation, the impact of the legislation upon existing correctional institutions, community-based correctional facilities and services, and jails, the likelihood that the legislation may create a need for additional prison capacity, and other relevant matters. The statement shall be factual and shall, if possible, provide a reasonable estimate of both the immediate effect and the long-range impact upon prison capacity.

2. *a.* When a committee of the general assembly reports a bill, joint resolution, or amendment to the floor, the committee shall state in the report whether a correctional impact statement is or is not required.

*b.* The legislative services agency shall review all bills and joint resolutions placed on the calendar of either chamber of the general assembly, as well as amendments filed to bills or joint resolutions on the calendar, to determine whether a correctional impact statement is required.

*c.* A member of the general assembly may request the preparation of a correctional impact statement by submitting a request to the legislative services agency.

3. The legislative services agency shall cause to be prepared a correctional impact statement within a reasonable time after receiving a request or determining that a proposal is subject to this

section. All correctional impact statements approved by the legislative services agency shall be transmitted immediately to either the chief clerk of the house or the secretary of the senate, after notifying the sponsor of the legislation that the statement has been prepared for publication. The chief clerk of the house or the secretary of the senate shall attach the statement to the bill, joint resolution, or amendment affected as soon as it is available.

4. The legislative services agency may request the cooperation of any state department or agency or political subdivision in preparing a correctional impact statement.

5. A revised correctional impact statement shall be prepared if the correctional impact has been changed by the adoption of an amendment, and may be requested by a member of the general assembly or be prepared upon a determination made by the legislative services agency. However, a request for a revised correctional impact statement shall not delay action on the bill, joint resolution, or amendment unless so ordered by the presiding officer of the chamber.

2003 Acts, ch 35, §12, 49  
Section amended

**2.58 through 2.60** Repealed by 2003 Acts, ch 35, § 47, 49. See chapter 2A.

#### RESEARCH REQUESTS — INTERIM STUDY COMMITTEES

##### **2.61 Requests for research.**

Requests for research on governmental matters may be made to the legislative services agency by either house of the general assembly, committees of either house of the general assembly, special interim committees of the general assembly, the legislative council, or upon petition by twenty or more members of the general assembly. Any legislative committee may request the legislative services agency to do research on any matter under consideration by such committee. For each such request the legislative council may, if deemed advisable, authorize a special interim study committee to conduct the research study or may request a standing committee to conduct such study. Members on a study committee shall be appointed by the council and shall consist of at least one member of the council and such other members of the majority and minority parties of the senate and the house of representatives as the council may designate. As far as practicable, a study committee shall include members of standing committees concerned with the subject matter of the study. No legislator shall serve on more than two study committees. Nonlegislative members having special knowledge of the subject under study may be ap-

pointed by the council to a study committee but such members shall be nonvoting members of such committee. The legislative services agency shall assist study committees on research studies when authorized by the legislative council.

2003 Acts, ch 35, §44, 46, 49  
Terminology change applied

**2.64 through 2.67** Repealed by 2003 Acts, ch 35, § 47, 49. See chapter 2A.

For proposed repeal of section 2.67 by 2003 Acts, 1st Ex, ch 2, §202, 205 effective July 1, 2004, see Code editor's note to §2.9

**2.100 through 2.104** Repealed by 2003 Acts, ch 35, § 47, 49. See chapter 2A.

## CHAPTER 2A

### LEGISLATIVE SERVICES AGENCY

Former ch 2A repealed by 2002 Acts, ch 1175, §68

#### **2A.1 Legislative services agency created — services — legislative privileges — non-partisanship and nonadvocacy.**

1. A legislative services agency is created as a nonpartisan, central legislative staff agency under the direction and control of the legislative council. The agency shall cooperate with and serve all members of the general assembly, the legislative council, and committees of the general assembly.

2. The legislative services agency shall provide the following services:

*a.* Legal and fiscal analysis, including legal drafting services, fiscal analysis of legislation, and state expenditure, revenue, and budget review.

*b.* State government oversight and performance evaluation.

*c.* Staffing of standing committees, revenue and budget committees, statutory committees, and interim study committees, and any subcommittees of such committees, including the provision of legal and fiscal analysis to committees and subcommittees.

*d.* Publication of the official legal publications of the state, including but not limited to the Iowa Code, Iowa Code Supplement, Iowa Acts, Iowa court rules, Iowa administrative bulletin, and Iowa administrative code as provided in chapter 2B.

*e.* Operation and maintenance of the legislative computer systems used by the senate, house of representatives, and the central legislative staff agencies.

*f.* Provision of legislative information to the public, provision of library information, management of legislative visitor protocol services, and provision of capitol tour guide services.

*g.* Other functions as assigned to the legislative services agency by the legislative council or the general assembly.

3. The legislative services agency shall provide services to the general assembly in such a manner as to preserve the authority of the senate and the house of representatives to determine their own rules of proceedings and to exercise all other powers necessary for a separate branch of the general assembly of a free and independent

state, and to protect the legislative privileges of the members and employees of the general assembly. In providing services to the general assembly, the legislative services agency shall adhere to all applicable policies of the general assembly and its constituent bodies relating to public access to legislative information and related confidentiality restrictions.

4. The director and all other employees of the legislative services agency shall not participate in partisan political activities and shall not be identified as advocates or opponents of issues subject to legislative debate except as otherwise provided by law or by the legislative council.

2003 Acts, ch 35, §1, 49  
NEW section

#### **2A.2 Director — duties.**

1. The administrative head of the legislative services agency shall be the director appointed by the legislative council as provided in section 2.42. The salary of the director shall be set by the legislative council.

2. The director shall do all of the following:

*a.* Employ persons with expertise to perform the legal, fiscal, technical, and other functions which are required to be performed by the legislative services agency by this chapter or are assigned to the legislative services agency by the legislative council or the general assembly.

*b.* Supervise all employees of the legislative services agency, including the legal counsel designated to provide legal assistance to the administrative rules review committee, and supervise any outside service providers retained by the legislative services agency.

*c.* Supervise all expenditures of the agency.

*d.* Supervise the legal and fiscal analysis and legal publication functions of the agency.

*e.* Supervise the government oversight and program evaluation functions of the agency.

*f.* Supervise the committee staffing functions of the agency.

*g.* Supervise the computer systems services functions of the agency.

*h.* Supervise the legislative and library information, legislative visitor protocol, and capitol

tour guide functions of the agency.

*i.* Perform other functions as assigned to the director by the legislative council or the general assembly.

2003 Acts, ch 35, §2, 49  
NEW section

### **2A.3 Information access — confidentiality — subpoenas.**

1. *a.* The director and agents and employees of the legislative services agency, with respect to the agency's provision of services relating to fiscal analysis of legislation, state expenditure, revenue, and budget review, state government oversight and performance evaluation, and staffing of revenue and budget committees, shall at all times have access to all agencies, offices, boards, and commissions of the state and its political subdivisions and private organizations providing services to individuals under contracts with state agencies, offices, boards, or commissions and to the information, records, instrumentalities, and properties used in the performance of such entities' statutory duties or contractual arrangements. All such entities and the described private organizations shall cooperate with the director, and shall make available to the director such information, records, instrumentalities, and properties upon request.

*b.* If the information sought by the legislative services agency, with respect to the agency's provision of services described in paragraph "a", is required by law to be kept confidential, the agency shall have access to the information, but shall maintain the confidentiality of the information and is subject to the same penalties as the lawful custodian of the information for dissemination of the information. However, the legislative services agency shall not have access to tax return information except for individual income tax sample data as provided in section 422.72, subsection 1.

*c.* The director may issue subpoenas for production of any information, records, instrumentalities, or properties to which the director is authorized to have access under paragraph "a". If any person subpoenaed refuses to produce the information, records, instrumentalities, or properties, the director may apply to the district court having jurisdiction over that person for the enforcement of the subpoena.

2. The director and agents and employees of the legislative services agency, with respect to the agency's provision of services relating to legal analysis, drafting, and publications, staffing of subject matter standing and statutory committees, and provision of legislative information to the public, may call upon any agency, office, board, or commission of the state or any of its political subdivisions or private organizations providing services to individuals under contracts with a state agency, office, board, or commission for such information and assistance as may be needed in the provision of services described in this subsection.

Such information and assistance shall be furnished within the resources and authority of such agency, office, board, or commission. This requirement of furnishing such information and assistance shall not be construed to require the production or opening of any public records which are required by law to be kept private or confidential.

3. The director, an agent or former agent, and an employee or former employee of the legislative services agency shall not be compelled to give testimony or to appear and produce documentary evidence in a judicial or quasi-judicial proceeding if the testimony or documentary evidence sought relates to a legislative duty or act concerning the consideration or passage or rejection of proposed legislation performed by the director, agent, or employee. An order or subpoena purporting to compel testimony or the production of documentary evidence protected under this subsection is unenforceable.

2003 Acts, ch 35, §3, 49  
NEW section

### **2A.4 Specific services — public policy recommendations restricted.**

The legislative services agency shall provide the following specific services:

1. Preparation of legal and legislative analysis of any governmental matter upon the proper request of members and committees of the general assembly. Such analysis shall not contain any public policy recommendations. Such legal analysis shall be provided through the exercise of an attorney-employee's independent, professional judgment.

2. Drafting and preparation of legislation, including bills, resolutions, and amendments, for committees and individual members of the general assembly; proposed bills and joint resolutions for state agencies and the governor in accordance with section 2.16; and bills embodying a plan of legislative and congressional redistricting prepared in accordance with chapter 42.

3. Fiscal analysis of legislation, and state expenditure, revenue, and budget review. The director of the agency or the director's designee may make recommendations to the general assembly concerning the state's expenditures and revenues.

4. Attendance at the budget hearings required by section 8.26. The director of the agency may offer explanations or suggestions and make inquiries with respect to such budget hearings.

5. Assistance to standing committees and members of the general assembly in attaching fiscal notes to bills and resolutions as provided by the rules of the general assembly.

6. Performance of the duties pertaining to the preparation of correctional impact statements as provided in section 2.56.

7. Furnishing information, acting in an advisory capacity, providing staffing services, and reporting to standing, statutory, and interim com-

mittees of the general assembly.

8. Provision of staffing services including but not limited to preparation of legal and legislative analysis for the administrative rules review committee.

9. Preparation of legal and legislative analysis for the legislative council with respect to rules and forms submitted by the supreme court to the legislative council pursuant to section 602.4202.

10. Review and oversight of state program operations and program evaluation of state agencies, including compliance, efficiency, and effectiveness determinations, as required by section 2A.7.

11. Provision of legislative computer systems services to the senate, house of representatives, and central legislative staff agencies, and provision of advice regarding legislative computer systems services, needs, capabilities, and uses to the legislative council and the general assembly.

2003 Acts, ch 35, §4, 49  
NEW section

#### **2A.5 Official legal and other publications — procurements.**

1. The legislative services agency shall publish the official legal publications of the state as provided in chapter 2B. The legislative services agency shall have legal custody of the publications and shall provide for the warehousing, sale, and distribution of the publications. The legislative services agency shall retain or cause to be retained a number of old editions of the publications but may otherwise distribute or cause to be distributed old editions of the publications to any person upon payment by the person of any distribution costs.

2. The printed versions of the publications listed in this subsection shall be sold at a price to be established by the legislative services agency. In determining the prices, the legislative services agency shall consider the costs of printing, binding, distribution, and paper stock, compilation and editing labor costs, and any other associated costs. The legislative services agency shall also consider the number of volumes or units to be printed, sold, and distributed in the determination of the prices.

- a. The Iowa Code.
- b. The Iowa Code Supplement.
- c. The Iowa Acts.
- d. The Iowa court rules.
- e. The Iowa administrative code.
- f. The Iowa administrative bulletin.

3. The legislative services agency shall compile for publication and distribute in odd-numbered years the Iowa official register. The register shall contain historical, political, and other information and statistics of general value but shall not contain information or statistics of a partisan character. The print and electronic versions of the register need not contain the same information and statistics but shall be published to provide the greatest access to such information and statistics

at the most reasonable cost as determined by the legislative services agency. The different versions of the register may be distributed free of charge, may be distributed free of charge except for postage and handling charges, or may be sold at a price to be established by the legislative services agency.

4. The legislative services agency may establish policies for the production, editing, distribution, and pricing of electronic publications containing information stored by the legislative branch in an electronic format, including information contained in the printed publications listed in this section. Such electronic publications may include programming not originally part of the stored information, including but not limited to search and retrieval functions. The policies shall provide for the widest possible distribution of these value-added electronic publications at the lowest price practicable, which shall not be more than the costs attributable to producing, editing, and distributing the electronic publications.

5. Subject to section 2.42, the legislative services agency shall determine its procurement procedures, which may include procurement determinations based on service provider competence, meeting of service or product specifications, and reasonableness of price; the posting of security to accompany a service provider proposal; the preference of Iowa-based businesses if comparable in price; the disclosure of service provider assignments; the inclusion of renewal options; the imposition of liquidated damages and other penalties for breach of any service provider requirement; and the rejection of all service provider proposals and institution of a new procurement process.

2003 Acts, ch 35, §5, 48, 49  
Legislative intent that provisions of 2003 Acts, ch 35, relating to official legal and other publications, procurements, special distribution of legal publications, and restrictions on free distributions by the legislative services agency shall prevail over conflicting provisions of 2003 Acts, ch 145; 2003 Acts, ch 145, §292  
NEW section

#### **2A.6 Special distribution of legal publications — restrictions on free distributions.**

1. The legislative services agency shall make free distribution of the printed versions of the official legal publications listed in section 2A.5, subsection 2, subject to payment of any routine distribution costs such as but not limited to mailing and handling costs, to the three branches of state government, to elected county officers, to county and city assessors, to Iowa's congressional delegation, to federal courts in Iowa and federal judges and magistrates for Iowa, and to state and university depository libraries, the library of Congress, and the library of the United States supreme court. Only such officers, offices, and agencies entitled to or receiving free copies during the fiscal year beginning July 1, 2002, and ending June 30, 2003, shall be entitled to continue to receive free copies in subsequent years, except that successor and new officers, offices, and agencies shall re-

ceive a reasonable number of free copies as determined by the legislative services agency. Such officers, offices, and agencies shall annually review the number of copies received in the prior year to determine if the number of copies received can be reduced and shall submit the information in a report to the legislative services agency. The number of copies received, once reduced, shall not be increased to the previous level without the express consent of the legislative services agency.

2. Each officer, office, or agency receiving one or more free copies of a publication under this section shall only receive up to the number of copies indicated free at the time of initial distribution. If an officer, office, or agency receiving one or more free copies of a publication under this section desires additional copies beyond the number initially received, the officer, office, or agency must request the additional copies and pay the normal charge for such publication.

3. If a version of a publication provided under this section is available in an electronic format, the legislative services agency may establish policies providing for the substitution of an electronic version for the printed version of the publication, and for the amount of payment, if any, required for the electronic publication. The payment amount shall not be more than established pursuant to section 2A.5 for the same publication. For the Iowa administrative code and its supplements, the legislative services agency may provide that the distribution requirement of this section is met by distributing relevant portions of the Iowa administrative code or its supplements in either a printed or electronic format.

4. Notwithstanding any provision of this section to the contrary, the legislative services agency may review the publication costs and offsetting sales revenues relating to legal publications in printed formats, and may establish policies requiring payment from persons otherwise entitled to receive them at no cost or at a price covering distribution costs pursuant to subsection 1. The payment amount shall not be more than established pursuant to section 2A.5 for the same publication.

2003 Acts, ch 35, §6, 49

Legislative intent that provisions of 2003 Acts, ch 35, relating to official legal and other publications, procurements, special distribution of legal publications, and restrictions on free distributions by the legislative services agency shall prevail over conflicting provisions of 2003 Acts, ch 145; 2003 Acts, ch 145, §292

NEW section

### **2A.7 State government oversight and program evaluation.**

1. The general assembly shall independently and intensively review and oversee the performance of state agencies in the operation of state programs to evaluate the efficiency and effectiveness of the state programs and to consider alternatives which may improve the benefits of such programs or may reduce their costs to the citizens of the state. The legislative services agency shall

provide technical and professional support for the general assembly's oversight responsibility.

2. The general assembly by concurrent resolution or the legislative council may direct the legislative services agency to conduct a program evaluation of any state agency. Upon the passage of the concurrent resolution or receiving the direction of the legislative council, the director of the legislative services agency shall inform the chairpersons of the committees responsible for appropriations of the anticipated cost of the program evaluation and the number and nature of any additional personnel needed to conduct the program evaluation and shall notify the official responsible for the program to be evaluated. The director, after consulting with the responsible official and the entity requesting the program evaluation, shall determine the goals and objectives of the state agency or state program for the purpose of the program evaluation.

3. In conducting the program evaluation, the legislative services agency may make certain determinations including but not limited to the following:

a. The organizational framework of the state agency, its adequacy and relationship to the overall structure of state government, and whether the program under the agency's jurisdiction could be more effective if consolidated with another program, transferred to another program, or modified, or whether the program should be abolished.

b. Whether the state agency is conducting programs and activities and expending funds appropriated to the state agency in compliance with state and federal law and any executive order of the governor, and whether statutory or administrative rule changes are advisable.

c. Whether the state agency is conducting authorized activities and programs pursuant to goals and objectives established by statute or rule, specific legislative intent, the budget, the governor, or a strategic or other long-range plan, and whether alternatives which might produce the desired results at a lower cost have been considered.

d. Whether the state agency is conducting programs and activities and expending funds appropriated to the state agency in an efficient and effective manner, has complied with all applicable laws, and, if not, determine the causes for such inefficiency, ineffectiveness, or noncompliance.

e. Relationships within and among other governmental agencies and programs including financial exchanges, coordination, inconsistent programs, and areas of duplication or overlapping programs.

f. The productivity of the state agency's operations measured in terms of cost-benefit relationships or other accepted measures of effectiveness.

g. Other criteria determined by the director.

4. Upon the completion of the program evaluation and preparation of a report on the evaluation,

the legislative services agency shall provide a copy of the report to the governing official or board of the state agency and afford the state agency a reasonable opportunity to respond to the findings and recommendations of the report. The response shall be included in the final version of the report released to the general assembly or the legislative council. Until its release the report shall be regarded as confidential by all persons properly having custody of the report.

2003 Acts, ch 35, §7, 49  
NEW section

#### **2A.8 Sales — tax exemption.**

1. The legislative services agency and its legis-

lative information office may sell mementos and other items relating to Iowa history and historic sites, the general assembly, and the state capitol, on the premises of property under the control of the legislative council, at the state capitol, and on other state property.

2. The legislative services agency is not a retailer under chapter 422 and the sale of items or provision of services by the legislative services agency is not a retail sale under chapter 422, division IV, and is exempt from the sales tax.

2003 Acts, ch 35, §8, 49  
NEW section

## CHAPTER 2B

### LEGAL PUBLICATIONS

#### **2B.1 Iowa Code and administrative code editors.**

1. The director of the legislative services agency shall appoint the Iowa Code editor and the administrative code editor, subject to the approval of the legislative council, as provided in section 2.42. The Iowa Code editor and the administrative code editor shall serve at the pleasure of the director of the legislative services agency.

2. The Iowa Code and administrative code editors are responsible for the editing, compiling, and proofreading of the publications they prepare, as provided in this chapter. The Iowa Code editor is entitled to the temporary possession of the original enrolled Acts and resolutions as necessary to prepare them for publication.

2003 Acts, ch 35, §13, 49  
Section amended

#### **2B.5 Duties of administrative code editor.**

The administrative code editor shall:

1. Cause the Iowa administrative bulletin and the Iowa administrative code to be published as provided in chapter 17A.

2. Cause the Iowa court rules to be published and distributed, as directed by the supreme court after consultation with the legislative council. The Iowa court rules shall consist of all rules prescribed by the supreme court. The Iowa court rules and supplements to the court rules shall be priced as provided in section 2A.5.

3. Cause to be published annually a correct list of state officers and deputies; members of boards and commissions; justices of the supreme court, judges of the court of appeals, and judges of the district courts including district associate judges and judicial magistrates; and members of the general assembly. The offices of the governor and secretary of state shall cooperate in the preparation

of the list.

4. Notify the administrative rules coordinator if a rule is not in proper style or form.

5. Perform other duties as directed by the director of the legislative services agency, the legislative council, or the administrative rules review committee and as provided by law.

2003 Acts, ch 35, §14, 49  
See §7.17, 17A.6  
Section amended

#### **2B.6 Duties of Iowa Code editor.**

The Iowa Code editor shall:

1. Submit recommendations as the Iowa Code editor deems proper to each general assembly for the purpose of amending, revising, codifying, and repealing portions of the statutes which are inaccurate, inconsistent, outdated, conflicting, redundant, or ambiguous, and present the recommendations in bill form to the appropriate committees of the general assembly.

2. Cause the annual Iowa Acts to be published, as provided in section 2B.10, including copies of all Acts and joint resolutions passed at each session of the general assembly.

3. Cause the Iowa Code and Iowa Code Supplement to be published as provided in section 2B.12.

4. Perform other duties as directed by the director of the legislative services agency or the legislative council and as provided by law.

2003 Acts, ch 35, §15, 49  
Section amended

#### **2B.10 Session laws.**

1. The arrangement of the Acts and resolutions, and the size, style, type, binding, general arrangement, and tables of the session laws shall be printed and published in the manner determined by the Iowa Code editor in accordance with the policies set by the legislative council as provided in section 2.42.

2. Chapters of the first regular session shall be numbered from one and chapters of the second regular session shall be numbered from one thousand one.

3. A list of elective state officers and deputies, supreme court justices, judges of the court of appeals, and members of the general assembly shall be published annually with the session laws.

4. A statement of the condition of the state treasury shall be included, as provided by the Constitution of the State of Iowa. The statement shall be furnished by the director of the department of administrative services.

5. The enrolling clerks of the house and senate shall arrange for the Iowa Code editor to receive suitable copies of all Acts and resolutions as soon as they are enrolled.

6. A notation of the filing of an estimate of a state mandate prepared by the legislative services agency pursuant to section 25B.5 shall be included in the session laws with the text of an enacted bill or joint resolution containing the state mandate.

2003 Acts, ch 35, §16, 45, 49; 2003 Acts, ch 145, §286  
See Constitution, Art. III, §18; §7A.3  
Terminology changes applied  
Subsection 5 amended

### **2B.12 Iowa Code and Code Supplement.**

1. A new Iowa Code shall be issued as soon as possible after the final adjournment of the second regular session of the general assembly. A new Code Supplement shall be issued as soon as possible after the first regular session of the general assembly. A Code Supplement may be issued after a special session of the general assembly or as required by the legislative council.

2. The entire Iowa Code shall be maintained on a computer database which shall be updated as soon as possible after each session of the general assembly. The Iowa Code and Code Supplement shall be prepared and printed on a good quality of paper in one or more volumes, in the manner determined by the Iowa Code editor in accordance with the policies of the legislative council, as provided in section 2.42.

3. An edition of the Iowa Code or Code Supplement shall contain each Code section in its new or amended form. However, a new section or amendment which does not take effect until after the probable publication date of a succeeding Iowa Code or Code Supplement may be deferred for publication in that succeeding Iowa Code or Code Supplement. The sections shall be inserted in each edition in a logical order as determined by the Iowa Code editor in accordance with the policies of the legislative council.

4. Each section of an Iowa Code or Code Supplement shall be indicated by a number printed in boldface type and shall have an appropriate head-note printed in boldface type.

5. Appropriate historical references or source notes may be placed following each section.

6. The Iowa Code published after the second regular session of the general assembly shall include:

a. An analysis of the Code by titles and chapters.

b. The Declaration of Independence.

c. The Articles of Confederation.

d. The Constitution of the United States.

e. The laws of the United States relating to the authentication of records.

f. The Constitution of the State of Iowa, original and codified versions.

g. The Act admitting Iowa into the union as a state.

h. A chapter title, number, and chapter analysis at the head of each chapter. The chapter number shall be printed at the top of each page.

i. All of the statutes of Iowa of a general and permanent nature, except as provided in subsection 3.

j. A comprehensive index and a summary index covering the Constitution and statutes of the state of Iowa.

7. The Code Supplement published after the first regular session of the general assembly shall include:

a. All of the statutes of Iowa of a general and permanent nature which were enacted or amended during that session, except as provided in subsection 3, and an indication of all sections repealed during that session, and any amendments to the Constitution of the State of Iowa approved by the voters at the preceding general election.

b. A chapter title and number for each chapter or part of a chapter included.

c. An index covering the material included.

8. A Code or Code Supplement may include appropriate tables showing the disposition of Acts of the general assembly and other reference material as determined by the Iowa Code editor in accordance with policies of the legislative council.

2003 Acts, ch 35, §17, 49  
See also §2.42

Subsection 6, paragraph f amended

### **2B.13 Editorial powers and duties.**

1. The Iowa Code editor in preparing the copy for an edition of the Iowa Code or Iowa Code Supplement shall not alter the sense, meaning, or effect of any Act of the general assembly, but may:

a. Correct manifestly misspelled words and grammatical and clerical errors, including punctuation, and change capitalization, spelling, and punctuation for purposes of uniformity and consistency in Code language.

b. Correct internal references to sections which are cited erroneously or have been repealed, amended, or renumbered.

c. Substitute the proper chapter, section, subsection, or other statutory reference for the term "*this Act*" or references to another Act of the general assembly when there appears to be no doubt as

to the proper method of making the substitution.

*d.* Substitute the proper date for references to the effective or applicability dates of an Act when there appears to be no doubt as to the proper method of making the substitution.

*e.* Correct names of agencies, officers, or other entities when there appears to be no doubt as to the proper method of making the correction.

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

*g.* Change words that designate one gender to reflect both genders when the provisions apply to both genders.

*h.* If any Code section or part of a Code section, or any Act of the general assembly which is intended to be codified, is amended by more than one Act or more than one provision in an Act of the general assembly, and the amendments do not expressly refer to or amend one of the other Acts or Act provisions in question, harmonize the amendments, if possible, so that effect may be given to each and incorporate the amendments as harmonized in the Code section. If amendments made by several Acts are irreconcilable, unless one of the amendments repeals or strikes the language in question, the Iowa Code editor shall codify the amendment that is latest in date of enactment by the general assembly. If amendments made by provisions within an Act are irreconcilable, unless one of the amendments repeals or strikes the language in question, the Iowa Code editor shall codify the provision listed last in the Act. If one of the amendments repeals or strikes the language in question, the Iowa Code editor shall codify the amendment that repeals or strikes the language.

2. The administrative code editor in preparing the copy for an edition of the Iowa administrative code or bulletin shall not alter the sense, meaning, or effect of any rule, but may:

*a.* Correct misspelled words and grammatical and clerical errors, including punctuation, and change capitalization, spelling, and punctuation for purposes of uniformity and consistency.

*b.* Correct references to rules or sections which are cited erroneously or have been repealed, amended, or renumbered.

*c.* Correct names of agencies, officers, or other entities when there appears to be no doubt as to the proper method of making the correction.

*d.* Transfer, divide, or combine rules or parts of rules and add or amend catchwords to rules and subrules.

*e.* Change words that designate one gender to reflect both genders when the provisions apply to both genders.

*f.* Perform any other editorial tasks required or authorized by section 17A.6.

3. The Iowa Code editor may, in preparing the copy for an edition of the Iowa Code or Iowa Code Supplement, establish standards for and change

capitalization, spelling, and punctuation in any Code provision for purposes of uniformity and consistency in Code language. The administrative code editor may establish standards for capitalization, spelling, and punctuation for purposes of uniformity and consistency in the administrative code.

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

5. The Iowa Code editor may prepare and publish comments deemed necessary for a proper explanation of the manner of printing a section or chapter of the Iowa Code. The Iowa Code editor shall maintain a record of all of the corrections made under subsection 1. The Iowa Code editor shall also maintain a separate record of the changes made under subsection 1, paragraphs “b” through “h”. The records shall be available to the public.

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

7. The effective date of all editorial changes in an edition of the Iowa Code or Iowa Code Supplement is the date of the Iowa Code editor’s approval of the final press proofs for the statutory text contained within that publication. The effective date of all editorial changes for the Iowa administrative code is the date those changes are published in the Iowa administrative code.

2003 Acts, ch 35, §18, 49  
Section amended

## **2B.17 Citations — official statutes.**

1. The permanent and official printed versions of the Iowa Codes and Code Supplements published subsequent to the adjournment of the 1982 regular session of the Sixty-ninth General Assembly shall be known and may be cited as “Iowa Code chapter (or section) . . . .”, or “Iowa Code Supplement chapter (or section) . . . .”, inserting the appropriate chapter or section number. If the year of edition is needed, it may be inserted before or after the words “Iowa Code” or “Iowa Code Supplement”. In Iowa publications, the word “Iowa” may be omitted if the meaning is clear.

2. The session laws of each general assembly shall be known as “Acts of the . . . . General Assembly, . . . . Session, Chapter (or File No.) . . . . , Section . . . .” (inserting the appropriate numbers) and shall be cited as “. . . . Iowa Acts, chapter . . . . , section . . . .” (inserting the appropriate

year, chapter, and section number).

3. The official printed versions of the Iowa Code, Iowa Code Supplement, and Iowa Acts published under authority of the state are the only authoritative publications of the statutes of this state. Other publications of the statutes of the state shall not be cited in the courts or in the reports or rules of the courts. The Iowa Code editor is the custodian of the official printed versions of the Iowa Code, Iowa Code Supplement, and Iowa Acts and may attest to and authenticate any portion of those official printed versions for purposes of admitting a portion of the official printed version in any court or office of any state, territory, or possession of the United States or in a foreign jurisdiction.

4. The Iowa administrative code and the Iowa administrative bulletin shall be cited as provided in section 17A.6.

5. The printed version of the Iowa administrative code is the permanent publication of administrative rules in this state and the Iowa administrative bulletin and the Iowa administrative code published pursuant to chapter 17A are the official publications of the administrative rules of this state, and are the only authoritative publications of the administrative rules of this state. Other

publications of the administrative rules of this state shall not be cited in the courts or in the reports or rules of the courts. The Iowa administrative code editor is the custodian of the official printed versions of the Iowa administrative code and the Iowa administrative bulletin and may attest to and authenticate any portion of those official printed versions for purposes of admitting a portion of the official printed version in any court or office of any state, territory, or possession of the United States or in a foreign jurisdiction.

2003 Acts, ch 35, §19, 49  
Subsections 3 and 5 amended

#### **2B.21 Availability of parts of the Iowa Code and administrative code.**

The Iowa Code editor and the administrative code editor, in accordance with policies established by the legislative council, may cause parts of the Iowa Code or administrative code to be made available for the use of public officers and other persons. This authority shall be exercised in a manner planned to avoid delay in the other publications of the editors.

2003 Acts, ch 35, §20, 49  
See also §7A.27  
Section amended

## CHAPTER 2C

### CITIZENS' AIDE

#### **2C.9 Powers.**

The citizens' aide may:

1. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any agency, without regard to the finality of the administrative action, except that the citizens' aide shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency. A communication or receipt of information made pursuant to the powers prescribed in this chapter shall not be considered an ex parte communication as described in the provisions of section 17A.17.

2. Investigate, on complaint or on the citizens' aide's own motion, any administrative action of any person providing child welfare or juvenile justice services under contract with an agency that is subject to investigation by the citizens' aide. The person shall be considered to be an agency for purposes of the citizens' aide's investigation.

3. Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of this chapter, determine the form, frequency, and distribution of the conclusions and recommendations of the citizens' aide.

4. Request and receive from each agency assistance and information as necessary in the performance of the duties of the office. Notwithstanding section 22.7, pursuant to an investigation the citizens' aide may examine any and all records and documents of any agency unless its custodian demonstrates that the examination would violate federal law or result in the denial of federal funds to the agency. Confidential documents provided to the citizens' aide by other agencies shall continue to maintain their confidential status. The citizens' aide is subject to the same policies and penalties regarding the confidentiality of the document as an employee of the agency. The citizens' aide may enter and inspect premises within any agency's control and may observe proceedings and attend hearings, with the consent of the interested party, including those held under a provision of confidentiality, conducted by any agency unless the agency demonstrates that the attendance or observation would violate federal law or result in the denial of federal funds to that agency. This subsection does not permit the examination of records or access to hearings and proceedings which are the work product of an attorney under section 22.7, subsection 4, or which are privileged communications under section 622.10.

5. Issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry. The citizens' aide, deputies, and assistants of the citizens' aide may administer oaths to persons giving testimony before them. If a witness either fails or refuses to obey a subpoena issued by the citizens' aide, the citizens' aide may petition the district court having jurisdiction for an order directing obedience to the subpoena. If the court finds that the subpoena should be obeyed, it shall

enter an order requiring obedience to the subpoena, and refusal to obey the court order is subject to punishment for contempt.

6. Establish rules relating to the operation, organization, and procedure of the office of the citizens' aide. The rules are exempt from chapter 17A and shall be published in the Iowa administrative code.

2003 Acts, ch 178, §46

NEW subsection 2 and former subsections 2 – 5 renumbered as 3 – 6

## CHAPTER 2D

### INTERNATIONAL RELATIONS

#### **2D.1 International relations advisory council.**

1. An international relations advisory council is created to provide coordination of state and local international relations activities, through both the public and private sectors, and to provide recommendations to the governor and to the general assembly relating to international relations activities.

2. The international relations advisory council shall consist of all of the following members:

*a.* The cochairpersons of the international relations committee established by the legislative council, or their designees.

*b.* Two members of the senate who are members of the international relations committee of the legislative council, appointed by the majority leader of the senate, after consultation with the president of the senate and the minority leader of the senate, and two members of the house of representatives who are members of the international relations committee of the legislative council, appointed by the speaker of the house, after consultation with the majority leader and the minority leader of the house of representatives.

*c.* The director of the department of economic development, or the director's designee.

*d.* The secretary of agriculture, or the secretary's designee.

*e.* The director of the department of administrative services, or the director's designee.

*f.* The director of the department of workforce development, or the director's designee.

*g.* The director of the department of cultural affairs, or the director's designee.

*h.* The director of the department of education, or the director's designee.

*i.* The director of public health, or the director's designee.

*j.* Representatives of agriculture, private business and industry, international programs provided through universities and colleges located in this state, Iowa sister states, the refugee services

center of the department of human services, and others, selected by the legislative council, based upon recommendations made by the international relations committee of the legislative council.

3. The cochairpersons of the international relations committee of the legislative council shall serve as cochairpersons of the advisory council.

4. The executive branch protocol officer and the legislative branch protocol officer shall act in a consultative capacity to the advisory council. The legislative branch protocol officer shall provide staff support to the advisory council.

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

*a.* Create a statewide network to coordinate international relations activities involving the executive and legislative branches, business and industry, public and private educational institutions, and other entities involved in promoting international relations. The network shall include provision of information to the public via electronic access utilizing the most advanced and cost-effective and efficient technology.

*b.* Coordinate existing resources, provided through state agencies and other entities with international relations expertise, to facilitate international relations activities. Resources shall be utilized in a manner which is most appropriate to the type of international relations activity involved.

*c.* Provide continuity, over time, at the state level in the development and enhancement of partnerships with international colleagues.

*d.* Develop a comprehensive, state international relations policy and define the state's role in the international relations arena.

*e.* Coordinate efforts with the executive branch and legislative branch protocol officers.

*f.* Sponsor an annual state summit on international relations capacity to promote international relations activities in a variety of arenas including but not limited to international market development and civic, cultural, and educational opportu-

nities. The summit should incorporate input from city, county, and state entities from both the public and private sectors.

*g.* Inform and educate the public, workforce, students, businesses, and state policymakers regarding the importance of international involvement in both economic and noneconomic international relations activities.

*h.* Compile reference materials and a listing of resources to be available to policymakers and the public in preparing for international relations activities and travel. The compiled materials and listing of resources shall be provided via electronic access utilizing the most advanced and cost-effective and efficient technology.

2003 Acts, ch 145, §286

Terminology change applied

**2D.3 Legislative branch protocol officer.**

The legislative services agency shall employ a

legislative branch protocol officer to coordinate activities related to state, national, and international visitors to the state capitol or with an interest in the general assembly, and related to travel of members of the general assembly abroad. The protocol officer shall serve in a consultative capacity and shall provide staff support to the international relations advisory council. The protocol officer shall also work with the executive branch protocol officer to coordinate state, national, and international relations activities. The legislative branch protocol officer shall submit periodic reports to the international relations committee of the legislative council regarding the visits of state, national, and international visitors and regarding international activities.

2003 Acts, ch 35, §44, 49

Terminology change applied

## CHAPTER 3

### STATUTES AND RELATED MATTERS

**3.1 Form of bills.**

Bills designed to amend, revise, codify, or repeal a law:

1. Shall refer to the numbers of the sections or chapters of the Code or Code Supplement to be amended or repealed, but it is not necessary to refer to the sections or chapters in the title.

2. Shall refer to the session of the general assembly and the sections and chapters of the Acts to be amended if the bill relates to a section or sections of an Act not appearing in the Code or codified in a supplement to the Code.

3. All references to statutes shall be expressed in numerals, and if omitted the Code editor in preparing Acts for publication in the session laws shall supply the numerals.

4. The title to a bill shall contain a brief statement of the purpose of the bill, however all detail matters properly connected with the subject so expressed may be omitted from the title.

Publication of bills, §2.9

Section not amended; footnote revised

**3.2 Bill drafting instructions.**

The legislative council shall, in consultation with the director of the legislative services agency and the Code editor, promulgate rules and instructions for the drafting of legislative bills and resolutions not otherwise in conflict with the provisions of law and the rules of the senate and the house.

2003 Acts, ch 35, §44, 49

Terminology change applied

## CHAPTER 4

### CONSTRUCTION OF STATUTES

**4.7 Conflicts between general and special statutes.**

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.

Intent of general assembly that §7E.6 govern compensation of members of boards, committees, commissions, or councils; see §7E.6(7)

Section not amended; footnote revised

**4.8 Irreconcilable statutes.**

If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment\* by the general assembly prevails. If provisions of the same Act are irreconcilable, the provision listed last in the Act prevails.

\*See Attorney General opinion, May 16, 1973; §2B.13(1)(h)

Intent of general assembly that §7E.6 govern compensation of members of boards, committees, commissions, or councils; see §7E.6(7)

Section not amended; footnote revised

## CHAPTER 6B

### PROCEDURE UNDER EMINENT DOMAIN

#### **6B.18 Notice of appraisalment — appeal of award — notice of appeal.**

1. After the appraisalment of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice, by ordinary mail, to the condemner and the condemnee of the date on which the appraisalment of damages was made, the amount of the appraisalment, and that any interested party may, within thirty days from the date of mailing the notice of the appraisalment of damages, appeal to the district court by filing notice of appeal with the district court of the county in which the real estate is located and by giving written notice to the sheriff that the appeal has been taken. The sheriff shall endorse the date of mailing of notice upon the original appraisalment of damages.

2. An appeal of appraisalment of damages is deemed to be perfected upon filing of a notice of appeal with the district court within thirty days from the date of mailing the notice of appraisalment of

damages. The notice of appeal shall be served on the adverse party, or the adverse party's agent or attorney, and any lienholder and encumbrancer of the property in the same manner as an original notice within thirty days from the date of filing the notice of appeal unless, for good cause shown, the court grants more than thirty days. If after reasonable diligence, the notice cannot be personally served, the court may prescribe an alternative method of service consistent with due process of law.

3. In case of condemnation proceedings instituted by the state department of transportation, when the owner appeals from the assessment made, such notice of appeal shall be served upon the attorney general, or the department general counsel to the state department of transportation, or the chief highway engineer for the department.

2003 Acts, ch 44, §1  
Subsection 2 amended

## CHAPTER 7

### GOVERNOR AND LIEUTENANT GOVERNOR

#### **7.13 Governor-elect expense fund.**

There is hereby created as a permanent fund in the office of the treasurer of state a fund to be known as the "*governor-elect expense fund*". For the purpose of establishing and maintaining said fund, for each biennium, there is hereby appropriated thereto from funds in the general fund not otherwise appropriated the sum of ten thousand dollars, or so much thereof as may be necessary, to pay for office space, supplies, postage, and secretarial and clerical salaries after the day of the election and before the day of the inauguration for a

first term governor-elect. Any balance in said fund at the end of each biennium shall revert to the general fund. Said fund shall be subject at all times to the warrant of the director of the department of administrative services drawn upon written requisition of the governor-elect. In event of a contested election, no distribution of the fund will be made until such time as the general assembly certifies the results of the election.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 7A

### OFFICIAL REPORTS AND MISCELLANEOUS PUBLICATIONS

#### **7A.1 Official reports — preparation.**

State officials, boards, commissions, and heads of departments shall prepare and file written official reports, in simple language and in the most concise form consistent with clearness and comprehensiveness of matter, required by law or by the governor.

Before filing any report its author shall carefully edit the same and strike therefrom all minutes

of proceedings, and all correspondence, petitions, orders, and other matter which can be briefly stated, or which is not important information concerning public affairs, and consolidate so far as practicable all statistical tables.

Any report failing to comply substantially with this section shall be returned to its author for correction, and until made so to comply shall not be printed.

This section shall not be construed as depriving the director of the department of administrative services of the right to edit and revise said report.

2003 Acts, ch 145, §106  
Unnumbered paragraph 4 amended

### 7A.2 Made to governor.

All official reports shall be made to the governor unless otherwise provided.

Reports after being filed with the governor and considered by the governor shall be delivered to the director of the department of administrative services.

2003 Acts, ch 145, §107  
Departmental annual reports to governor and legislature; see §7E.3(4)  
Unnumbered paragraph 2 amended

### 7A.2A Annual reports — financial information.

An annual report issued by a state official, board, commission, department, or independent agency that is required by law to be submitted to the general assembly shall include a financial information section pertaining to the topic of the report. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the fiscal year covered by the annual report and for the previous fiscal year and may include budget information for future fiscal years. In addition to any narrative, the financial information shall be provided in graphic form utilizing a columnar format.

2003 Acts, ch 57, §1  
NEW section

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

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

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

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

as practicable after June 30 of each odd-numbered year and shall be as detailed as may be required by the governor, or in case the reports are to be filed with the general assembly, the presiding officers of the two houses of the general assembly.

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

2003 Acts, ch 145, §108 – 110  
Subsection 1 amended  
Subsection 6 stricken and former subsections 7 – 12 renumbered as 6 – 11  
Subsection 9 amended

### 7A.11 Documents filed with the general assembly.

1. It is the intent of the general assembly that a department or official may notify the chief clerk of the house of representatives and the secretary of the senate of the availability of documents and materials other than those covered by subsection 2.

2. A department or official required to file a document with the general assembly shall only be required to send one copy of the document to each of the following:

- a. The chief clerk of the house of representatives.
- b. The secretary of the senate.
- c. Each caucus or research staff director of the general assembly.

3. The chief clerk of the house of representatives and the secretary of the senate shall transmit a list of the documents received, and a list of the documents and materials available to the general assembly to the legislative services agency, which shall maintain the lists, as well as a list of addresses where copies of the documents may be ordered. The legislative services agency shall periodically distribute copies of these lists to members of the general assembly. The chief clerk of the house of representatives and the secretary of the senate may transmit the actual documents received to the legislative services agency for temporary storage.

2003 Acts, ch 35, §44, 49  
Terminology change applied

### 7A.14 Number of copies — style.

The annual and biennial reports shall be published, printed, and bound in such number as the director of the department of administrative services may order. The officials and heads of departments shall furnish the director with information necessary to determine the number of copies to be printed.

They shall be printed on good paper, in legible type with pages substantially six inches by nine

inches in size. They may be divided for binding where one portion should receive larger distribution than another, or be issued in parts or sections for greater convenience.

2003 Acts, ch 145, §111  
Unnumbered paragraph 1 amended

**7A.15 through 7A.19** Repealed by 2003 Acts, ch 35, § 47, 49; 2003 Acts, ch 145, § 291. See § 2.9.

See Code editor's note to §2.9

**7A.20 Miscellaneous documents.** Repealed by 2003 Acts, ch 35, § 47 – 49.

**7A.21 and 7A.22** Repealed by 2003 Acts, ch 35, § 47, 49; 2003 Acts, ch 145, § 291. See § 2A.5.

See Code editor's note to §2.9

**7A.23 Price of departmental reports.**

The director of the department of administrative services shall establish and fix a selling price for all state departmental reports and any other state publications the director may designate, which price per volume shall be the amount charged any person, other than public officials, who purchases the publication. The price shall cover the cost of printing and distribution. The director may distribute gratis to state or local public officials or offices, as the director deems necessary, copies of departmental annual reports.

2003 Acts, ch 145, §112  
Section amended

**7A.25 and 7A.26** Repealed by 2003 Acts, ch 35, § 47, 49; 2003 Acts, ch 145, § 291. See § 2A.5.

See Code editor's note to §2.9

**7A.27 Other necessary publications — when necessary to sell.**

Other miscellaneous documents, reports, bulletins, books, and booklets may be published that are needed for the use of the various officials and departments of state, or are of value for the information of the general assembly or the public, in form and number most useful and convenient, to be determined by the director of the department of administrative services.

When such publications, except supplements to the Iowa administrative code, paid for by public funds furnished by the state, contain reprints of statutes or rules, or both, they shall be sold and distributed at cost by the department ordering the publication if the cost per publication is one dollar or more, unless a central library or depository is established. Such publications shall be obtained from the director of the department of administrative services on requisition by the department ordering the publication, and the selling price, if any, shall be determined by the director of the department of administrative services by dividing the to-

tal cost of printing, paper, distribution, and binding by the number printed. The price shall be set at the nearest multiple of ten to the quotient thus obtained. Distribution of such publications shall be made by the director gratis to public officers, purchasers of licenses from state departments required by statute, and departments. Funds from the sale of such publications shall be deposited monthly in the general fund of the state except the cost of distribution shall be deposited in the printing revolving fund established in section 8A.345.

2003 Acts, ch 145, §113  
Additional geological reports, §456.9  
Publication of director of institutions bulletins, §218.46  
Publication of parts of Code or administrative code, §2B.21  
Section amended

**7A.28 Governor may fix filing date.**

The governor shall have the right to fix a date for the completion of or filing of any copy or manuscript for any miscellaneous document or other publication, or for any portion of the manuscript, and to compel compliance with such orders the same as in the case of the official reports. The director of the department of administrative services shall report to the governor any failure to furnish manuscript or other delay affecting any publication.

2003 Acts, ch 145, §114  
Section amended

**7A.29 Title pages — complimentary insertions.**

The director of the department of administrative services shall provide the necessary printer's copy for a suitable title page for each publication requiring such title which shall contain the name of the author, but such title shall not have written or printed thereon or attached thereto the words "Compliments of" followed by the name of the author, nor any other words of similar import.

2003 Acts, ch 145, §115  
Section amended

**7A.30 Inventory of state property.**

Each state board, commission, department, and division of state government and each institution under the control of the department of human services, the Iowa department of corrections and the state board of regents and each division of the state department of transportation are responsible for keeping a written, detailed, up-to-date inventory of all real and personal property belonging to the state and under their charge, control, and management. The inventories shall be in the form prescribed by the director of the department of administrative services.

Inventories maintained in the files of each such agency of state government shall be open to public inspection and available for the information of the executive council and director of the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 7D

### EXECUTIVE COUNCIL

#### **7D.6 Report — official register.**

The secretary shall, as soon as practicable after January 1 of each odd-numbered year, prepare a report of the proceedings of the executive council for the two preceding calendar years. The report shall include a statement of:

1. The official canvass of the votes cast at the last general election.
2. Other acts of the council that are of general interest.

The report may be published in the Iowa official register as provided in section 2A.5.

2003 Acts, ch 35, §21, 48, 49  
Section amended

#### **7D.13 Order of transfer.**

If after such hearing the council shall find that said special work has been completed or abandoned, and that there is no good reason why such

transfer should not then be made, such findings shall be made a matter of record in the minutes of its proceedings, and the secretary of the council shall at once file a copy of such proceedings with the director of the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

#### **7D.14 Duty to transfer.**

The director of the department of administrative services shall, on receipt from the secretary of the council of a copy of such record, make such transfer.

2003 Acts, ch 145, §286  
Terminology change applied

**7D.33 State employee suggestion system.** Repealed by 2003 Acts, ch 145, § 291. See § 8A.110.

## CHAPTER 7E

### EXECUTIVE BRANCH ORGANIZATION AND RESPONSIBILITIES

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

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

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

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

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

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

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

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

*g.* The Iowa department of economic development, created in section 15.105, which has primary responsibility for programs for carrying out the economic development policies of the state.

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

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

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

*k.* The department of elder affairs, created in section 231.21, which has primary responsibility for leadership and program management for programs which serve the senior citizens of the state.

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

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

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

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

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

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

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

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

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

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

v. The commission of veterans affairs, which has primary responsibility for state veterans affairs.

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

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

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

2003 Acts, ch 145, §116 – 119; 2003 Acts, ch 178, §96, 121; 2003 Acts, ch 179, §142

See Code editor's note  
 Subsection 1, paragraph b amended  
 Subsection 1, paragraph c stricken and former paragraphs d – w redesignated as c – v  
 Subsection 1, paragraph c amended  
 Subsection 1, paragraph x stricken

### 7E.5A Buildings and infrastructure — funding.

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

2. A department shall, within its five-year capital budget request, identify specific instances where the failure to address deferred maintenance has had a negative impact on the department's ability to implement its mission and the proposed costs for annual routine and preventive maintenance based on an industry standard of one percent of the estimated replacement cost of the department's facilities. This subsection shall not apply to the state department of transportation.

3. A department requesting state moneys for a vertical infrastructure project shall actively pursue any federal funds for which the proposed project may be eligible and shall demonstrate such pursuit prior to receiving state moneys for the project. The department shall report the receipt of any such federal funds to the department of management and the legislative services agency in the manner described in section 8.23.

4. As used in this section, "vertical infrastructure" means the same as defined in section 8.57, subsection 5, paragraph "c".

2003 Acts, ch 35, §45, 49  
 Terminology change applied

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

1. a. Any position of membership on any board, committee, commission, or council in the executive branch of state government which is compensated by the payment of a per diem to the holder of that position under statutory law shall be compensated at the rate of fifty dollars per diem, notwithstanding any other law to the contrary.

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

c. In regard to any board, committee, commission, or council which has its name or organizational location altered after January 1, 1986, the statutory provision on the subject of per diem com-

compensation which was applicable to it on January 1, 1986, shall continue to govern such agency and its successor agency, notwithstanding the change in name or organizational location.

2. Any position of membership on any board, committee, commission, or council in the state government which has a compensation level limited to expenses only is eligible to receive, in addition to such actual expense reimbursement, an additional expense allowance of fifty dollars per day if the holder of any such position applies for such additional expense allowance and the holder of the position has an income level of one hundred fifty percent or less of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

3. Any position of membership on the board of the Iowa lottery authority shall receive compensation of fifty dollars per day and expenses.

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

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

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

7. It is the intent of the general assembly that this section shall be the governing provision on the subject of the compensation of any position of membership on any board, committee, commission, or council in the state government and that the provisions of this section shall govern over any

conflicting provision of law except provisions enacted subsequent to July 1, 1986, notwithstanding the provisions of section 4.7.

2003 Acts, ch 35, §22, 49; 2003 Acts, ch 178, §97, 121; 2003 Acts, ch 179, §142

Subsection 3 amended

Subsection 7 stricken and former subsection 8 renumbered as 7

**7E.7 Organizational structure.**

For organizational purposes only, the following apply:

1. The Iowa finance authority and the Iowa economic protective and investment authority shall be considered parts of the Iowa department of economic development. The Iowa department of economic development may provide staff assistance and administrative support to the authorities.

2. The agricultural development authority as established in section 175.3 shall be considered part of the office of treasurer of state. The office may provide staff assistance and administrative support to the authority.

3. The Iowa higher education loan authority shall be attached to the college student aid commission.

4. The Iowa railway finance authority shall be considered part of the department of transportation. The department of transportation may provide staff assistance and administrative support to the authority.

5. The Iowa advance funding authority shall be considered part of the department of education. The department of education may provide staff assistance and administrative support to the authority.

2003 Acts, ch 137, §1

Subsection 2 amended

**CHAPTER 7F**

**OFFICE FOR STATE-FEDERAL RELATIONS**

**7F.1 Office for state-federal relations.**

1. *Purpose.* The purpose of this section is to establish, as an independent agency, an office for state-federal relations which will develop a non-partisan state-federal relations program accessible to all three branches of state government.

2. *Definition.* As used in this section, unless the context otherwise requires, "office" means the office for state-federal relations established pursuant to this section.

3. *Office established.* A state-federal relations office is established as an independent agency. The office shall be located in Washington, D.C., and shall be administered by the director of the office who is appointed by the governor, subject to confirmation by the senate, and who serves at the pleasure of the governor. The office and its per-

sonnel are exempt from the merit system provisions of chapter 8A, subchapter IV.

4. *Office duties.* The office shall:

a. Coordinate the development of Iowa's state-federal relations efforts which shall include an annual state-federal program to be presented to Iowa's congressional delegation, the sponsorship of training sessions for state government officials, and the maintenance of a management information system.

b. Provide state government officials with greater access to current information on federal legislative and executive actions affecting state government.

c. Advocate federal policies and positions which benefit the state or are important to state government.

d. Monitor federal budget policies and assistance programs and assess their impact on the state.

e. Strengthen the working relationships between state government officials and Iowa's congressional delegation.

f. Improve the state's ability to establish key

contacts with federal officials, officials from other states, organizations, business groups, and professional associations in order to share information and form cooperative agreements.

2003 Acts, ch 145, §120  
Confirmation; see §2.32  
Subsection 3 amended

## CHAPTER 7J

### CHARTER AGENCIES

#### 7J.1 Charter agencies.

1. *Designation of charter agencies — purpose.* The governor may, by executive order, designate state departments or agencies, as described in section 7E.5, or the Iowa lottery authority established in chapter 99G, other than the department of administrative services, if the department is established in law, or the department of management, as a charter agency by July 1, 2003. The designation of a charter agency shall be for a period of five years which shall terminate as of June 30, 2008. The purpose of designating a charter agency is to grant the agency additional authority as provided by this chapter while reducing the total appropriations to the agency.

#### 2. *Charter agency directors.*

a. Prior to each fiscal year, or as soon thereafter as possible, the governor and each director of a designated charter agency shall enter into an annual performance agreement which shall set forth measurable organization and individual goals for the director in key operational areas of the director's agency. The annual performance agreement shall be made public and a copy of the agreement shall be submitted to the general assembly.

b. In addition to the authority granted the governor as to the appointment and removal of a director of an agency that is a charter agency, the governor may remove a director of a charter agency for misconduct or for failure to achieve the performance goals set forth in the annual performance agreement.

c. Notwithstanding any provision of law to the contrary, the governor may set the salary of a director of a charter agency under the pay plan for exempt positions in the executive branch of government. In addition, the governor may authorize the payment of a bonus to a director of a charter agency in an amount not in excess of fifty percent of the director's annual rate of pay, based upon the governor's evaluation of the director's performance in relation to the goals set forth in the annual performance agreement.

d. A director of a charter agency may authorize the payment of bonuses to employees of the charter agency in a total amount not in excess of

fifty percent of the director's annual rate of pay, based upon the director's evaluation of the employees' performance.

#### 3. *Appropriations and asset management.*

a. It is the intent of the general assembly that state general fund operating appropriations to a charter agency for the fiscal year beginning July 1, 2003, and ending June 30, 2004, shall be reduced from the appropriation that would otherwise have been enacted for that charter agency which, along with any additional generated revenue to the general fund of the state attributed to the reinvention process as determined by the department of management, over that already committed to the general fund of the state by a charter agency, will achieve an overall target of fifteen million dollars.

b. Notwithstanding any provision of law to the contrary, proceeds from the sale or lease of capital assets that are under the control of a charter agency shall be retained by the charter agency and used for such purposes within the scope of the responsibilities of the charter agency.

c. Notwithstanding section 8.33, one-half of all unencumbered or unobligated balances of appropriations made for each fiscal year of that fiscal period to the charter agency shall not revert to the state treasury or to the credit of the funds from which the appropriations were made.

d. For the fiscal period beginning July 1, 2003, and ending June 30, 2005, a charter agency is not subject to a uniform reduction ordered by the governor in accordance with section 8.31.

#### 4. *Personnel management.*

a. Notwithstanding any provision of law to the contrary, a charter agency shall not be subject to any limitation relating to the number of or pay grade assigned to its employees, including any limitation on the number of full-time equivalent positions as defined by section 8.36A.

b. A charter agency may waive any personnel rule and may exercise the authority granted to the department of administrative services relating to personnel management concerning employees of the charter agency, subject to any restrictions on such authority as to employees of the charter agency covered by a collective bargaining agree-

ment. The exclusive representative of employees of a charter agency may enter into agreements with the charter agency to grant the charter agency the authority described in this paragraph. A waiver of a rule pursuant to this subsection shall be indexed, filed, and made available for public inspection in the same manner as provided in section 17A.9A, subsection 4.

5. *Procurement and general services.* A charter agency may waive any administrative rule regarding procurement, fleet management, printing and copying, or maintenance of buildings and grounds, and may exercise the authority of the department of administrative services as it relates to the physical resources of the state. A waiver of a rule pursuant to this subsection shall be indexed, filed, and made available for public inspection in the same manner as provided in section 17A.9A, subsection 4.

6. *Information technology.* A charter agency may waive any administrative rule regarding the acquisition and use of information technology and may exercise the powers of the department of administrative services as it relates to information technology. A waiver of a rule pursuant to this subsection shall be indexed, filed, and made available for public inspection in the same manner as provided in section 17A.9A, subsection 4.

7. *Rule flexibility.*

a. A charter agency may temporarily waive or suspend the provisions of any administrative rule if strict compliance with the rule impacts the ability of the charter agency requesting the waiver or suspension to perform its duties in a more cost-efficient manner and the requirements of this subsection are met.

b. The procedure for granting a temporary waiver or suspension of any administrative rule shall be as follows:

(1) The charter agency may waive or suspend a rule if the agency finds, based on clear and convincing evidence, all of the following:

(a) The application of the rule poses an undue financial hardship on the applicable charter agency.

(b) The waiver or suspension from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person.

(c) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or suspension is requested.

(d) The waiver or suspension would not result in a violation of due process, a violation of state or federal law, or a violation of the state or federal constitution.

(2) If a charter agency proposes to grant a waiver or suspension, the charter agency shall draft the waiver or suspension so as to provide the narrowest exception possible to the provisions of the rule and may place any condition on the waiver

or suspension that the charter agency finds desirable to protect the public health, safety, and welfare. The charter agency shall then submit the waiver or suspension to the administrative rules review committee for consideration at the committee's next scheduled meeting.

(3) The administrative rules review committee shall review the proposed waiver or suspension at the committee's next scheduled meeting following submission of the proposal and may either take no action or affirmatively approve the waiver or suspension, or delay the effective date of the waiver or suspension in the same manner as for rules as provided in section 17A.4, subsection 5, and section 17A.8, subsection 9. If the administrative rules review committee either approves or takes no action concerning the proposed waiver or suspension, the waiver or suspension may become effective no earlier than the day following the meeting. If the administrative rules review committee delays the effective date of the waiver or suspension but no further action is taken to rescind the waiver or suspension, the proposed waiver or suspension may become effective no earlier than upon the conclusion of the delay. The administrative rules review committee shall notify the applicable charter agency of its action concerning the proposed waiver or suspension.

(4) Copies of the grant or denial of a waiver or suspension under this subsection shall be filed and made available to the public by the applicable charter agency.

c. A waiver or suspension granted pursuant to this subsection shall be for a period of time not to exceed twelve months or until June 30, 2008, whichever first occurs, and as determined by the applicable charter agency. A renewal of a temporary waiver or suspension granted pursuant to this section shall be granted or denied in the same manner as the initial waiver or suspension.

8. *Reporting requirements.*

a. Each charter agency shall submit a written report to the general assembly by December 31 of each year summarizing the activities of the charter agency for the preceding fiscal year. The report shall include information concerning the expenditures of the agency and the number of filled full-time equivalent positions during the preceding fiscal year. The report shall include information relating to the actions taken by the agency pursuant to the authority granted by this section.

b. By January 15, 2008, the governor shall submit a written report to the general assembly on the operation and effectiveness of this chapter and the costs and savings associated with the implementation of this chapter. The report shall include any recommendations about extending the chapter's effectiveness beyond June 30, 2008.

9. *Department of management review.* Each proposed waiver or suspension of an administrative rule as authorized by this section shall be submitted to the department of management for re-

view prior to the waiver or suspension becoming effective. The director of the department of management may disapprove the waiver or suspension if, based on clear and convincing evidence, the director determines that the suspension or waiver would result in an adverse financial impact on the state.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §32, 36; 2003 Acts, ch 179, §85, 86; 2003 Acts, 1st Ex, ch 2, §14, 209

NEW section  
Terminology change applied

### 7J.2 Charter agency grant fund.

1. A charter agency grant fund is created in the state treasury under the control of the department of management for the purpose of providing funding to support innovation by those state agencies designated as charter agencies in accordance with section 7J.1. Innovation purposes shall include but are not limited to training, development of outcome measurement systems, management system modifications, and other modifications as-

sociated with transition of operations to charter agency status. Moneys in the fund are appropriated to the department of management for the purposes described in this subsection.

2. A charter agency requesting a grant from the fund shall complete an application process designated by the director of the department of management.

3. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the charter agency grant fund shall be credited to the charter agency grant fund. Notwithstanding section 8.33, moneys credited to the charter agency grant fund shall not revert to the fund from which appropriated at the close of a fiscal year.

2003 Acts, ch 178, §33, 36; 2003 Acts, ch 179, §87

NEW section

### 7J.3 Repeal.

This chapter is repealed June 30, 2008.

2003 Acts, ch 178, §34, 36

NEW section

## CHAPTER 8

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

#### 8.5 General powers and duties.

The director of the department of management shall have the power and authority to:

1. *Assistants.* Employ, with the approval of the governor, two assistants and such clerical assistants as the director may find necessary.

2. *Compensation of employees.* Fix the compensation, with the approval of the governor, of any person employed by the director, provided that the total amount paid in salaries shall not exceed the appropriation made for that purpose.

3. *Discharge of employees.* Discharge any employee of the department of management.

4. *Miscellaneous duties.* Exercise and perform such other powers and duties as may be prescribed by law.

See chapter 8A, subchapter IV, for merit system  
Section not amended; footnote revised

#### 8.9 Grants enterprise management office.

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

ing for the office is from the appropriation to the department pursuant to section 8A.505, subsection 2.

2003 Acts, ch 99, §1

NEW section

#### 8.10 Facilitator's duties.

The specific duties of the facilitator of the office of grants enterprise management may include the following:

1. Establish a grants network representing all state agencies to assist the grants enterprise management office in an advisory capacity. Each state agency shall designate an employee on the management or senior staff level to serve as the agency's federal funds coordinator and represent the agency on the grants network. An agency may not create a staff position for a federal funds coordinator. The coordinator's duties shall be in addition to the duties of the employee of the agency.

2. Develop a plan for increased state access to funding sources other than the general fund of the state.

3. Develop procedures to formally notify appropriate state and local agencies of the availability of discretionary federal funds and, when necessary, coordinate the application process.

4. Establish an automated information system database for grants applied for and received and to track congressional activity.

5. Provide information and counseling to state agencies and political subdivisions of the state concerning the availability and means of obtaining state, federal, and private grants.

6. Provide grant application writing assistance and training to state agencies and political subdivisions of the state, directly or through inter-agency contracts, cooperative agreements, or contracts with third-party providers.

7. Monitor the federal register and other federal or state publications to identify funding opportunities, with special emphasis on discretionary grants or other funding opportunities available to the state.

8. Periodically review the funding strategies and methods of those states that rank significantly above the national average in the per capita receipt of federal funds to determine whether those strategies and methods could be successfully employed by this state.

2003 Acts, ch 99, §2  
NEW section

**8.11 through 8.20** Repealed by 86 Acts, ch 1245, § 451.

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

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

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

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

4. At the meeting in which the conference agrees to the revenue estimate for the following fiscal year in accordance with the provisions of subsection 3, the conference shall agree to an esti-

mate for tax refunds payable from that estimated revenue. The estimates required by this subsection shall be used in determining the adjusted revenue estimate under section 8.54.

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

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

b. The amount of revenue for the following fiscal year from gambling revenues and from interest earned on the cash reserve fund and the economic emergency fund to be deposited in the rebuild Iowa infrastructure fund under section 8.57, subsection 5, paragraph "e".

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

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

2003 Acts, ch 35, §23, 49; 2003 Acts, ch 178, §98, 121; 2003 Acts, ch 179, §142

Subsection 1 amended  
Subsection 5, paragraph a amended

#### **8.23 Annual departmental estimates.**

1. On or before October 1, prior to each legislative session, all departments and establishments of the government shall transmit to the director, on blanks to be furnished by the director, estimates of their expenditure requirements, including every proposed expenditure, for the ensuing fiscal year, classified so as to distinguish between expenditures estimated for administration, operation, and maintenance, and the cost of each project involving the purchase of land or the making of a public improvement or capital outlay of a permanent character, together with supporting data and explanations as called for by the director.

a. The estimates of expenditure requirements shall be based upon seventy-five percent of the funding provided for the current fiscal year accounted for by program reduced by the historical employee vacancy factor in form specified by the director and the remainder of the estimate of expenditure requirements prioritized by program. The estimates shall be accompanied with performance measures for evaluating the effectiveness of the program.

b. The budget estimates for an agency as defined in section 8E.103 shall be based on achieving goals contained in the enterprise strategic plan

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

c. If a department or establishment fails to submit estimates within the time specified, the legislative services agency shall use the amounts of the appropriations to the department or establishment for the fiscal year in process at the time the estimates are required to be submitted as the amounts for the department's or establishment's request in the documents submitted to the general assembly for the ensuing fiscal year and the governor shall cause estimates to be prepared for that department or establishment as in the governor's opinion are reasonable and proper.

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

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

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 179, §88, 159  
2003 amendment striking subsection 1, paragraph a, takes effect May 30, 2003, and is first applicable to appropriations made for the fiscal year beginning July 1, 2003; 2003 Acts, ch 179, §159

Terminology changes applied  
Subsection 1, paragraph a stricken and former paragraphs b–e redesignated as a–d

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

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

by the director subject to review by the governor.

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

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

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

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

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

6. Allotments from appropriations for the foreign trade offices of the department of economic development, if the appropriations are described by line item in the department's appropriation Act or another Act, may be made as is necessary to take advantage of the most favorable foreign currency exchange rates.

2003 Acts, ch 145, §121; 2003 Acts, ch 179, §89, 159  
2003 amendments to subsections 1–3, 5, and 6 take effect May 30, 2003, and are first applicable to appropriations made for the fiscal year beginning July 1, 2003; 2003 Acts, ch 179, §159

See Code editor's note to §2.9  
Section amended

### 8.34 Charging off unexpended appropriations.

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

2003 Acts, ch 145, §286  
Terminology change applied

### 8.35A Information to be given to legislative services agency.

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

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

3. The director shall communicate any changes or anticipated changes to the budgeting system or the accounting system in writing to the

legislative services agency prior to implementation.

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

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

2003 Acts, ch 35, §45, 46, 49; 2003 Acts, ch 145, §286  
Terminology changes applied

### 8.36A Full-time equivalent positions.

1. For purposes of making appropriations and financial reports and as used in appropriations statutes, "full-time equivalent position" means a budgeting and monitoring unit that equates the aggregate of full-time positions, part-time positions, a vacancy and turnover factor, and other adjustments. One full-time equivalent position represents two thousand eighty working hours, which is the regular number of hours one full-time person works in one fiscal year. The number of full-time equivalent positions shall be calculated by totaling the regular number of hours that could be annually worked by persons in all authorized positions, reducing those hours by a vacancy and turnover factor and dividing that amount by two thousand eighty hours. In order to achieve the full-time equivalent position level, the number of filled positions may exceed the number of full-time equivalent positions during parts of the fiscal year to compensate for time periods when the number of filled positions is below the authorized number of full-time equivalent positions.

2. If a department or establishment has reached or anticipates reaching the full-time equivalent position level authorized for the department but determines that conversion of a contract position to a full-time equivalent position would result in cost savings while providing comparable or better services, the department or establishment may request the director of the department of management to approve the conversion and addition of the full-time equivalent position. The request shall be accompanied by evi-

dence demonstrating how the cost savings and service quality will be achieved through the conversion. If approved by the director of the department of management, the department's or establishment's authorized full-time equivalent position level shall be increased accordingly and the revised level shall be reported to the fiscal committee of the legislative council and the legislative services agency.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §122  
Terminology change applied  
Section amended

#### 8.44 Reporting additional funds received.

Upon receiving federal funds or any other funds from any public or private sources except gifts or donations made to institutions for the personal use or for the benefit of members, patients, or inmates and receipts from the gift shop of merchandise manufactured by members, patients, or inmates, the state departments, agencies, boards, and institutions receiving such funds shall submit a written report within thirty days after receipt of the funds to the director of the department of management. The report shall state the source of the funds that supplement or replace state appropriations for institutional operations, the amount received, and the terms under which the funds are received.

All departments and establishments of government and the judicial branch shall notify the department of management and the legislative services agency of any change in the receipt of federal or other nonstate grants, receipts, and funds from the funding levels on which appropriations for the current or ensuing fiscal year were or are based. Changes which must be reported include, but are not limited to, any request, approval, award, or loss changes affecting federal or other nonstate grants, receipts, or funds. The notifications shall be made on a quarterly basis. The format of the notifications shall be specified by the legislative services agency.

2003 Acts, ch 35, §45, 49  
Terminology change applied

#### 8.46 Lease-purchase — reporting.

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

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

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

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

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

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

b. The proposed terms of the contract.

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

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

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

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

2003 Acts, ch 35, §45, 49  
Terminology change applied

#### 8.47 Service contracts.

1. The department of administrative services, in cooperation with the office of attorney general and the department of management, shall adopt uniform terms and conditions for service contracts executed by a department or establishment benefiting from service contracts. The terms and conditions shall include but are not limited to all of the following:

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

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

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

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

3. The state board of regents shall establish terms and conditions for service contracts execut-

ed by institutions governed by the state board of regents.

4. This section does not apply to service contracts or other agreements for services by the department of public defense that are funded with at least seventy-five percent federal moneys. The department of public defense shall establish terms and conditions for service contracts and other agreements for services that comply with this section to the greatest extent possible.

2003 Acts, ch 145, §123, 124  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 2 amended

### 8.55 Iowa economic emergency fund.

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

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

*b.* Notwithstanding paragraph “*a*”, any moneys in excess of the maximum balance in the economic emergency fund after the distribution of the surplus in the general fund of the state at the conclusion of the fiscal year beginning July 1, 2002, and subsequent fiscal years, shall not be transferred to the general fund of the state but shall be transferred to the endowment for Iowa’s health account of the tobacco settlement trust fund. The amount transferred under this paragraph shall not exceed the difference between forty million dollars and the total amount transferred to the endowment for Iowa’s health account pursuant to 2001 Iowa Acts, chapter 177, section 2, as amended by 2001 Iowa Acts, chapter 187, section 28, and previous fiscal years.

*c.* Notwithstanding paragraph “*a*”, any moneys in excess of the maximum balance in the economic emergency fund after the distribution of the surplus in the general fund of the state at the conclusion of each fiscal year and after the appropriate amount has been transferred pursuant to paragraph “*b*”, shall not be transferred to the general fund of the state but shall be transferred to the senior living trust fund. The total amount transferred, in the aggregate, under this paragraph for all fiscal years shall not exceed one hundred eighteen million dollars.

*d.* Notwithstanding paragraph “*a*”, any moneys in excess of the maximum balance in the economic emergency fund after the distribution of the

surplus in the general fund of the state at the conclusion of each fiscal year and after the appropriate amounts have been transferred pursuant to paragraphs “*b*” and “*c*” shall not be transferred to the general fund of the state but shall be transferred to the endowment for Iowa’s health account of the tobacco settlement trust fund. The total amount transferred, in the aggregate, under this paragraph for all fiscal years shall not exceed the difference between one hundred one million seven hundred fifty-one thousand dollars and the amounts transferred to the endowment for Iowa’s health account to repay the amounts transferred or appropriated from the endowment for Iowa’s health account in 2002 Iowa Acts, chapter 1165, 2002 Iowa Acts, chapter 1166, 2002 Iowa Acts, chapter 1167, 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, and 2003 Iowa Acts, chapter 183.

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

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

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

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

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

(3) The balance of the general fund of the state at the end of the fiscal year prior to the appropria-

tion made in this paragraph was negative.

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

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

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

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

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 179, §29, 30

For future amendment to subsection 2, paragraph a, effective July 1, 2004, see 2002 Acts, 2nd Ex, ch 1001, §25, 33; 2003 Acts, ch 179, §40

Terminology change applied

Subsection 2, paragraphs c and d amended

### 8.56 Cash reserve fund.

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

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

3. The moneys in the cash reserve fund shall only be used pursuant to an appropriation made by the general assembly. An appropriation shall be made in accordance with subsection 4 only for the fiscal year in which the appropriation is made. The moneys shall only be appropriated by the general assembly for nonrecurring emergency expenditures and shall not be appropriated for payment

of any collective bargaining agreement or arbitrator’s decision negotiated or awarded under chapter 20. Except as provided in section 8.58, the cash reserve fund shall be considered a special account for the purposes of section 8.53 in determining the cash position of the general fund of the state for the payment of state obligations.

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

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

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

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

2001 amendments to subsections 1 and 3 are effective July 1, 2002; 2001 Acts, 2nd Ex, ch 6, §31

For future amendments to this section, effective July 1, 2004, see 2002 Acts, 2nd Ex, ch 1001, §27, 33; 2003 Acts, ch 179, §40

Section not amended; footnote revised

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

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

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

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

(3) The moneys appropriated under this lettered paragraph shall be credited in equal and pro-

portionate amounts in each quarter of the current fiscal year.

b. The surplus existing in the general fund of the state at the conclusion of the fiscal year is appropriated for distribution in the succeeding fiscal year as provided in subsections 2 and 3. Moneys credited to the cash reserve fund from the appropriation made in this paragraph shall not exceed the amount necessary for the cash reserve fund to reach the cash reserve goal percentage for the succeeding fiscal year. As used in this paragraph, “surplus” means the excess of revenues and other financing sources over expenditures and other financing uses for the general fund of the state in a fiscal year.

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

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

reduction account which remain unexpended for items on the filed schedule for the previous fiscal year shall be credited to the Iowa economic emergency fund.

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

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

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

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

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

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

e. Notwithstanding provisions to the contrary in sections 99D.17 and 99F.11, for the fiscal year beginning July 1, 2000, and for each fiscal year

thereafter, not more than a total of sixty million dollars shall be deposited in the general fund of the state in any fiscal year pursuant to sections 99D.17 and 99F.11. The next fifteen million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the vision Iowa fund created in section 12.72 for the fiscal year beginning July 1, 2000, and for each fiscal year through the fiscal year beginning July 1, 2019. The next five million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the school infrastructure fund created in section 12.82 for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter until the principal and interest on all bonds issued by the treasurer of state pursuant to section 12.81 are paid, as determined by the treasurer of state. The total moneys in excess of the moneys deposited in the general fund of the state, the vision Iowa fund, and the school infrastructure fund in a fiscal year shall be deposited in the rebuild Iowa infrastructure fund and shall be used as provided in this section, notwithstanding section 8.60.

If the total amount of moneys directed to be deposited in the general fund of the state under sections 99D.17 and 99F.11 in a fiscal year is less than the total amount of moneys directed to be deposited in the vision Iowa fund and the school infrastructure fund in the fiscal year pursuant to this paragraph “e”, the difference shall be paid from lottery revenues in the manner provided in section 99G.39, subsection 3.

f. There is appropriated from the rebuild Iowa infrastructure fund to the secure an advanced vision for education fund created in section 422E.3A, for each fiscal year of the fiscal period beginning July 1, 2004, and ending June 30, 2014, the amount of the moneys in excess of the first forty-seven million dollars credited to the rebuild Iowa infrastructure fund during the fiscal year, not to exceed ten million dollars.

2003 Acts, ch 178, §99, 121; 2003 Acts, ch 179, §90, 142, 159; 2003 Acts, 1st Ex, ch 2, §91, 209

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

For future amendment to this section effective July 1, 2004, see 2002 Acts, 2nd Ex, ch 1001, §28, 33; 2003 Acts, ch 179, §31, 40

2003 amendments to subsection 1, paragraph c, take effect May 30, 2003, and are first applicable to appropriations made for the fiscal year beginning July 1, 2003; 2003 Acts, ch 179, §159

Subsection 1, paragraph c amended

Subsection 5, paragraph e, unnumbered paragraph 2 amended

Subsection 5, NEW paragraph f

### 8.59 Appropriations freeze.

Notwithstanding contrary provisions of the Code, the amounts appropriated under the applicable sections of the Code for fiscal years commencing on or after July 1, 1993, are limited to those amounts expended under those sections for the fiscal year commencing July 1, 1992. If an ap-

plicable section appropriates moneys to be distributed to different recipients and the operation of this section reduces the total amount to be distributed under the applicable section, the moneys shall be prorated among the recipients. As used in this section, “*applicable sections*” means the following sections: 53.50, 229.35, 230.8, 230.11, 411.20, and 663.44.

Section not amended; internal reference change applied

### 8.61 Trust fund information.

The department of administrative services in cooperation with each appropriate agency shall track receipts to the general fund of the state which under law were previously collected to be used for specific purposes, or to be credited to, or be deposited to a particular account or fund, as provided in section 8.60.

The department of administrative services and each appropriate agency shall prepare reports detailing revenue from receipts previously deposited into each of the funds. A report shall be submitted to the legislative services agency at least once for each three-month period as designated by the legislative services agency.

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286  
Terminology changes applied

### 8.62 Use of reversions.

1. For the purposes of this section, “*operational appropriation*” means an appropriation from the general fund of the state providing for salary, support, administrative expenses, or other personnel-related costs.

2. Notwithstanding the provisions of section 8.33 or any other provision of law to the contrary, if on June 30 of a fiscal year, a balance of an operational appropriation remains unexpended or unencumbered, not more than fifty percent of the balance may be encumbered by the agency to which the appropriation was made and used as provided in this section and the remaining balance shall be deposited in the cash reserve fund created in section 8.56. Moneys encumbered under this section shall only be used by the agency during the succeeding fiscal year for employee training, technology enhancement, or purchases of goods and services from Iowa prison industries. Unused moneys encumbered under this section shall be deposited in the cash reserve fund on June 30 of the succeeding fiscal year.

3. On or before June 30 of the fiscal year following the fiscal year in which funds were encumbered under this section, an agency encumbering funds under this section shall report to the joint appropriations subcommittee which recommends funding for the agency, the legislative services agency, the department of management, and the legislative fiscal committee of the legislative council detailing how the moneys were expended. Moneys shall not be encumbered under this section from an appropriation which received a transfer

from another appropriation pursuant to section 8.39.

2003 Acts, ch 35, §45, 49  
Terminology change applied

### 8.63 Innovations fund.

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

2. The director of the department of management shall establish an eight-member committee to be called the state innovations fund committee. The committee shall review all requests for funds and approve loans of funds if the committee determines that the loan meets the requirements for a project loan or an enterprise loan as provided in this section.

3. A project loan can be funded if the committee determines that an agency request would result in cost savings or added revenue to the general fund of the state. Eligible projects are projects which cannot be funded from an agency's operating budget without adversely affecting the agency's normal service levels. Projects may include, but are not limited to, purchase of advanced technology, contracting for expert services, and acquisition of equipment or supplies.

4. An enterprise loan can be funded if the committee determines that the agency or business unit has a viable business plan and the capability to use the loan to provide internal services to government. The enterprise is expected to receive payment for services from its customers and use those payments to cover its expenses, including repayment of the loan.

5. A state agency seeking a loan from the innovations fund shall complete an application form designed by the state innovations fund committee which employs, for projects, a return on investment concept and demonstrates how state general fund expenditures will be reduced or how state general fund revenues will increase, or for enterprises, a business plan that shows how the enterprise will meet customer needs, provide value to customers, and demonstrate financial viability. Minimum loan requirements for state agency requests shall be determined by the committee. As an incentive to increase state general fund revenues, an agency may retain up to fifty percent of savings realized in connection with a project loan from the innovations fund. The amount retained shall be determined by the innovations fund committee.

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

novations fund committee.

*b.* If the department of management and the department of revenue certify that the savings from a proposed innovations fund project will result in a net increase in the balance of the general fund of the state without a corresponding cost savings to the requesting agency, and if the requesting agency meets all other eligibility requirements, the innovations fund committee may approve the loan for the project and not require repayment by the requesting agency. There is appropriated from the general fund of the state to the department of management for deposit in the innovations fund an amount sufficient to repay the loan amount.

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

2003 Acts, ch 145, §125, 293  
Section amended

### 8.64 Local government innovation fund — committee — loans.

1. The local government innovation fund is created in the state treasury under the control of the department of management for the purpose of stimulating and encouraging innovation in local government by the awarding of loans to cities and counties.

2. The director of the department of management shall establish a seven-member committee to be called the local government innovation fund committee. Committee members shall have expertise in local government. The committee shall review all requests for funds and approve loans of funds if the committee determines that a city or county project that is the subject of a request would result in cost savings, innovative approaches to service delivery, or added revenue to the city, county, or state. Eligible projects are projects which cannot be funded from a city's or county's operating budget without adversely affecting the city's or county's normal service levels. Preference shall be given to requests involving the sharing of services between two or more local governments. Projects may include, but are not limited to, purchase of advanced technology, contracting for expert services, and acquisition of equipment or supplies.

3. A city or county seeking a loan from the local government innovation fund shall complete an application form designed by the local government innovation fund committee which employs a return on investment concept and demonstrates how the project funded by the loan will result in reduced city, county, or state general fund expenditures or how city or county fund revenues will increase without an increase in state costs. Mini-

mum loan requirements for city or county requests shall be determined by the committee.

4. *a.* In order for the local government innovation fund to be self-supporting, the local government innovation fund committee shall establish repayment schedules for each loan awarded. The loan requirements shall be outlined in a chapter 28E agreement executed between the state and the city or county receiving the loan. A city or county shall repay the loan over a period not to exceed five years, with interest, at a rate to be determined by the local government innovation fund committee.

*b.* The local government innovation fund committee shall utilize the department of manage-

ment, the department of revenue, or other source of technical expertise designated by the committee to certify savings projected for a local government innovation fund project.

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

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §27

NEW section

Terminology change applied

## CHAPTER 8A

### DEPARTMENT OF ADMINISTRATIVE SERVICES

Continuation of effectiveness of rules, regulations, forms, orders, and directives promulgated under prior law, and validity of licenses and permits issued under prior law, by state agencies affected by 2003 Acts, ch 145;

schedule for updating Iowa administrative code to conform to restructuring of state government; 2003 Acts, ch 145, §287

For transition provisions relating to the transfer of merit system personnel; the transfer of preexisting funds; applicability of causes of action and statutes of limitation to successor agencies; and the replacement of signs, logos, stationery, insignia, uniforms, and related items, see 2003 Acts, ch 145, §288

For provisions authorizing the department of administrative services to determine how designated state services are delivered to state agencies; requiring the department to conduct a managed competition for delivery of services pilot project and submit its report by July 1, 2005; requiring the department to submit a request for proposals for a managed competition for printing services by July 1, 2005, unless other methods are more efficient; requiring a study by September 1, 2004, and report by November 1, 2004, of the impact of transferring all state agency employees delivering information technology services to the department of administrative services and physically merging the data centers of the department of administrative services, the department of workforce development, and the state department of transportation into one data center; authorizing the department to limit unified fleet management responsibilities to cars and small trucks and subjecting fleet management operations to a managed competition process by July 1, 2005, unless other methods are more efficient; and requiring periodic progress reports regarding implementation of 2003 Acts, ch 145, see 2003 Acts, ch 145, §289, 290

#### SUBCHAPTER I

#### ADMINISTRATION

#### PART 1

#### GENERAL PROVISIONS

#### 8A.101 Definitions.

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

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

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

*b.* The general assembly, or any office or unit

under its administrative authority.

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

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

2. “Department” means the department of administrative services.

3. “Director” means the director of the department of administrative services or the director’s designee.

4. “Governmental entity” means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; any unit of the United States government; or any association or other organization whose membership consists primarily of one or more of any of the foregoing.

5. “Governmental subdivision” means a

county, city, school district, or combination thereof.

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

2003 Acts, ch 145, §1  
NEW section

#### **8A.102 Department created — director appointed.**

1. The department of administrative services is created. The director of the department shall be appointed by the governor to serve at the pleasure of the governor and is subject to confirmation by the senate. If the office becomes vacant, the vacancy shall be filled in the same manner as provided for the original appointment.

2. The person appointed as director shall be professionally qualified by education and have no less than five years’ experience in the field of management, public or private sector personnel administration including the application of merit principles in employment, financial management, and policy development and implementation. The appointment shall be made without regard for political affiliation. The director shall not be a member of any local, state, or national committee of a political party, an officer or member of a committee in any partisan political club or organization, or hold or be a candidate for a paid elective public office. The director is subject to the restrictions on political activity provided in section 8A.416. The governor shall set the salary of the director within pay grade nine.

2003 Acts, ch 145, §2  
Confirmation, §2.32  
NEW section

#### **8A.103 Department — purpose — mission.**

The department is created for the purpose of managing and coordinating the major resources of state government including the human, financial, physical, and information resources of state government.

The mission of the department is to implement a world-class, customer-focused organization that provides a complement of valued products and services to the internal customers of state government.

2003 Acts, ch 145, §3  
NEW section

#### **8A.104 Powers and duties of the director.**

The director shall do all of the following:

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

2. Appoint all personnel deemed necessary for the administration of the department’s functions as provided in this chapter.

3. Prepare an annual budget for the department.

4. Develop and recommend legislative propos-

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

5. Adopt rules deemed necessary for the administration of this chapter in accordance with chapter 17A.

6. Develop and maintain support systems within the department to provide appropriate administrative support and sufficient data for the effective and efficient operation of state government.

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

8. Establish the internal organization of the department and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department to promote economic and efficient administration and operation of the department.

9. Install a records system for the keeping of records which are necessary for a proper audit and effective operation of the department.

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

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

12. Serve as the chief information officer for the state.

13. Exercise and perform such other powers and duties as may be prescribed by law.

2003 Acts, ch 145, §4  
NEW section

#### **8A.105 Prohibited interests — penalty.**

The director shall not have any pecuniary interest, directly or indirectly, in any contract for supplies furnished to the state, or in any business enterprise involving any expenditure by the state. A violation of the provisions of this section shall be a serious misdemeanor, and upon conviction, the director shall be removed from office in addition to any other penalty.

2003 Acts, ch 145, §5  
NEW section

#### **8A.106 Public records.**

1. The records of the department, except personal information in an employee’s file if the publication of such information would serve no proper public purpose, shall be public records and shall be

open to public inspection, subject to reasonable rules as to the time and manner of inspection which may be prescribed by the director. However, the department shall not be required to release financial information, business, or product plans which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by the department.

2. The state agency that is the lawful custodian of a public record shall be responsible for determining whether a record is required by federal or state statute to be confidential. The transmission of a record by a state agency by use of electronic means established, maintained, or managed by the department shall not constitute a transfer of the legal custody of the record from the individual state agency to the department or to any other person or entity.

3. The department shall not have authority to determine whether an individual state agency should automate records of which the individual state agency is the lawful custodian. However, the department may encourage state agencies to implement electronic access to public records.

4. A state agency shall not limit access to a record by requiring a citizen to receive the record electronically as the only means of providing the record. A person shall have the right to examine and copy a printed form of a public record as provided in section 22.2, unless the public record is confidential.

2003 Acts, ch 145, §6  
NEW section

#### **8A.107 Oaths and subpoenas.**

The director may administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter. A person who fails to appear in response to a subpoena or produce books or papers pertinent to the investigation or hearing or who knowingly gives false testimony is guilty of a simple misdemeanor.

2003 Acts, ch 145, §7  
NEW section

#### **8A.108 Acceptance of funds.**

The department may receive and accept donations, grants, gifts, and contributions in the form of moneys, services, materials, or otherwise, from the United States or any of its agencies, from this state or any of its agencies, or from any other person, and may use or expend such moneys, services, materials, or other contributions, or issue grants, in carrying out the operations of the department. All federal grants to and the federal receipts of the department are hereby appropriated for the purpose set forth in such federal grants or receipts.

2003 Acts, ch 145, §8  
NEW section

#### **8A.109 Federal funds.**

1. Neither the provisions of this chapter nor rules adopted pursuant to this chapter shall apply in any situation where such provision or rule is in conflict with a governing federal regulation or where the provision or rule would jeopardize the receipt of federal funds.

2. If it is determined by the attorney general that any provision of this chapter would cause denial of funds or services from the United States government which would otherwise be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds or services.

2003 Acts, ch 145, §9  
NEW section

#### **8A.110 State employee suggestion system.**

1. There is created a state employee suggestion system for the purpose of encouraging state employees to develop and submit ideas which will reduce costs and increase efficiency in state government and which will make monetary and other awards to state employees whose cost reduction ideas are adopted under the system.

2. The department shall provide necessary personnel for the efficient operation of the system. The department shall adopt rules as necessary for the administration of the system and to establish the award policy under which the system will operate. The rules shall include:

*a.* Eligibility standards and restrictions for both the state employee submitting the suggestion and the suggestion being submitted. The rules shall provide that suggestions relating to academic affairs, including teaching, research, and patient care programs at a university teaching hospital, are ineligible.

*b.* Procedures for submitting and evaluating suggestions, including the responsibilities of each person involved in the system and providing that the final decision to implement shall be made by the director of the applicable state agency.

*c.* The method of presentation of awards to employees.

*d.* The method of promoting the suggestion program in the broadest possible manner to state employees.

*e.* Any other policies necessary to properly administer the system.

3. *a.* When a suggestion is implemented and results in a direct cost reduction within state government, the suggester shall be awarded ten percent of the first year's net savings, not exceeding ten thousand dollars, and a certificate. A cash award shall not be awarded for a suggestion which saves less than one hundred dollars during the first year of implementation. The state agency head shall approve all awards and determine the amount to be awarded. Appeals of award amounts

shall be submitted to the director whose decision is final.

*b.* Certificates shall be awarded to suggesters of implemented suggestions that result in a direct cost reduction of less than one hundred dollars. The state agency head shall make the determination as to who will receive certificates. That decision is final.

4. An award made pursuant to this section shall be paid for out of the appropriated funds of the state agency realizing the cost savings, but the payment for awards shall not violate any state or federal contract, law, or regulation, or impair any agency contractual obligation.

5. *a.* A state agency shall keep records of each suggestion implemented and the cost savings resulting from the suggestion for a period of one year from the date of implementation of the suggestion.

*b.* The director shall file a report with the governor and the general assembly for each fiscal year, relating to the administration and implementation of the suggestion system and the benefits for the state, the state departments, and state employees.

6. The ability of employees to patent ideas submitted under this section is subject to all other agency rules and Code requirements pertaining to patents.

2003 Acts, ch 145, §10  
NEW section

**8A.111 through 8A.120** Reserved.

## PART 2

### SERVICES — PROVISION AND FUNDING

#### **8A.121 Financing department services — customer councils.**

1. The department shall establish a process by which the department shall determine which services provided by the department shall be funded by an appropriation to the department and which services shall be funded by the governmental entity receiving the service.

2. *a.* For services which the department determines shall be funded by the governmental entity receiving the service, the department shall establish a process for determining whether the department shall be the sole provider of the service or not.

*b.* If the department determines that it shall be the sole provider of a service, the department shall establish, by rule, a customer council responsible for overseeing departmental operations with regard to the service provided to ensure that the department meets the needs of affected governmental entities and the citizens those entities serve. The rules adopted shall provide, at a minimum, for the method of appointment of members

to the council by governmental entities required to receive the service from the department and for the powers and duties of the council as it relates to the service provided, which shall include the authority of approving, on an annual basis, business plans submitted by the department for performance of the service, the procedure for resolving complaints concerning the service provided, and the procedure for setting rates for the service. In addition, if the service to be provided may also be provided to the judicial branch and legislative branch, then the rules shall provide that the chief justice of the supreme court and the legislative council may, in their discretion, each appoint a member to the applicable customer council.

3. Departmental processes required to be established pursuant to this section shall provide, at a minimum, for input from affected governmental entities as well as for a biennial review by the appropriate customer council of the decision made by the department that the department should be the sole provider of a service.

4. The department shall annually prepare a listing separately identifying services to be provided by the department and funded by an appropriation, services to be provided by the department and funded by the governmental entity receiving the service, and services which the department is authorized to provide but which governmental entities may provide on their own or obtain from another provider of the service.

2003 Acts, ch 145, §11  
NEW section

#### **8A.122 Services to governmental entities.**

1. The director shall enter into agreements with state agencies, and may enter into agreements with any other governmental entity, to furnish services and facilities of the department to the applicable governmental entity. The agreement shall provide for the reimbursement to the department of the reasonable cost of the services and facilities furnished. All governmental entities of this state may enter into such agreements.

2. This chapter does not affect any city civil service programs established under chapter 400.

3. The state board of regents shall not be required to obtain any service for the state board of regents or any institution under the control of the state board of regents that is provided by the department pursuant to this chapter without the consent of the state board of regents.

2003 Acts, ch 145, §12  
NEW section

#### **8A.123 Department internal service funds.**

1. Activities of the department shall be accounted for within the general fund of the state, except that the director may establish and maintain internal service funds in accordance with generally accepted accounting principles, as defined

in section 8.57, subsection 4, for activities of the department which are primarily funded from billings to governmental entities for services rendered by the department. The establishment of an internal service fund is subject to the approval of the director of the department of management and the concurrence of the auditor of state. At least ninety days prior to the establishment of an internal service fund pursuant to this section, the director shall notify in writing the general assembly, including the legislative council, legislative fiscal committee, and the legislative services agency.

2. Internal service funds shall be administered by the department and shall consist of moneys collected by the department from billings issued in accordance with section 8A.125 and any other moneys obtained or accepted by the department, including but not limited to gifts, loans, donations, grants, and contributions, which are designated to support the activities of the individual internal service funds. The director may obtain loans from the innovations fund created in section 8.63 for deposit in an internal service fund established pursuant to this section to provide seed and investment capital to enhance the delivery of services provided by the department.

3. The proceeds of an internal service fund established pursuant to this section shall be used by the department for the operations of the department consistent with this chapter. The director may appoint the personnel necessary to ensure the efficient provision of services funded pursuant to an internal service fund established under this section. However, this usage requirement shall not limit or restrict the department from using proceeds from gifts, loans, donations, grants, and contributions in conformance with any conditions, directions, limitations, or instructions attached or related thereto.

4. Section 8.33 does not apply to any moneys in internal service funds established pursuant to this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in these funds shall be credited to these funds.

5. *a.* The director shall annually provide internal service fund service business plans and financial reports to the department of management and the general assembly. The business plans may include the recommendation that a portion of unexpended net income be periodically returned to the appropriate funding source.

*b.* The department shall submit an annual report not later than October 1 to the members of the general assembly and the legislative services agency of the activities funded by and expenditures made from an internal service fund established pursuant to this section during the preceding fiscal year.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §13  
NEW section  
Terminology changes applied

#### **8A.124 Additional personnel.**

The department may employ, upon the approval of the department of management, such additional personnel in excess of the number of full-time equivalent positions authorized by the general assembly if such additional personnel are reasonable and necessary to perform such duties as required to meet the needs of the department to provide services to other governmental entities and as authorized by this chapter. The director shall notify in writing the department of management, the legislative fiscal committee, and the legislative services agency of any additional personnel employed pursuant to this section.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §14  
NEW section  
Terminology change applied

#### **8A.125 Billing — credit card payments.**

1. The director may bill a governmental entity for services rendered by the department in accordance with the duties of the department as provided in this chapter. Bills may include direct, indirect, and developmental costs which have not been funded by an appropriation to the department. The department shall periodically render a billing statement to a governmental entity outlining the cost of services provided to the governmental entity. The amount indicated on the statement shall be paid by the governmental entity and amounts received by the department shall be considered repayment receipts as defined in section 8.2, and deposited into the accounts of the department.

2. In addition to other forms of payment, a person may pay by credit card for services provided by the department, according to rules adopted by the treasurer of state. The credit card fees to be charged shall not exceed those permitted by statute. A governmental entity may adjust its payment to reflect the costs of processing as determined by the treasurer of state. The discount charged by the credit card issuer may be included in determining the fees to be paid for completing a financial transaction under this section by using a credit card. All credit card payments shall be credited to the fund used to account for the services provided.

2003 Acts, ch 145, §15  
NEW section

#### **8A.126 Department debts and liabilities — appropriation request.**

If a service provided by the department and funded from an internal service fund established under section 8A.123 ceases to be provided and insufficient funds remain in the internal service fund to pay any outstanding debts and liabilities relating to that service, the director shall notify the general assembly and request that moneys be appropriated from the general fund of the state to

pay such debts and liabilities.

2003 Acts, ch 145, §16  
NEW section

**8A.127 through 8A.200** Reserved.

SUBCHAPTER II  
INFORMATION TECHNOLOGY

PART 1

GENERAL PROVISIONS

Department to conduct a study by September 1, 2004, and report by November 1, 2004, on the impact of transferring all state agency information technology services employees to the department of administrative services and the impact of merging the data centers of the department, the state department of transportation, and the department of workforce development into one data center; 2003 Acts, ch 145, §290

**8A.201 Definitions.**

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

1. *“Information technology”* means computing and electronics applications used to process and distribute information in digital and other forms and includes information technology devices, information technology services, and value-added services.

2. *“Information technology council”* means the information technology council established in section 8A.204.

3. *“Information technology device”* means equipment or associated software, including programs, languages, procedures, or associated documentation, used in operating the equipment which is designed for utilizing information stored in an electronic format. *“Information technology device”* includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

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

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

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

(1) Computer systems application development and maintenance.

(2) Systems integration and interoperability.

(3) Operating systems maintenance and design.

(4) Computer systems programming.

(5) Computer systems software support.

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

(7) Data management consultation.

(8) Information technology education and consulting.

(9) Information technology planning and standards.

(10) Establishment of local area network and

workstation management standards.

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

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

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

c. The state department of transportation mobile radio network.

d. The department of public safety law enforcement communications systems and capitol complex security systems in use for the legislative branch.

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

f. The Iowa lottery authority.

g. A judicial district department of correctional services established pursuant to section 905.2.

6. *“Value-added services”* means services that offer or provide unique, special, or enhanced value, benefits, or features to the customer or user including, but not limited to, services in which information technology is specially designed, modified, or adapted to meet the special or requested needs of the user or customer; services involving the delivery, provision, or transmission of information or data that require or involve additional processing, formatting, enhancement, compilation or security; services that provide the customer or user with enhanced accessibility, security or convenience; research and development services; and services that are provided to support technological or statutory requirements imposed on participating agencies and other governmental entities, businesses, and the public.

2003 Acts, ch 145, §17  
NEW section

**8A.202 Information technology services — mission — powers and duties — responsibilities.**

1. *Mission.* The mission of the department as it relates to information technology services is to provide high-quality, customer-focused information technology services and business solutions to government and to citizens.

2. *Powers and duties of department.* The powers and duties of the department as it relates to information technology services shall include, but are not limited to, all of the following:

a. Providing information technology to agencies and other governmental entities.

b. Implementing the strategic information technology plan.

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

*d.* Prescribing standards and adopting rules relating to information technology and procurement, including but not limited to system design and systems integration and interoperability, which shall apply to all participating agencies except as otherwise provided in this chapter. The department shall implement information technology standards as established pursuant to this chapter which are applicable to information technology procurements for participating agencies.

*e.* Developing and maintaining an electronic repository for public access to reference copies of agency mandated reports, newsletters, and publications in conformity with section 305.10, subsection 1, paragraph “h”. The department shall develop technical standards for an electronic repository in consultation with the state librarian and the state archivist.

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

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

*h.* Coordinating the acquisition of information technology by participating agencies in furtherance of the purposes of this chapter. The department shall institute procedures to ensure effective and efficient compliance with the applicable standards established pursuant to this subchapter. This subchapter shall not be construed to prohibit or limit a participating agency from entering into an agreement or contract for information technology with a qualified private entity.

*i.* Entering into contracts, leases, licensing agreements, royalty agreements, marketing agreements, memorandums of understanding, or other agreements as necessary and appropriate to administer this subchapter.

*j.* Requesting that a participating agency provide such information as is necessary to establish and maintain an inventory of information technology used by participating agencies, and such participating agency shall provide such information to the department in a timely manner. The form and content of the information to be provided shall be determined by the department.

*k.* Charging reasonable fees, costs, expenses, charges, or other amounts to an agency, governmental entity, public official, or person or entity related to the provision, sale, use, or utilization of, or cost sharing with respect to, information technology and any intellectual property interests related thereto; research and development; proprietary hardware, software, and applications; and information technology architecture and design. The department may enter into nondisclosure agreements and take any other legal action reasonably necessary to secure a right to an interest in information technology development by or on behalf of

the state of Iowa and to protect the state of Iowa’s proprietary information technology and intellectual property interests. The provisions of chapter 23A relating to noncompetition by state agencies and political subdivisions with private enterprise shall not apply to department activities authorized under this paragraph.

*l.* Charging reasonable fees, costs, expenses, charges, or other amounts to an agency, governmental entity, public official, or other person or entity to or for whom information technology or other services have been provided by or on behalf of, or otherwise made available through, the department.

*m.* Providing, selling, leasing, licensing, transferring, or otherwise conveying or disposing of information technology, or any intellectual property or other rights with respect thereto, to agencies, governmental entities, public officials, or other persons or entities.

*n.* Entering into partnerships, contracts, leases, or other agreements with public and private entities for the evaluation and development of information technology pilot projects.

*o.* Initiating and supporting the development of electronic commerce, electronic government, and internet applications across participating agencies and in cooperation with other governmental entities. The department shall foster joint development of electronic commerce and electronic government involving the public and private sectors, develop customer surveys and citizen outreach and education programs and material, and provide for citizen input regarding the state’s electronic commerce and electronic government applications.

3. *Responsibilities.* The responsibilities of the department as it relates to information technology services include the following:

*a.* Coordinate the activities of the department in promoting, integrating, and supporting information technology in all business aspects of state government.

*b.* Provide for server systems, including mainframe and other server operations, desktop support, and applications integration.

*c.* Provide applications development, support, and training, and advice and assistance in developing and supporting business applications throughout state government.

4. *Information technology charges.* The department shall render a statement to an agency, governmental entity, public official, or other person or entity to or for whom information technology, value-added services, or other items or services have been provided by or on behalf of, or otherwise made available through, the department. Such an agency, governmental entity, public official, or other person or entity shall pay an amount indicated on such statement in a manner determined by the department.

5. *Dispute resolution.* If a dispute arises be-

tween the department and an agency for which the department provides or refuses to provide information technology, the dispute shall be resolved as provided in section 679A.19.

2003 Acts, ch 145, §18; 2003 Acts, ch 179, §57, 84  
NEW section

#### **8A.203 Director — information technology services powers and duties.**

The director shall do all of the following as it relates to information technology services:

1. Prescribe and adopt information technology standards and rules.
2. Develop and recommend legislative proposals deemed necessary for the continued efficiency of the department in performing information technology functions, and review legislative proposals generated outside of the department which are related to matters within the department's purview.
3. Provide advice to the governor on issues related to information technology.
4. Consult with agencies and other governmental entities on issues relating to information technology.
5. Work with all governmental entities in an effort to achieve the information technology goals established by the department.

2003 Acts, ch 145, §19  
NEW section

#### **8A.204 Information technology council — members — powers and duties.**

##### *1. Membership.*

*a.* The information technology council is composed of fourteen members including the following:

- (1) The chairperson of the IowAccess advisory council established in section 8A.221, or the chairperson's designee.
- (2) Two executive branch department heads appointed by the governor.
- (3) Six persons appointed by the governor who are knowledgeable in information technology matters.
- (4) One person representing the judicial branch appointed by the chief justice of the supreme court who shall serve in an ex officio, nonvoting capacity.
- (5) Four members of the general assembly with not more than one member from each house being from the same political party. The two senators shall be designated by the president of the senate after consultation with the majority and minority leaders of the senate. The two representatives shall be designated by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. Legislative members shall serve in an ex officio, nonvoting capacity. A legislative member is eligible for per diem and expenses as provided in section 2.10.

*b.* The members appointed pursuant to para-

graph "a" shall serve four-year staggered terms and such appointments to the information technology council are subject to the requirements of sections 69.16, 69.16A, and 69.19. The four-year terms of members appointed by the governor shall be staggered as designated by the governor. Members appointed by the governor are subject to senate confirmation and may also be eligible to receive compensation as provided in section 7E.6. Members shall be reimbursed for actual and necessary expenses incurred in performance of the members' duties.

*c.* The information technology council shall annually elect its own chairperson from among the voting members of the council. A majority of the voting members of the council constitutes a quorum.

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

*a.* Advise the department in the development of recommended standards for consideration with respect to the procurement of information technology by all participating agencies.

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

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

*d.* Review, as deemed appropriate by the information technology council, legislative proposals recommended by the director, or other legislative proposals as developed and deemed necessary by the information technology council.

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

agency regarding the rate establishment or change.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §20, 293  
Confirmation, §2.32  
NEW section  
Terminology changes applied

#### **8A.205 Digital government.**

1. The department is responsible for initiating and supporting the development of electronic commerce, electronic government, and internet applications across participating agencies and in cooperation with other governmental entities.

2. In developing the concept of digital government, the department shall do all of the following:

*a.* Establish standards, consistent with other state law, for the implementation of electronic commerce, including standards for digital signatures, electronic currency, and other items associated with electronic commerce.

*b.* Establish guidelines for the appearance and functioning of applications.

*c.* Establish standards for the integration of electronic data across state agencies.

*d.* Foster joint development of electronic commerce and electronic government involving the public and private sectors.

*e.* Develop customer surveys and citizen outreach and education programs and material, and provide for citizen input regarding the state's electronic commerce and electronic government applications.

*f.* Provide staff support for the IowaAccess advisory council.

2003 Acts, ch 145, §21  
NEW section

#### **8A.206 Information technology standards.**

1. The department shall develop, in consultation with the information technology council, recommended standards for consideration with respect to the procurement of information technology by all participating agencies. It is the intent of the general assembly that information technology standards be established for the purpose of guiding such procurements. Such standards, unless waived by the department, shall apply to all information technology procurements for participating agencies.

2. The office of the governor or the office of an elective constitutional or statutory officer shall consult with the department prior to procuring information technology and consider the standards recommended by the department, and provide a written report to the department relating to the office's decision regarding such acquisitions.

2003 Acts, ch 145, §22  
NEW section

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

1. Standards established by the department,

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

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

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

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

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

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

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

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

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

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

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

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

*d. Reverse auction.*

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

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

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

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

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

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

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

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

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

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

2003 Acts, ch 145, §23  
NEW section

**8A.208 through 8A.220** Reserved.

## PART 2

### IOWACCESS

#### **8A.221 IowAccess advisory council established — duties — membership.**

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

2. *Duties.*

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

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

(2) Recommend to the director the priority of projects associated with IowAccess.

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

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

(5) Review and recommend to the director all rules to be adopted by the department that are related to IowAccess.

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

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

(8) Other duties as assigned by the director.

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

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

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

### 3. Membership.

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

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

(2) Six persons representing lawful custodians as follows:

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

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

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

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

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

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

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

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

b. Members appointed by the governor are subject to confirmation by the senate and shall serve four-year staggered terms as designated by the governor. The advisory council shall annually elect its own chairperson from among the voting members of the board. Members appointed by the governor are subject to the requirements of sections 69.16, 69.16A, and 69.19. Members ap-

pointed by the governor shall be reimbursed for actual and necessary expenses incurred in performance of their duties. Such members may also be eligible to receive compensation as provided in section 7E.6.

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

2003 Acts, ch 145, §24  
Confirmation, §2.32  
Initial appointments to IowaAccess advisory council; 2000 Acts, ch 1141, §18, 19  
NEW section

### 8A.222 Financial transactions.

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

a. Fees required to obtain an electronic public record as provided in section 22.3A.

b. Fees required to process an application or file a document, including but not limited to fees required to obtain a license issued by a licensing authority.

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

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

3. In addition to other forms of payment, credit cards shall be accepted in payment for moneys owed to or fees imposed by a governmental entity in the same manner as provided in section 8A.125.

4. Notwithstanding any other provision of this section, the department may establish for the fiscal years beginning July 1, 2003, and ending June 30, 2005, a pilot project for fee collection. Fees shall be collected based on the ability to access court information from remote locations.

2003 Acts, ch 145, §25  
NEW section

### 8A.223 Audits required.

A technology audit of the electronic transmission system by which government records are transmitted electronically to the public shall be

conducted not less than once annually for the purpose of determining that government records and other electronic data are not misappropriated or misused by the department or a contractor of the department.

2003 Acts, ch 145, §26  
NEW section

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

An IowAccess revolving fund is created in the state treasury. The revolving fund shall be administered by the department and shall consist of moneys collected by the department as fees, moneys appropriated by the general assembly, and any other moneys obtained or accepted by the department for deposit in the revolving fund. The proceeds of the revolving fund are appropriated to and shall be used by the department to maintain, develop, operate, and expand IowAccess consistent with this subchapter. The department shall submit an annual report not later than January 31 to the members of the general assembly and the legislative services agency of the activities funded by and expenditures made from the revolving fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the revolving fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the revolving fund shall be credited to the revolving fund.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §27  
NEW section  
Terminology changes applied

**8A.225 through 8A.300** Reserved.

### SUBCHAPTER III

#### PHYSICAL RESOURCES

##### PART 1

#### GENERAL PROVISIONS

#### **8A.301 Definitions.**

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

1. *“Bid specification”* means the standards or qualities which must be met before a contract to purchase will be awarded and any terms which the director has set as a condition precedent to the awarding of a contract.

2. *“Competitive bidding procedure”* means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, accepted, rejected, or awarded. A *“competitive bidding procedure”* may include a transaction accomplished in an electronic format.

3. *“Life cycle cost”* means the expected total cost of ownership during the life of a product.

4. *“Printing”* means, as used in chapter 7A and this subchapter, the reproduction of an image from a printing surface made generally by a contact impression that causes a transfer of ink, the reproduction of an impression by a photographic process, or the reproduction of an image by electronic means and shall include binding and may include material, processes, or operations necessary to produce a finished printed product, but shall not include binding, rebinding or repairs of books, journals, pamphlets, magazines and literary articles by any library of the state or any of its offices, departments, boards, and commissions held as a part of their library collection.

5. *“State buildings and grounds”* excludes any building under the custody and control of the Iowa public employees’ retirement system.

2003 Acts, ch 145, §28  
NEW section

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

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

1. Providing a system of uniform standards and specifications for purchasing. When the system is developed, all items of general use shall be purchased by state agencies through the department, except items used by the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other agencies exempted by law. However, items of general use may be purchased through the department by any governmental entity.

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

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

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

5. Developing and implementing procedures

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

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

2003 Acts, ch 145, §29  
NEW section

**8A.303 through 8A.310** Reserved.

## PART 2

### PURCHASING

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

The director shall adopt rules establishing competitive bidding procedures.

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

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

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

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

3. *a.* The director may contract for the purchase of items or services by the department. Con-

tracts for the purchase of items or services shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price.

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

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

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

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

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

8. The director shall adopt rules providing that any state agency may, upon request, purchase directly from a vendor if the direct purchasing is as economical or more economical than purchasing through the department, or upon a showing that direct purchasing by the state agency would be in the best interests of the state due to an immediate or emergency need. The rules shall include a provision permitting a state agency to purchase directly from a vendor, on the agency's own authority, if the purchase will not exceed five thousand dollars and the purchase will contribute to the agency complying with or exceeding the targeted small business procurement goals under sections 73.15 through 73.21.

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

9. *a.* When the estimated total cost of construction, erection, demolition, alteration, or repair of a public improvement exceeds twenty-five thousand dollars, the department shall solicit bids on the proposed improvement by publishing an advertisement in a print format. The advertisement shall appear in two publications in a newspaper published in the county in which the work is to be done. The first advertisement for bids appearing in a newspaper shall be not less than fifteen days

prior to the date set for receiving bids. The department may publish an advertisement in an electronic format as an additional method of soliciting bids under this paragraph.

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

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

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

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

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

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

13. A bidder awarded a state construction contract shall disclose the names of all subcontractors,

who will work on the project being bid, within forty-eight hours after the award of the contract.

If a subcontractor named by a bidder awarded a state construction contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost.

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

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

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

17. This section does not apply to Iowa technology center contracts in support of activities performed for another governmental entity, either state or federal. The Iowa technology center is an entity created by a chapter 28E agreement entered into by the department of public defense.

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

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

partment's need.

2003 Acts, ch 145, §30  
 Preferences; see also chapter 73, §73A.21  
 NEW section

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

The director may purchase items through the state department of transportation, institutions under the control of the state board of regents, and any other agency exempted by law from centralized purchasing. These state agencies shall upon request furnish the director with a list of and specifications for all items of office equipment, furniture, fixtures, motor vehicles, heavy equipment, and other related items to be purchased during the next quarter and the date by which the director must file with the agency the quantity of items to be purchased by the state agency for the department. The department shall be liable to the state agency for the proportionate costs the items purchased for the department bear to the total purchase price. When items purchased have been delivered, the state agency shall notify the director and after receipt of the purchase price shall release the items to the director or upon the director's order.

2003 Acts, ch 145, §31  
 NEW section

#### **8A.313 Disputes involving purchasing from Iowa state industries.**

Disputes arising between the department of corrections and a purchasing department or agency over the procurement of products from Iowa state industries as described in section 904.808 shall be referred to the director. The decision of the director is final unless a written appeal is filed with the executive council within five days of receipt of the decision of the director, excluding Saturdays, Sundays, and legal holidays. If an appeal is filed, the executive council shall hear and determine the appeal within thirty days. The decision of the executive council is final.

2003 Acts, ch 145, §32  
 NEW section

#### **8A.314 Purchasing revolving fund.**

1. A purchasing revolving fund is established within the department. The director shall keep an accurate itemized account for each state agency purchasing through the department, using services provided for by the department, and using postage supplied by the department.

2. At the end of each month the director shall render a statement to each state agency for the actual cost of items purchased through the department, and the actual cost of services and postage used by the agency. The monthly statement shall also include a fair proportion of the administrative costs of the department during the month. The portion of administrative costs shall be determined by the director subject to review by the

executive council upon complaint from any state agency adversely affected.

3. Statements rendered to the various state agencies shall be paid by the state agencies in the manner determined by the department. When the statements are paid the sums shall be credited to the purchasing revolving fund. If any funds accrue to the revolving fund in excess of two hundred twenty-five thousand dollars and there is no anticipated need or use for such funds, the governor shall order the excess funds credited to the general fund of the state.

2003 Acts, ch 145, §33  
 NEW section

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

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

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

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

*c.* A minimum of ten percent of the purchases of garbage can liners made by the department shall be plastic garbage can liners with recycled content. The percentage shall increase by ten percent annually until fifty percent of the purchases of garbage can liners are plastic garbage can liners with recycled content.

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

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

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

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

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

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

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

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

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

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

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

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

administer this section.

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

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

2003 Acts, ch 145, §34  
NEW section

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

The department shall do all of the following:

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

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

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

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

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

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

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

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

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

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

4. *a.* Provide that when purchasing hydraulic fluids, greases, and other industrial lubricants, the department or a state agency authorized by

the department to directly purchase hydraulic fluids, greases, and other industrial lubricants shall give preference to purchasing bio-based hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans.

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

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

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

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

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

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

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

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

2003 Acts, ch 145, §35  
NEW section

**8A.317 through 8A.320** Reserved.

### PART 3

#### PHYSICAL RESOURCES AND FACILITY MANAGEMENT

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

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

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

2. Institute, in the name of the state, and with the advice and consent of the attorney general, civ-

il and criminal proceedings against any person for injury or threatened injury to any public property, including but not limited to intangible and intellectual property, under the person's control.

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

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

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

6. a. Lease all buildings and office space necessary to carry out the provisions of this subchapter or necessary for the proper functioning of any state agency at the seat of government. For state agencies at the seat of government, the director may lease buildings and office space in Polk county or in a county contiguous to Polk county. If no specific appropriation has been made, the proposed lease shall be submitted to the executive council for approval. The cost of any lease for which no specific appropriation has been made shall be paid from the fund provided in section 7D.29.

b. When the general assembly is not in session, the director may request moneys from the executive council for moving state agencies located at the seat of government from one location to another. The request may include moving costs, telecommunications costs, repair costs, or any other costs relating to the move. The executive council may approve and shall pay the costs from funds provided in section 7D.29 if it determines the agency or department has no available funds for these expenses.

c. Coordinate the leasing of buildings and office space by state agencies throughout the state and develop cooperative relationships with the

state board of regents in order to promote the collocation of state agencies.

7. Unless otherwise provided by law, coordinate the location, design, plans and specifications, construction, and ultimate use of the real or personal property to be purchased by a state agency for whose benefit and use the property is being obtained. If the purchase of real or personal property is to be financed pursuant to section 12.28, the department shall cooperate with the treasurer of state in providing the information necessary to complete the financing of the property.

A contract for acquisition, construction, erection, demolition, alteration, or repair by a private person of real or personal property to be lease-purchased by the treasurer of state pursuant to section 12.28 is exempt from section 8A.311, subsections 1 and 9, unless the lease-purchase contract is funded in advance by a deposit of the lessor's moneys to be administered by the treasurer of state under a lease-purchase contract which requires rent payments to commence upon delivery of the lessor's moneys to the lessee.

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

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

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

11. Call upon any state agency, as defined in section 8.3A, for assistance the director may require in performing the director's duties under subsection 10 regarding capital project status reports. All state agencies, upon the request of the director and with the approval of the director of the department of management, shall assist the director and are authorized to make available to the director any existing studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director's duties.

12. In carrying out the requirements of section

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

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

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

2003 Acts, ch 145, §36  
NEW section

### **8A.322 Buildings and grounds — services — public use.**

1. The director shall provide necessary lighting, fuel, and water services for the state buildings and grounds located at the seat of government, and for the state laboratories facility in Ankeny, except the buildings and grounds referred to in section 216B.3, subsection 6.

2. Except for buildings and grounds described in section 216B.3, subsection 6; section 2.43, unnumbered paragraph 1; and any buildings under the custody and control of the Iowa public employees' retirement system, the director shall assign office space at the capitol, other state buildings, and elsewhere in the city of Des Moines, and the state laboratories facility in Ankeny, for all executive and judicial state agencies. Assignments may be changed at any time. The various officers to whom rooms have been so assigned may control the same while the assignment to them is in force. Official apartments shall be used only for the purpose of conducting the business of the state. The term "capitol" or "capitol building" as used in the Code shall be descriptive of all buildings upon the capitol grounds. The capitol build-

ing itself is reserved for the operations of the general assembly, the governor, and the courts and the assignment and use of physical facilities for the general assembly shall be pursuant to section 2.43.

3. The director shall establish, publish, and enforce rules regulating and restricting the use by the public of the capitol buildings and grounds and of the state laboratories facility in Ankeny. The rules when established shall be posted in conspicuous places about the capitol buildings and grounds and the state laboratories facility, as applicable. Any person violating any rule, except a parking regulation, shall be guilty of a simple misdemeanor.

2003 Acts, ch 145, §37  
NEW section

#### **8A.323 Parking regulations.**

1. The director shall establish, publish, and enforce rules regulating, restricting, or prohibiting the use by state officials, state employees, and the public, of motor vehicle parking facilities at the state capitol complex and at the state laboratories facility in Ankeny. The assignment of legislative parking spaces shall be under the control of the legislative council. The rules established by the director may establish fines for violations and a procedure for payment of the fines. The director may order payment of a fine and enforce the order in the district court.

2. Motor vehicles parked in violation of the rules may be removed without the owner's or operator's consent and at the owner's or operator's expense. Motor vehicles removed and not claimed within thirty days of their removal or vehicles abandoned within the capitol grounds may be disposed of in accordance with the provisions of sections 321.85 through 321.91.

3. The parking rules established shall be posted in conspicuous places at the capitol complex and at the state laboratories facility in Ankeny, as applicable. Copies of the rules shall be made available to all state officials and employees and any other person who requests a copy of the rules.

4. All fines collected by the department shall be forwarded to the treasurer of state and deposited in the general fund of the state.

2003 Acts, ch 145, §38  
NEW section

#### **8A.324 Disposal of personal property.**

The director may dispose of personal property of the state under the director's control by any of the following means:

1. The director may dispose of unfit or unnecessary personal property by sale. Proceeds from the sale of personal property shall be deposited in the general fund of the state.

2. If the director concludes that the personal property has little or no value, the director may en-

ter into an agreement with a not-for-profit organization or governmental agency to dispose of the personal property. The not-for-profit organization or governmental agency may charge the state agency in control of the property with the cost of removing and transporting the property. Title to the personal property shall transfer when the personal property is in the possession of the not-for-profit organization or governmental agency. If a governmental agency adds value to the property transferred to it and sells it, the proceeds from the sale shall be deposited with the governmental agency and not in the general fund of the state.

3. The director may dispose of presses, printing equipment, printing supplies, and other machinery or equipment used in the printing operation.

2003 Acts, ch 145, §39  
NEW section

#### **8A.325 Services and commodities accepted.**

The director may accept services, commodities, and surplus property and make provision for warehousing and distribution to various departments and governmental subdivisions of the state, and such other agencies, institutions, and authorized recipients within the state as may be from time to time designated in federal statutes and rules.

2003 Acts, ch 145, §40  
NEW section

#### **8A.326 Terrace Hill commission.**

1. The Terrace Hill commission is created consisting of nine persons, appointed by the governor, who are knowledgeable in business management and historic preservation and renovation. The governor shall appoint the chairperson. The terms of the commission members are for three years beginning on July 1 and ending on June 30.

2. The Terrace Hill commission may consult with the Terrace Hill society, Terrace Hill foundation, the executive and legislative branches of this state, and other persons interested in the property.

3. The Terrace Hill commission may enter into contracts, subject to this chapter, to execute its purposes.

4. The commission may adopt rules to administer the programs of the commission. The decision of the commission is final agency action under chapter 17A.

2003 Acts, ch 145, §41  
NEW section

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

1. A rent revolving fund is created in the state treasury under the control of the department to be used by the department to pay the lease or rental costs of all buildings and office space necessary for the proper functioning of any state agency at the

seat of state government as provided in section 8A.321, subsection 6, except that this fund shall not be used to pay the rental or lease costs of a state agency which has not received funds budgeted for rental or lease purposes.

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

2003 Acts, ch 145, §42  
NEW section

#### 8A.328 Recycling revolving fund.

A recycling revolving fund is created within the state treasury under the control of the department. The fund shall consist of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The assets of the fund shall be used by the department only for supporting recycling operations. Moneys in the fund shall be drawn upon the written requisition of the director or an authorized representative of the director. The fund is subject to an annual audit by the auditor of state. Section 8.33 does not apply to any moneys in the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2003 Acts, ch 145, §43  
NEW section

#### 8A.329 Wastepaper recycling program.

1. The department in accordance with recommendations made by the department of natural resources shall require all state agencies to establish an agency wastepaper recycling program. The director shall adopt rules which require a state agency to develop a program to ensure the recycling of the wastepaper generated by the agency. All state employees shall practice conservation of paper materials.

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

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

2003 Acts, ch 145, §44  
NEW section

8A.330 through 8A.340 Reserved.

## PART 4

### PRINTING

Department shall submit a request for proposals for a managed competition for printing services by July 1, 2005, unless more efficient results can be obtained by other methods;  
2003 Acts, ch 145, §290

#### 8A.341 State printing — duties.

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

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

2. If money is appropriated for this purpose, by November 1 of each year supply a report which contains the name, gender, county, or city of residence when possible, official title, salary received during the previous fiscal year, base salary as computed on July 1 of the current fiscal year, and traveling and subsistence expense of the personnel of each of the departments, boards, and commissions of the state government except personnel who receive an annual salary of less than one thousand dollars. The number of the personnel and the total amount received by them shall be shown for each department in the report. All employees who have drawn salaries, fees, or expense allowances from more than one department or subdivision shall be listed separately under the proper departmental heading. On the request of the director, the head of each department, board, or commission shall furnish the data covering that agency. The report shall be distributed upon request without charge to each caucus of the general assembly, the legislative services agency, the chief clerk of the house of representatives, and the secretary of the senate. Copies of the report shall be made available to other persons in both print or electronic medium upon payment of a fee, which shall not exceed the cost of providing the copy of the report. Sections 22.2 through 22.6 apply to the report. All funds from the sale of the report shall be deposited in the printing revolving fund established in section 8A.345. Requests for print publications shall be handled only upon receipt of postage by the director.

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

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 145, §45  
Style, publication, and distribution of Iowa Code and Code Supplement, Iowa Acts, Iowa administrative code, Iowa administrative bulletin, and

Iowa court rules; §2.42, 2A.5, 2A.6  
 NEW section  
 Terminology change applied

#### **8A.342 Contracts with state institutions.**

The director may, without advertising for bids, enter into contracts or make provision for doing any of the work coming under the provisions of chapter 7A and this subchapter at any school or institution under the ownership or control of the state. The work shall be done under conditions substantially the same as those provided for in the case of contracts with individuals and the same standard of quality or product shall be required.

2003 Acts, ch 145, §46  
 NEW section

#### **8A.343 Specifications and requirements.**

The director shall, from time to time, adopt and print specifications and requirements covering all matters relating to printing that are the subject of contracts.

2003 Acts, ch 145, §47  
 NEW section

#### **8A.344 Public printing — bidding procedures.**

1. The director shall advertise for bids for public printing. Advertisements shall state where and how specifications and other necessary information may be obtained, the time during which the director will receive bids, and the day, hour, and place when bids will be publicly opened or accessed, and the manner by which the contracts will be awarded.

2. The director shall supply prospective bidders and others on request with the specifications and requirements, blank forms for bids, samples of printing so far as possible, and all other information pertaining to the subject.

3. The specifications shall be kept on file in the office of the director, open to public inspection, together with samples so far as possible, of the work to be done or the material to be furnished.

4. Bids submitted must be:

*a.* Secured in writing, by telephone, by facsimile, or in a format prescribed by the director as indicated in the bid specifications.

*b.* Signed by the bidder, or if a telephone or electronic bid, confirmed by the bidder in a manner prescribed by the director.

*c.* Submitted in a format prescribed by the director which reasonably assures the authenticity of the bid and the bidder's identity.

*d.* Submitted to the department as specified by the date and time established in the advertisements for bids.

5. When a bidder submits a bid to the department, the director may require the bidder to file a bid bond or a certified or cashier's check payable to the treasurer of state in an amount to be fixed in the bid specifications, either covering all classes or items or services, or separate certified or cash-

ier's checks for each bid in case the bidder makes more than one bid. In lieu of a certified or cashier's check, the bidder may furnish a yearly bond in an amount to be established by the director. Certified or cashier's checks deposited by unsuccessful bidders, and by successful bidders when they have entered into the contract, shall be returned to them.

6. All bids shall be publicly opened or accessed and read and the contracts awarded in the manner designated in the bid specifications. In the award of a contract, due consideration shall be given to the price bid, mechanical and other equipment proposed to be used by the bidder, the financial responsibility of the bidder, the bidder's ability and experience in the performance of similar contracts, and any other factors that the department determines are relevant and that are included in the bid specifications.

7. The director shall have the right to reject any or all bids, and in case of rejection or because of failure of a bidder to enter into a contract, the director may advertise for and secure new bids.

8. When the director is satisfied that bidders have presented bids pursuant to an agreement, understanding, or combination to prevent free competition, the director shall reject all of them and readvertise for bids as in the first instance.

2003 Acts, ch 145, §48  
 NEW section

#### **8A.345 Printing revolving fund.**

A revolving fund is created in the state treasury under the control of the department and may be used in making payments for supplying paper stock, offset printing, copy preparation, binding, distribution costs, and original payment of printing and binding claims for any of the state departments, bureaus, commissions, or institutions. All salaries and expenses properly chargeable to the fund shall be paid from the fund. The director may also use the fund for the purchase of replacement or additional equipment if a sufficient balance will remain in the fund to enable the continued operation of the printing operations of the department.

2003 Acts, ch 145, §49  
 NEW section

**8A.346 through 8A.350** Reserved.

### PART 5

#### DOCUMENT MANAGEMENT

#### **8A.351 Distribution of documents — general provisions.**

If money is appropriated for this purpose, the director shall do all of the following:

1. The director shall require from officials or heads of departments mailing lists, or addressed labels or envelopes, for use in distribution of reports and documents. The director shall revise such lists, eliminating duplications and adding to

the lists libraries, institutions, public officials, and persons having actual use for the material. The director shall arrange the lists so as to reduce to the minimum the postage or other cost for delivery. Requests for publications shall be handled only upon receipt of postage by the director from the requesting agency or department.

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

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

2003 Acts, ch 145, §50  
NEW section

**8A.352 through 8A.360** Reserved.

## PART 6

### FLEET MANAGEMENT

Department may limit unified fleet management responsibilities to cars and small trucks; operations shall be subject to managed competition process by July 1, 2005, unless more efficient results can be obtained by other methods; 2003 Acts, ch 145, §290

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

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

2003 Acts, ch 145, §51  
NEW section

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

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

2. The director may cause all state-owned motor vehicles to be inspected periodically. Whenever the inspection reveals that repairs have been improperly made on the motor vehicle or that the operator is not giving the motor vehicle the proper

care, the director shall report this fact to the head of the state agency to which the motor vehicle has been assigned, together with recommendation for improvement.

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

A motor vehicle operated under this subsection shall not operate on gasoline other than gasoline blended with at least ten percent ethanol, unless under emergency circumstances. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol, if commercially available. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

4. *a.* The director shall provide for the purchase of all motor vehicles for all branches of the state government, except the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other state agency exempted by law. The director shall purchase new vehicles in accordance with competitive bidding procedures for items or services as provided in this subchapter. The director may purchase used or preowned vehicles at governmental or dealer auctions if the purchase is determined to be in the best interests of the state.

*b.* The director, and any other state agency, which for purposes of this subsection includes but is not limited to community colleges and institu-

tions under the control of the state board of regents, or local governmental subdivisions purchasing new motor vehicles, shall purchase new passenger vehicles and light trucks so that the average fuel efficiency for the fleet of new passenger vehicles and light trucks purchased in that year equals or exceeds the average fuel economy standard for the vehicles' model year as established by the United States secretary of transportation under 15 U.S.C. § 2002. This paragraph does not apply to vehicles purchased for law enforcement purposes or used for off-road maintenance work, or work vehicles used to pull loaded trailers.

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

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

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

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

5. Of all new passenger vehicles and light pickup trucks purchased by the director, a minimum of

ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion including but not limited to any of the following:

- a. A flexible fuel, which is any of the following:
  - (1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.
  - (2) A fuel which is a mixture of diesel fuel and processed soybean oil. At least twenty percent of the mixed fuel by volume must be processed soybean oil.
  - (3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.
- b. Compressed or liquefied natural gas.
- c. Propane gas.
- d. Solar energy.
- e. Electricity.

This subsection does not apply to vehicles and trucks purchased and directly used for law enforcement or purchased and used for off-road maintenance work or to pull loaded trailers.

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

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

8. The director shall require that a sign be placed on each state-owned motor vehicle in a conspicuous place which indicates its ownership by the state. This requirement shall not apply to motor vehicles requested to be exempt by the director or by the commissioner of public safety. All state-owned motor vehicles shall display registration

plates bearing the word “official” except motor vehicles requested to be furnished with ordinary plates by the director or by the commissioner of public safety pursuant to section 321.19. The director shall keep an accurate record of the registration plates used on all state-owned motor vehicles.

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

2003 Acts, ch 145, §52  
Marking vehicles generally, §721.8  
“Official” plates, §321.19, 321.170  
NEW section

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

1. A state officer or employee shall not use a state-owned motor vehicle for personal private use. A state officer or employee shall not be compensated for driving a privately owned motor vehicle unless it is done on state business with the approval of the director. In that case the state officer or employee shall receive an amount to be determined by the director. The amount shall not exceed the maximum allowable under the federal internal revenue service rules per mile, notwithstanding established mileage requirements or depreciation allowances. However, the director may authorize private motor vehicle rates in excess of the rate allowed under the federal internal revenue service rules for state business use of substantially modified or specially equipped privately owned vehicles required by persons with disabilities. A statutory provision establishing reimbursement for necessary mileage, travel, or actual expenses to a state officer falls under the pri-

rate motor vehicle mileage rate limitation provided in this section unless specifically provided otherwise. Any peace officer employed by the state as defined in section 801.4 who is required to use a private motor vehicle in the performance of official duties shall receive the private vehicle mileage rate at the rate provided in this section. However, the director may delegate authority to officials of the state, and department heads, for the use of private vehicles on state business up to a yearly mileage figure established by the director. If a state motor vehicle has been assigned to a state officer or employee, the officer or employee shall not collect mileage for the use of a privately owned motor vehicle unless the state motor vehicle assigned is not useable.

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

- a. Officials and employees of the state whose mileage is paid other than by a state agency.
- b. Elected officers of the state.
- c. Judicial officers or court employees.
- d. Members and employees of the general assembly who shall be governed by policies relating to motor vehicle travel, including but not limited to reimbursement for expenses, if such policies are otherwise established by the general assembly.

2003 Acts, ch 145, §53  
See also §2.10, 70A.9, 602.1509  
NEW section

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

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

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

general fund of the state.

2003 Acts, ch 145, §54  
NEW section

**8A.365 Vehicle replacement — depreciation fund.**

1. The director shall maintain a depreciation fund for the purchase of replacement motor vehicles and additions to the fleet. The director's records shall show the total funds deposited by and credited to each department or agency. At the end of each month, the director shall render a statement to each state department or agency for additions to the fleet and total depreciation credited to that department or agency. Such depreciation expense shall be paid by the state departments or agencies in the same manner as other expenses are paid, and shall be deposited in the depreciation fund to the credit of the department or agency. The funds credited to each department or agency shall remain the property of the department or agency. However, at the end of each biennium, the director shall cause to revert to the fund from which it accumulated any unassigned depreciation.

2. The department of corrections is not obligated to pay the depreciation expense otherwise required by this section.

2003 Acts, ch 145, §55  
NEW section

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

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

2003 Acts, ch 145, §56  
NEW section

**8A.367 through 8A.400 Reserved.**

SUBCHAPTER IV

STATE HUMAN RESOURCE  
MANAGEMENT — OPERATIONS

PART 1

GENERAL PROVISIONS

**8A.401 Definitions.**

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

1. *“Appointing authority”* means the chairperson or person in charge of any state agency including, but not limited to, boards, bureaus, commissions, and departments, or an employee designated to act for an appointing authority.

2. *“Merit system”* means the merit system established under this subchapter.

2003 Acts, ch 145, §57  
NEW section

**8A.402 State human resource management — responsibilities.**

1. The department is the central agency responsible for state human resource management, including the following:

a. Policy and program development, workforce planning, and research.

b. Employment activities and transactions, including recruitment, examination, and certification of personnel seeking employment or promotion.

c. Compensation and benefits, including position classification, wages and salaries, and employee benefits. Employee benefits include, but are not limited to, group medical, dental, life, and long-term disability insurance, workers' compensation, unemployment benefits, sick leave, deferred compensation, holidays and vacations, tuition reimbursement, and educational leaves.

d. Equal employment opportunity, affirmative action, and workforce diversity programs.

e. Education, training, and workforce development programs.

f. Personnel records and administration, including the audit of all personnel-related documents.

g. Employment relations, including the negotiation and administration of collective bargaining agreements on behalf of the executive branch of the state and its departments and agencies as provided in chapter 20. However, the state board of regents, for the purposes of implementing and administering collective bargaining pursuant to chapter 20, shall act as the exclusive representative of the state with respect to its faculty, scientific, and other professional staff.

h. The coordination and management of the state's human resource information system, except as otherwise required for those employees governed by chapter 262.

2. The department, as it relates to the human resources of state government, shall do the following:

a. Establish and maintain a list of all employees in the executive branch of state government and set forth, as to each employee, the class title, pay, status, and other pertinent data. For employees governed by chapter 262, the director shall work collaboratively with the state board of regents to collect such information.

b. Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling, and welfare.

c. Encourage and exercise leadership in the development of effective personnel administration within the several state agencies, and to make available the facilities of the department to this end.

d. The director may delegate any or all aspects of the recruitment, examination, and selection

processes to an agency in the executive branch upon request by that agency. The director shall oversee all activities delegated to that agency.

e. Utilize appropriate persons, including officers and employees in the executive branch, to assist in the recruitment and examination of applicants for employment. These officers and employees are not entitled to extra pay for their services, but shall be paid their necessary traveling and other expenses.

3. The human resource management powers and duties of the department do not extend to the legislative branch or the judicial branch of state government, except for functions related to administering compensation and benefit programs.

2003 Acts, ch 145, §58  
NEW section

**8A.403 through 8A.410** Reserved.

## PART 2

### MERIT SYSTEM

Personnel in the state merit system who are mandatorily transferred due to effect of 2003 Acts, ch 145, shall retain salary, benefits, and accrued years of service; 2003 Acts, ch 145, §288

#### **8A.411 Merit system established — collective bargaining — applicability.**

1. The general purpose of this subchapter is to establish for the state of Iowa a system of human resource administration based on merit principles and scientific methods to govern the appointment, compensation, promotion, welfare, development, transfer, layoff, removal, and discipline of its civil employees, and other incidents of state employment.

2. It is also the purpose of this subchapter to promote the coordination of personnel rules and policies with collective bargaining agreements negotiated under chapter 20.

3. All appointments and promotions to positions covered by the state merit system shall be made solely on the basis of merit and fitness, to be ascertained by examinations or other appropriate screening methods, except as otherwise specified in this subchapter.

4. Provisions of this subchapter pertaining to qualifications, examination, certification, probation, and just cause apply only to employees covered by the merit system.

2003 Acts, ch 145, §59  
NEW section

#### **8A.412 Merit system — applicability — exceptions.**

The merit system shall apply to all employees of the state and to all positions in state government now existing or hereafter established. In addition, the director shall negotiate an agreement with the director of the department for the blind concern-

ing the applicability of the merit system to the professional employees of the department for the blind. However, the merit system shall not apply to the following:

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

2. All judicial officers and court employees.

3. The staff of the governor.

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

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

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

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

8. Persons who are paid a fee on a contract-for-services basis.

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

10. Residents, patients, or inmates working in state institutions, or persons on parole working in work experience programs.

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

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

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

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

15. The chief deputy administrative officer and each division administrator of each state agency not otherwise specifically provided for in this section, and physicians not otherwise specifically provided for in this section. As used in this

subsection, “*division administrator*” means a principal administrative or policymaking position designated by a chief administrative officer and approved by the director or as specified by law.

16. All confidential employees.

17. Other employees specifically exempted by law.

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

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

20. Chief deputy industrial commissioners.

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

22. All employees of the Iowa state fair authority.

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

24. The position classifications of employees of statewide elected officials that were exempt from the merit system as of June 30, 1994, shall remain exempt and any employees subsequently hired to fill any exempt position vacancies shall be classified as exempt employees.

2003 Acts, ch 145, §60

Equal opportunity and special appointments; §19B.2

NEW section

#### **8A.413 State human resource management — rules.**

The department shall adopt rules for the administration of this subchapter pursuant to chapter 17A. Rulemaking shall be carried out with due regard to the terms of collective bargaining agreements. A rule shall not supersede a provision of a collective bargaining agreement negotiated under chapter 20. The rules shall provide:

1. For the preparation, maintenance, and revision of a job classification plan that encompasses each job in the executive branch, excluding job classifications under the state board of regents, based upon assigned duties and responsibilities, so that the same general qualifications may reasonably be required for and the same pay plan may be equitably applied to all jobs in the same job classification. The director shall classify the position of every employee in the executive branch, excluding employees of the state board of regents, into one of the classes in the plan. An appointing authority or employee adversely affected by a classification or reclassification decision may file an appeal with the director. Appeals of a classification or reclassification decision shall be exempt from the provisions of section 17A.11 and shall be heard

by a committee appointed by the director. The classification or reclassification of a position that would cause the expenditure of additional salary funds shall not become effective if the expenditure of funds would be in excess of the total amount budgeted for the department of the appointing authority until budgetary approval has been obtained from the director of the department of management.

When the public interest requires a decrease or increase of employees in any position or type of employment not otherwise provided by law, or the creation or abolishment of any position or type of employment, the director, acting in good faith, shall so notify the governor. Thereafter, the position or type of employment shall stand abolished or created and the number of employees therein reduced or increased.

2. For pay plans covering all employees in the executive branch, excluding employees of the state board of regents, after consultation with the governor and appointing authorities, and consistent with the terms of collective bargaining agreements negotiated under chapter 20.

3. For examinations to determine the relative fitness of applicants for employment. Such examinations shall be practical in character and shall relate to such matters as will fairly assess the ability of the applicant to discharge the duties of the position to which appointment is sought.

Where the Code of Iowa establishes certification, registration, or licensing provisions, such documents shall be considered prima facie evidence of basic skills accomplishment and such persons shall be exempt from further basic skills examination.

Vacancies shall be announced publicly at least ten days in advance of the date fixed for the filing of applications for the vacancies, and shall be advertised through the communications media. The director may, however, in the director’s discretion, continue to receive applications and examine candidates for a period adequate to assure a sufficient number of eligibles to meet the needs of the system, and may add the names of successful candidates to existing eligible lists.

4. For promotions which shall give appropriate consideration to the applicant’s qualifications, record of performance, and conduct. A promotion means a change in the status of an employee from a position in one class to a position in another class having a higher pay grade.

5. For the establishment of lists for appointment and promotion, upon which lists shall be placed the names of successful candidates.

6. For the rejection of applicants who fail to meet reasonable requirements.

7. For the appointment by the appointing authority of a person on the appropriate list to fill a vacancy.

8. For a probation period of six months, ex-

cluding educational or training leave, before appointment may be made complete, and during which period a probationer may be discharged or reduced in class or pay. If the employee's services are unsatisfactory, the employee shall be dropped from the payroll on or before the expiration of the probation period. If satisfactory, the appointment shall be deemed permanent. The determination of the appointing authority shall be final and conclusive.

9. For temporary employment for not more than seven hundred eighty hours in a fiscal year.

10. For provisional employment when there is no appropriate list available. Such provisional employment shall not continue longer than one hundred eighty calendar days.

11. For transfer from a position in one state agency to a similar position in the same state agency or another state agency involving similar qualifications, duties, responsibilities, and salary ranges. Whenever an employee transfers or is transferred from one state agency to another state agency, the employee's seniority rights, any accumulated sick leave, and accumulated vacation time, as provided in the law, shall be transferred to the new place of employment and credited to the employee. Employees who are subject to contracts negotiated under chapter 20 which include transfer provisions shall be governed by the contract provisions.

12. For reinstatement of persons who have attained permanent status and who resign in good standing or who are laid off from their positions without fault or delinquency on their part.

13. For establishing in cooperation with the appointing authorities a performance management system for all employees in the executive branch, excluding employees of the state board of regents, which shall be considered in determining salary increases; as a factor in promotions; as a factor in determining the order of layoffs and in reinstatement; as a factor in demotions, discharges, and transfers; and for the regular evaluation, at least annually, of the qualifications and performance of those employees.

14. For layoffs by reason of lack of funds or work, or reorganization, and for the recall of employees so laid off, giving consideration in layoffs to the employee's performance record and length of service. An employee who has been laid off may be on a recall list for one year, which list shall be exhausted by the organizational unit enforcing the layoff before selection of an employee may be made from the promotional or nonpromotional list in the employee's classification. Employees who are subject to contracts negotiated under chapter 20 which include layoff and recall provisions shall be governed by the contract provisions.

15. For imposition, as a disciplinary measure, of a suspension from service without pay.

16. For discharge, suspension, or reduction in job classification or pay grade for any of the follow-

ing causes: failure to perform assigned duties; inadequacy in performing assigned duties; negligence; inefficiency; incompetence; insubordination; unrehabilitated alcoholism or narcotics addiction; dishonesty; unlawful discrimination; failure to maintain a license, certificate, or qualification necessary for a job classification or position; any act or conduct which adversely affects the employee's performance or the employing agency; or any other good cause for discharge, suspension, or reduction. The person discharged, suspended, or reduced shall be given a written statement of the reasons for the discharge, suspension, or reduction within twenty-four hours after the discharge, suspension, or reduction. All persons concerned with the administration of this subchapter shall use their best efforts to ensure that this subchapter and the rules adopted pursuant to this subchapter shall not be a means of protecting or retaining unqualified or unsatisfactory employees, and shall discharge, suspend, or reduce in job classification or pay grade all employees who should be discharged, suspended, or reduced for any of the causes stated in this subsection.

17. For establishment of a uniform plan for resolving employee grievances and complaints. Employees who are subject to contracts negotiated under chapter 20 which include grievance and complaint provisions shall be governed by the contract provisions.

18. For attendance regulations, and special leaves of absence, with or without pay, or reduced pay, in the various classes of positions in the executive branch, excluding positions under the state board of regents. Employees who are subject to contracts negotiated under chapter 20 which include leave of absence provisions shall be governed by the contract provisions. Annual sick leave and vacation time shall be granted in accordance with section 70A.1.

19. For the development and operation of programs to improve the work effectiveness and morale of employees in the executive branch, excluding employees of the state board of regents, including training, safety, health, welfare, counseling, recreation, and employee relations.

20. Notwithstanding any provisions to the contrary, a rule or regulation shall not be adopted by the department which would deprive the state of Iowa, or any of its agencies or institutions, of federal grants or other forms of financial assistance.

21. For veterans preference through a provision that veterans, as defined in section 35.1, shall have five points added to the grade or score attained in qualifying examinations for appointment to jobs.

Veterans who have a service-connected disability or are receiving compensation, disability benefits, or pension under laws administered by the veterans administration shall have ten points added to the grades attained in qualifying ex-

aminations. A veteran who has been awarded the purple heart for disabilities incurred in action shall be considered to have a service-connected disability.

22. For acceptance of the qualifications, requirements, regulations, and general provisions established under other sections of the Code pertaining to professional registration, certification, and licensing.

2003 Acts, ch 145, §61  
NEW section

#### **8A.414 Experimental research projects.**

The director may conduct experimental or research personnel-related projects of limited duration designed to improve the quality of the employment system. The provisions of section 8A.413 or administrative rules adopted pursuant to that section are waived for the purposes of such projects. Projects adopted under this authority shall not violate existing collective bargaining agreements. Any projects that relate to issues covered by such agreements or issues that are mandatory subjects of collective bargaining are subject to negotiations as applicable. The director shall notify the chairpersons of the standing committees on appropriations of the senate and the house of representatives and the chairpersons of the appropriate subcommittees of those committees of the proposed projects. The notice from the director shall include the purpose of the project, a description of the project, and how the project will be evaluated. Chairpersons notified shall be given at least two weeks to review and comment on the proposal before the project is implemented. The director shall report the results of the experimental research projects conducted in the preceding fiscal year to the legislative council by September 30 of each year.

2003 Acts, ch 145, §62  
NEW section

#### **8A.415 Grievances and discipline resolution.**

1. *Grievances.* An employee, except an employee covered by a collective bargaining agreement which provides otherwise, who has exhausted the available agency steps in the uniform grievance procedure provided for in the department rules may, within seven calendar days following the date a decision was received or should have been received at the second step of the grievance procedure, file the grievance at the third step with the director. The director shall respond within thirty calendar days following receipt of the third step grievance.

If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative pro-

cedure Act, chapter 17A. Decisions rendered shall be based upon a standard of substantial compliance with this subchapter and the rules of the department. Decisions by the public employment relations board constitute final agency action.

For purposes of this subsection, "*uniform grievance procedure*" does not include procedures for discipline and discharge.

2. *Discipline resolution.* A merit system employee, except an employee covered by a collective bargaining agreement, who is discharged, suspended, demoted, or otherwise reduced in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The employee has the right to a hearing closed to the public, unless a public hearing is requested by the employee. The hearing shall otherwise be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. Decisions by the public employment relations board constitute final agency action.

2003 Acts, ch 145, §63  
NEW section

#### **8A.416 Discrimination, political activity, use of official influence prohibited.**

1. A person shall not be appointed or promoted to, or demoted or discharged from, any position in the merit system, or in any way favored or discriminated against with respect to employment in the merit system because of the person's political or religious opinions or affiliations or race or national origin or sex, or age.

2. A person holding a position in the classified service shall not, during the person's working hours or when performing the person's duties or when using state equipment or at any time on state property, take part in any way in soliciting any contribution for any political party or any person seeking political office, and such employee shall not engage in any political activity that will impair the employee's efficiency during working hours or cause the employee to be tardy or absent from work. This section does not preclude any employee from holding any office for which no pay is

received or any office for which only token pay is received.

3. A person shall not seek or attempt to use any political endorsement in connection with any appointment to a position in the merit system.

4. A person shall not use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the merit system, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

5. An employee shall not use the employee's official authority or influence for the purpose of interfering with an election or affecting the results thereof.

6. Any officer or employee who violates this section shall be subject to suspension, dismissal, or demotion subject to the right of appeal provided in this subchapter.

7. The director shall adopt any rules necessary for further restricting political activities of employees in the executive branch, but only to the extent necessary to comply with federal standards. Employees retain the right to vote as they please and to express their opinions on all subjects.

2003 Acts, ch 145, §64  
See also chapters 39A and 721  
NEW section

#### **8A.417 Prohibited actions.**

1. A person shall not make any false statement, certificate, mark, rating, or report with regard to any examination or appointment made under this subchapter or in any manner commit or attempt to commit any fraud preventing the impartial execution of this subchapter and the rules adopted pursuant to this subchapter.

2. A person shall not, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the merit system.

3. An employee of the department or any other person shall not defeat, deceive, or obstruct any person in the person's right to examination or appointment under this subchapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the merit system.

4. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a merit system administered by, or subject to approval of, the director as a reprisal for a failure by that employee to inform the person that the employee made a disclosure of infor-

mation permitted by this section, or for a disclosure of any information by that employee to a member or employee of the general assembly, or for a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer. This subsection does not apply if the disclosure of the information is prohibited by statute.

2003 Acts, ch 145, §65  
NEW section

#### **8A.418 Federal programs exemption exceptions — penalty.**

1. Notwithstanding the provisions of this subchapter to the contrary, a person employed under a temporary, emergency employment utilization program funded by the federal government which program does not exceed one year and which program is not subject to merit system standards by federal law, shall be exempt from this subchapter except as provided in this section.

2. A person employed as provided in this section shall be subject to the provisions of section 8A.416 relating to political activity and the civil penalties contained in such section and, consistent with subsection 1, the provisions of section 8A.417 relating to prohibited actions.

3. A person violating this section shall be subject to the penalty provided for in section 8A.458.

2003 Acts, ch 145, §66  
NEW section

#### **8A.419 through 8A.430 Reserved.**

### PART 3

#### EMPLOYEE BENEFITS

#### **8A.431 Iowa management training system — training revolving fund.**

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

2. A training revolving fund is created in the state treasury under the control of the department. The moneys credited to the fund shall be used for the purpose of paying actual and necessary expenses incurred by the department in administering the training system. All fees, grants, or specific appropriations for this purpose shall be credited to the fund. The fees for the training system courses shall be set by the director to cover the costs of course development, training materials, facilities and equipment, professional instructors,

and administration. The fees shall be paid to the department by the state agency sending the employees for training and the payment shall be credited to the training revolving fund. Notwithstanding section 8.33, moneys in the revolving fund shall not revert. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2003 Acts, ch 145, §67  
NEW section

**8A.432 Combined charitable campaign program, fees, revolving fund.**

1. The department shall establish and administer a combined charitable campaign program for state employees.

2. A combined charitable campaign revolving fund is created in the state treasury under the control of the department. The moneys credited to the fund shall be used for the purpose of paying actual and necessary expenses incurred by the department in administering the program. Administrative expenses shall not exceed five percent of the contributions pledged the previous year. All fees, grants, or specific appropriations for this purpose shall be credited to the fund. The fees for the program shall be set by the director to cover only the cost of administration and materials and shall not cover salaries of state employees involved in the administration of the program. The fees shall be paid to the department from the voluntary employee contributions and the payment shall be credited to the revolving fund. Notwithstanding section 8.33, any moneys in the fund shall not revert. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2003 Acts, ch 145, §68  
NEW section

**8A.433 Deferred compensation plan.**

The department shall make available to eligible state employees the option of utilizing mutual funds as an investment alternative to the state's deferred compensation plan established under section 509A.12. Participating employees shall, to the extent permitted by law, be allowed to transfer moneys deferred under the plan to a mutual fund offered pursuant to section 509A.12. The department may make the deferred compensation plan established pursuant to this section available to governmental employees of a public entity authorized to establish a deferred compensation program pursuant to section 509A.12.

2003 Acts, ch 145, §69  
NEW section

**8A.434 Iowa state employee deferred compensation trust fund.**

1. A separate, special Iowa state employee deferred compensation trust fund is created in the state treasury under the control of the depart-

ment. The fund shall consist of all moneys deposited in the fund pursuant to this section, any other assets that must be held in trust for the exclusive benefit of participants in the state's deferred compensation program as required by section 457 of the federal Internal Revenue Code, and interest and earnings thereon, and shall be used for the exclusive benefit of participants in a deferred compensation program established by the state under section 509A.12.

2. The director is the trustee of the fund and shall administer the fund. Any loss to the fund shall be charged against the fund and the director shall not be personally liable for such loss. In addition, the director is the trustee of any trusts referenced in section 457(g) of the federal Internal Revenue Code. Any loss to the trusts shall be charged against the trusts and the director shall not be personally liable for such loss.

3. Any compensation or portion of compensation reduced by a participant in conjunction with a deferred compensation program established by the state under section 509A.12 and any earnings or income thereon shall be held in trust and used for the exclusive benefit of the participant or the participant's beneficiary as provided by section 457 of the federal Internal Revenue Code.

4. For purposes of this section, custodial accounts, annuity contracts, and any other contracts referenced in section 457(g) of the federal Internal Revenue Code shall be treated as trusts for purposes of section 457 of the federal Internal Revenue Code.

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

2003 Acts, ch 145, §70  
NEW section

**8A.435 State employee deferred compensation match trust fund.**

1. A separate, special Iowa state employee deferred compensation match trust fund is created in the state treasury under the control of the department. The trust fund shall consist of all moneys deposited in the fund, and other assets that must be held in trust for the exclusive benefit of participants in the state's deferred compensation match program as required by section 401(a) of the federal Internal Revenue Code, and interest and earnings thereon, and shall be used for the exclusive benefit of participants and their beneficiaries in a deferred compensation match program established by the state under section 509A.12.

2. The director is the trustee of the fund and shall administer the fund. Any loss to the fund shall be charged against the trust and the director shall not be personally liable for such loss.

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

be credited to the fund.

2003 Acts, ch 145, §71  
NEW section

**8A.436 State employee dependent care spending account trust fund.**

1. A separate, special Iowa state employee dependent care spending account trust fund is created in the state treasury under the control of the department. The trust fund consists of all moneys, including monthly administrative charges paid by a state department or agency as authorized by section 8A.451, held in trust for the exclusive benefit of participants in the state's dependent care spending account plan. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest and earnings from moneys in the trust fund shall be credited to the trust fund and shall be used exclusively for the benefit of plan participants.

2. The director shall serve as trustee of the trust fund and shall administer the fund as required by sections 125 and 129 of the federal Internal Revenue Code. Any loss to the fund shall be charged against the fund and the director shall not be personally liable for such loss. The director has the authority to direct expenditures as deemed appropriate to the exclusive benefit of the plan participants.

2003 Acts, ch 145, §72  
NEW section

**8A.437 State employee health flexible spending account trust fund.**

1. The director shall establish for state employees a health flexible spending account plan which offers multiple benefits to state employees. The state's health flexible spending account plan shall be established to meet the conditions of section 125 of the Internal Revenue Code of 1986.

2. A separate, special Iowa state employee health flexible spending account trust fund is created in the state treasury under the control of the department. The trust fund consists of all moneys appropriated to the fund, all monthly administrative charges paid by a state department or agency as authorized by section 8A.451, and any other assets directed to be held in trust for the exclusive benefit of participants in the state's health flexible spending account plan. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest and earnings from moneys in the trust fund shall be credited to the trust fund and shall be used exclusively for the benefit of plan participants.

3. The director shall serve as trustee of the trust fund and has the authority to direct expenditures as deemed appropriate to the exclusive benefit of the plan participants.

2003 Acts, ch 145, §73  
Authority of governing body, §509A.1  
NEW section

**8A.438 Annuity contracts.**

1. At the request of an employee of a state agency through contractual agreement, the director may arrange for the purchase of group or individual annuity contracts for any of the employees of that agency, which annuity contracts are issued by a nonprofit corporation issuing retirement annuities exclusively for educational institutions and their employees or are purchased from any company the employee chooses that is authorized to do business in this state or through an Iowa-licensed salesperson that the employee selects, on a group or individual basis, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits afforded under section 403(b) of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums. As used in this section, unless the context otherwise requires, "annuity contract" includes any custodial account which meets the requirements of section 403(b)(7) of the Internal Revenue Code, as defined in section 422.3.

2. Whenever an existing tax-sheltered annuity contract is to be replaced by a new contract, the agent or representative of the company shall send a letter of intent by registered mail at least thirty days prior to any action to the company being replaced, to the commissioner of insurance of this state, to the agent's own company, and to the director. The letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract.

2003 Acts, ch 145, §74  
NEW section

**8A.439 Longevity pay prohibited — exception.**

A state employee subject to the provisions of this subchapter shall not be entitled to longevity pay except for those employees granted longevity pay pursuant to section 307.48.

2003 Acts, ch 145, §75  
NEW section

**8A.440 through 8A.450** Reserved.

PART 4

MISCELLANEOUS PROVISIONS

**8A.451 Human resources administrative costs.**

1. The department may quarterly render a statement to each department or agency which operates in whole or in part from other than general fund appropriations for a pro rata share of the cost

of administration of the department, or a portion thereof, as it relates to the state human resources management duties of the department pursuant to this subchapter. The expense shall be paid by the state department or agency in the same manner as other expenses of that department or agency are paid and all moneys received shall be deposited in the general fund of the state.

2. The department shall render monthly a statement to each state department or agency for a pro rata share of the cost of administration of the state employee flexible spending accounts. The expense shall be paid by the state department or agency in the same manner as other expenses of that state department or agency are paid and all moneys received for administration costs shall be deposited in the appropriate fund.

2003 Acts, ch 145, §76  
NEW section

#### **8A.452 Use of public buildings.**

All officers and employees of the state and of political subdivisions of the state shall allow the department the reasonable use of public buildings under their control, and furnish heat, light, and furniture for any examination, hearing, or investigation authorized by this subchapter. The department shall pay to a political subdivision the reasonable cost of any such facilities furnished.

2003 Acts, ch 145, §77  
NEW section

#### **8A.453 Aid by state employees — records and information.**

1. All officers and employees of the state shall comply with and aid in all proper ways in carrying out the provisions of this subchapter and the rules and orders under this subchapter. All officers and employees shall furnish any records or information which the director requires for any purpose of this subchapter. The director may institute and maintain any action or proceeding at law or in equity that the director considers necessary or appropriate to secure compliance with this subchapter and the rules and orders under this subchapter.

2. The director may delegate to a person in any department, agency, board, commission, or office, located away from the seat of government, any of the duties imposed by this subchapter upon the director.

2003 Acts, ch 145, §78  
NEW section

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

1. A separate, special Iowa state health insurance administration fund is created in the state treasury under the control of the department. The fund shall consist of all moneys deposited in the fund from proceeds of a monthly per contract administrative charge assessed and collected by the department. Moneys deposited in the fund shall be expended by the department for health insurance program administration costs. Notwith-

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

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

3. The expenditure of moneys from the fund in any fiscal year shall not exceed the amount of the monthly charge established by the general assembly multiplied by the number of health insurance contracts in effect at the beginning of the same fiscal year in which the expenditures shall be made. Any unencumbered or unobligated moneys in the fund at the end of the fiscal year shall not revert but shall be transferred to the health insurance premium reserve fund established pursuant to section 509A.5.

4. This section is repealed July 1, 2007.

2003 Acts, ch 145, §79  
Monthly per contract administrative charge for fiscal year beginning July 1, 2003; 2003 Acts, ch 181, §38  
NEW section

#### **8A.455 Certification of payrolls — actions.**

1. A state disbursing or auditing officer shall not make or approve or take part in making or approving a payment for personnel services to any person unless the payroll voucher or account of the pay bears the certification of the director, or of the director's authorized agent, that the persons named have been appointed and employed in accordance with this subchapter and the rules and orders under this subchapter, and that funds are available for the payment of the persons.

2. The director may, for proper cause, withhold certification from an entire payroll or from any specific item or items on a payroll. The director may, however, provide that certification of payrolls may be made once every year, and such certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of the officer's or employee's payroll. In the latter case a voucher for payment of salary to such employee shall not be issued or payment of salary shall not be made with-

out further certification by the director.

3. Any citizen may maintain an action in accordance with chapter 17A to restrain a disbursing officer from making any payment in contravention of this subchapter, or rule or order under this subchapter. Any sum paid contrary to this subchapter or any rule or order under this subchapter may be recovered in an action in accordance with chapter 17A maintained by any citizen, from any officer who made, approved, or authorized such payment or who signed or countersigned a voucher, payroll, check, or warrant for such payment, or from the sureties on the official bond of any such officer. All moneys recovered in any such action shall be paid into the state treasury.

4. Any person appointed or employed in contravention of this subchapter or of any rule or order under this subchapter who performs service for which the person is not paid may maintain an action in accordance with chapter 17A against the officer or officers who purported so to appoint or employ the person to recover the agreed pay for such services or the reasonable value of the services if no pay was agreed upon. An officer shall not be reimbursed by the state at any time for any sum paid to such person on account of such services.

5. If the director wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain a proceeding in accordance with chapter 17A in the courts to compel the director to certify such a payroll voucher or account.

2003 Acts, ch 145, §80  
NEW section

#### **8A.456 Access to records.**

1. An employee subject to the provisions of this subchapter shall have access to the employee's personal file.

2. An applicant for a position subject to the provisions of this subchapter shall be permitted to review, in accordance with such rules as the director may prescribe, any evaluation resulting from the application for employment.

2003 Acts, ch 145, §81  
See also §91B.1  
NEW section

#### **8A.457 Workers' compensation claims.**

The director shall employ appropriate staff to handle and adjust claims of state employees for workers' compensation benefits pursuant to chapters 85, 85A, 85B, and 86, or with the approval of the executive council contract for the services or purchase workers' compensation insurance coverage for state employees or selected groups of state employees. A state employee workers' compensation fund is created in the state treasury under the control of the department to pay state employee workers' compensation claims and administrative costs. The department shall establish a rating for-

mula and assess premiums to all agencies, departments, and divisions of the state including those which have not received an appropriation for the payment of workers' compensation insurance and which operate from moneys other than from the general fund of the state. The department shall collect the premiums and deposit them into the state employee workers' compensation fund. Notwithstanding section 8.33, moneys deposited in the state employee workers' compensation fund shall not revert to the general fund of the state at the end of any fiscal year, but shall remain in the state employee workers' compensation fund and be continuously available to pay state employee workers' compensation claims. The director may, to the extent practicable, contract with a private organization to handle the processing and payment of claims and services rendered under the provisions of this section.

2003 Acts, ch 145, §82  
NEW section

#### **8A.458 Penalty.**

A person who willfully violates this subchapter or any rules adopted pursuant to this subchapter, where no other penalty is prescribed, is guilty of a simple misdemeanor.

2003 Acts, ch 145, §83  
NEW section

**8A.459 through 8A.501** Reserved.

### SUBCHAPTER V

#### FINANCIAL ADMINISTRATION

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

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

1. *Centralized accounting system.* To assume the responsibilities related to a centralized accounting system for state government.

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

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

4. *Collection and payment of funds — monthly payments.* To control the payment of all moneys into the state treasury, and all payments from the state treasury by the preparation of appropriate warrants, or warrant checks, directing such collections and payment, and to advise the treasurer of state monthly in writing of the amount of public funds not currently needed for operating expenses. Whenever the state treasury includes state funds that require distribution to counties, cities, or other political subdivisions of this state, and the counties, cities, and other political subdivisions certify to the director that warrants will be

stamped for lack of funds within the thirty-day period following certification, the director may partially distribute the funds on a monthly basis. Whenever the law requires that any funds be paid by a specific date, the director shall prepare a final accounting and shall make a final distribution of any remaining funds prior to that date.

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

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

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

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

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

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

8. *Accounts.* To keep the central budget and proprietary control accounts of the general fund of the state and special funds, as defined in section 8.2, of the state government. Upon elimination of the state deficit under generally accepted accounting principles, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year, the recognition of revenues received and expenditures paid and transfers received and paid within the time period required pursuant to section 8.33 shall be in accordance with generally accepted accounting principles. Budget accounts are those accounts maintained to control the receipt and disposition of all funds, appropriations, and allotments. Proprietary accounts are those accounts relating to assets, liabilities, income, and expense. For each fiscal year, the financial position and results of operations of the state shall be reported in a comprehensive annual financial report prepared in accordance with generally accepted accounting principles, as established by the governmental ac-

counting standards board.

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

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

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

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

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

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

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

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

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

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

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

b. Modify the centralized statewide account-

ing system and develop, or require to be developed by the appropriate departments of state government, the necessary reports and procedures necessary to complete the managerial and financial reports required to comply with the federal law.

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

2003 Acts, ch 145, §84  
NEW section

#### **8A.503 Rules — deposit of departmental moneys.**

The director shall prescribe by rule the manner and methods by which all departments and agencies of the state who collect money for and on behalf of the state shall cause the money to be deposited with the treasurer of state or in a depository designated by the treasurer of state. All such moneys collected shall be deposited at such times and in such depositories to permit the state of Iowa to deposit the funds in a manner consistent with the state's investment policies. All such moneys shall be promptly deposited, as directed, even though the individual amount remitted may not be correct. If any individual amount remitted is in excess of the amount required, the department or agency receiving the same shall refund the excess amount. If the individual amount remitted is insufficient, the person, firm, or corporation concerned shall be immediately billed for the amount of the deficiency.

2003 Acts, ch 145, §85  
NEW section

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

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

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

b. "*Person*" does not include a state agency.

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

(1) Any debt, which is assigned to the department of human services, or which the child sup-

port recovery unit is otherwise attempting to collect, or which the foster care recovery unit of the department of human services is attempting to collect on behalf of a child receiving foster care provided by the department of human services.

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

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

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

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

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

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

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

d. Before setoff, the amount of a person's claim on a state agency and the amount of a person's li-

ability to a state agency shall constitute a minimum amount set by rule of the collection entity.

e. Upon submission of an allegation of liability by a state agency, the collection entity shall notify the state agency whether the person allegedly liable is entitled to payment from a state agency, and, if so entitled, shall notify the state agency of the amount of the person's entitlement and of the person's last address known to the collection entity. Section 422.72, subsection 1, does not apply to this paragraph.

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

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

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

h. The collection entity shall, after the state agency has sent notice to the person liable or, if the liability is owing and payable to the clerk of the district court, the collection entity has sent notice to the person liable, set off the amount owed to the agency against any amount which a state agency owes that person. The collection entity shall refund any balance of the amount to the person. The

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

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

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

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

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

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

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

4. The director shall have the authority to enter into reciprocal agreements with the departments of revenue of other states that have enacted legislation that is substantially equivalent to the setoff procedure provided in this section for the recovery of an amount due because of a default on a

guaranteed student or parental loan under chapter 261. A reciprocal agreement shall also be approved by the college student aid commission. The agreement shall authorize the department to provide by rule for the setoff of state income tax refunds or rebates of defaulters from states with which Iowa has a reciprocal agreement and to provide for sending lists of names of Iowa defaulters to the states with which Iowa has a reciprocal agreement for setoff of that state's income tax refunds.

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

2003 Acts, ch 145, §86, 286  
NEW section

#### **8A.505 Cost allocation system — appropriation.**

1. The department shall develop and administer an indirect cost allocation system for state agencies. The system shall be based upon standard cost accounting methodologies and shall be used to allocate both direct and indirect costs of state agencies or state agency functions in providing centralized services to other state agencies. A cost that is allocated to a state agency pursuant to this system shall be billed to the state agency and the cost is payable to the general fund of the state. The source of payment for the billed cost shall be any revenue source except for the general fund of the state. If a state agency is authorized by law to bill and recover direct expenses, the state agency shall recover indirect costs in the same manner.

2. There is appropriated annually from the increase in indirect cost reimbursements over the amount of indirect cost reimbursements received during the fiscal year beginning July 1, 2002, to the office of grants enterprise management of the department of management the sum of up to one hundred twenty-five thousand dollars. The director shall transfer the funds appropriated to the department of management as provided in this subsection and shall make the funds resulting from the increase in reimbursements available during the fiscal year to the department of management on a monthly basis. If the amount of the increase in indirect cost reimbursements is insufficient to pay the maximum appropriation provided for in this subsection, the amount appropriated is equal to the amount of such increase.

2003 Acts, ch 145, §87; 2003 Acts, 1st Ex, ch 2, §34, 209  
Office of grants enterprise management, see §8.9  
NEW section

#### **8A.506 Accounting.**

The director may at any time require any person receiving money, securities, or property belonging to the state, or having the management, disbursement, or other disposition of them, an account of which is kept in the department, to render state-

ments of them and information in reference to them.

2003 Acts, ch 145, §88  
NEW section

#### **8A.507 Stating account.**

If an officer who is accountable to the state treasury for any money or property neglects to render an account to the director within the time prescribed by law, or if no time is so prescribed, within twenty days after being required to do so by the director, the director shall state an account against the officer from the books of the officer's office, charging ten percent damages on the whole sum appearing due, and interest at the rate of six percent per annum on the aggregate from the time when the account should have been rendered; all of which may be recovered by action brought on the account, or on the official bond of the officer.

2003 Acts, ch 145, §89  
NEW section

#### **8A.508 Compelling payment.**

If an officer fails to pay into the state treasury the amount received by the officer within the time prescribed by law, or having settled with the director, fails to pay the amount found due, the director shall charge the officer with twenty percent damages on the amount due, with interest on the aggregate from the time the amount became due at the rate of six percent per annum, and the whole may be recovered by an action brought on the account, or on the official bond of the officer, and the officer shall forfeit the officer's commission.

2003 Acts, ch 145, §90  
NEW section

#### **8A.509 Defense to claim.**

The penal provisions in sections 8A.507 and 8A.508 are subject to any legal defense which the officer may have against the account as stated by the director, but judgment for costs shall be rendered against the officer in the action, whatever its result, unless the officer rendered an account within the time named in those sections.

2003 Acts, ch 145, §91  
NEW section

#### **8A.510 Requested credits — oath required.**

When a county treasurer or other receiver of public money seeks to obtain credit on the books of the department for payment made to the county treasurer, before giving such credit the director shall require that person to take and subscribe an oath that the person has not used, loaned, or appropriated any of the public money for the person's private benefit, nor for the benefit of any other person.

2003 Acts, ch 145, §92  
NEW section

#### **8A.511 Requisition for information.**

In those cases where the director is authorized

to call upon persons or officers for information, or statements, or accounts, the director may issue a requisition therefor in writing to the person or officer called upon, allowing reasonable time, which, having been served and return made to the director, as a notice in a civil action, is evidence of the making of the requisition.

2003 Acts, ch 145, §93  
NEW section

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

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

1. *Funding limit.*

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

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

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

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

(3) Claims approved by an agency according to the provisions of sections 25.1 and 25.2.

2. *Convention expenses.* Claims for expenses in attending conventions, meetings, conferences, or gatherings of members of an association or society organized and existing as a quasi-public association or society outside the state of Iowa shall not be allowed at public expense, unless authorized by the executive council; and claims for these expenses outside of the state shall not be allowed unless the voucher is accompanied by the portion of the minutes of the executive council, certified to by its secretary, showing that the expense was authorized by the council. This section does not apply to claims in favor of the governor, attorney general, utilities board members, or to trips referred to in sections 97B.7A and 217.20.

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

2003 Acts, ch 145, §94  
NEW section

#### **8A.513 Claims — approval.**

The director before approving a claim on behalf of the department shall determine:

1. That the creation of the claim is clearly authorized by law. Statutes authorizing the expenditure may be referenced through account coding authorized by the director.

2. That the claim has been authorized by an officer or official body having legal authority to so

authorize and that the fact of authorization has been certified to the director by such officer or official body.

3. That all legal requirements have been observed, including notice and opportunity for competition, if required by law.

4. That the claim is in proper form as the director may provide.

5. That the charges are reasonable, proper, and correct and no part of the claim has been paid.

2003 Acts, ch 145, §95  
NEW section

#### **8A.514 Vouchers — interest — payment of claims.**

1. Before a warrant or its equivalent is issued for a claim payable from the state treasury, the department shall file an itemized voucher showing in detail the items of service, expense, item furnished, or contract for which payment is sought. However, the director may authorize the prepayment of claims when the best interests of the state are served under rules adopted by the director. The claimant's original invoice shall be attached to a department's approved voucher. The director shall adopt rules specifying the form and contents for invoices submitted by a vendor to a department. The requirements apply to acceptance of an invoice by a department. A department shall not impose additional or different requirements on submission of invoices than those contained in rules of the director unless the director exempts the department from the invoice requirements or a part of the requirements upon a finding that compliance would result in poor accounting or management practices.

2. Vouchers for postage, stamped envelopes, and postal cards may be audited as soon as an order for them is entered.

3. The departments, the general assembly, and the courts shall pay their claims in a timely manner. If a claim for services, supplies, materials, or a contract which is payable from the state treasury remains unpaid after sixty days following the receipt of the claim or the satisfactory delivery, furnishing, or performance of the services, supplies, materials, or contract, whichever date is later, the state shall pay interest at the rate of one percent per month on the unpaid amount of the claim. This subsection does not apply to claims against the state under chapters 25 and 669 or to claims paid by federal funds. The interest shall be charged to the appropriation or fund to which the claim is certified. Departments may enter into contracts for goods or services on payment terms of less than sixty days if the state may obtain a financial benefit or incentive which would not otherwise be available from the vendor. The department, in consultation with other affected departments, shall develop policies to promote consistency and fiscal responsibility relating to payment terms authorized under this subsection. The

director shall adopt rules under chapter 17A relating to the administration of this subsection.

2003 Acts, ch 145, §96  
NEW section

#### **8A.515 Warrants — form.**

A warrant shall bear on its face the signature of the director or its facsimile, or the signature of an assistant or its facsimile in case of a vacancy in the office of the director; a proper number, date, amount, and name of payee; a reference to the law under which it is drawn; whether for salaries or wages, services, or supplies, and what kind of supplies; and from what office or department, or for what other general or special purposes; or in lieu thereof, a coding system may be used, which particulars shall be entered in a warrant register kept for that purpose in the order of issuance; and as soon as practicable after issuing a warrant register, the director shall certify a duplicate of it to the treasurer of state.

2003 Acts, ch 145, §97  
NEW section

#### **8A.516 Required payee.**

All warrants shall be drawn to the order of the person entitled to payment or compensation, except that when goods or materials are purchased in foreign countries, warrants may be drawn upon the treasurer of state, payable to the bearer for the net amount of invoice and current exchange, and

the treasurer of state shall furnish a foreign draft payable to the order of the person from whom purchase is made.

2003 Acts, ch 145, §98  
NEW section

#### **8A.517 Prohibited payee.**

In no case shall warrants be drawn in the name of the certifying office, department, board, or institution, or in the name of an employee, except for personal service rendered or expense incurred by the employee, unless express statutory authority exists therefor.

2003 Acts, ch 145, §99  
NEW section

#### **8A.518 Claims exceeding appropriations.**

A claim shall not be allowed when the claim will exceed the amount specifically appropriated for the claim.

2003 Acts, ch 145, §100  
NEW section

#### **8A.519 Cancellation of state warrants.**

On the last business day of each month, the director shall cancel and request the treasurer of state to stop payment on all state warrants which have been outstanding and unredeemed by the treasurer of state for six months or longer.

2003 Acts, ch 145, §101  
NEW section

## CHAPTER 8D

### IOWA COMMUNICATIONS NETWORK

#### **8D.2 Definitions.**

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

1. “*Commission*” means the Iowa telecommunications and technology commission established in section 8D.3.
2. “*Director*” means the executive director appointed pursuant to section 8D.4.
3. “*Network*” means the Iowa or state communications network.
4. “*Private agency*” means an accredited non-public school, a nonprofit institution of higher education eligible for tuition grants, or a hospital licensed pursuant to chapter 135B or a physician clinic to the extent provided in section 8D.13, subsection 16.
5. *a.* “*Public agency*” means a state agency, an institution under the control of the board of regents, the judicial branch as provided in section 8D.13, subsection 17, a school corporation, a city library, a library service area as provided in chapter 256, a county library as provided in chapter 336, or a judicial district department of correctional services established in section 905.2, to the ex-

tent provided in section 8D.13, subsection 15, an agency of the federal government, or a United States post office which receives a federal grant for pilot and demonstration projects.

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

6. “*State communications*” refers to the transmission of voice, data, video, the written word or other visual signals by electronic means but does not include radio and television facilities and other educational telecommunications systems and services including narrowcast and broadcast systems under the public broadcasting division of the department of education, department of transportation distributed data processing and mobile radio network, or law enforcement communica-

tions systems.

2003 Acts, ch 44, §2; 2003 Acts, ch 179, §157  
Terminology change applied  
Subsection 5, paragraph b amended

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

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

The commission shall ensure that the network operates in an efficient and responsible manner consistent with the provisions of this chapter for the purpose of providing the best economic service attainable to the network users consistent with the state's financial capacity. The commission shall ensure that educational users and the use, design, and implementation for educational applications be given the highest priority concerning use of the network. The commission shall provide for the centralized, coordinated use and control of the network.

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

The benefits and salary paid to the members of the commission shall be adjusted annually equal to the average of the annual pay adjustments, ex-

pense reimbursements, and related benefits provided under collective bargaining agreements negotiated pursuant to chapter 20.

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

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

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

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

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

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

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

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

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

(d) Ensure that rural communities have access to comparable services to the services pro-

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

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

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

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

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

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

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

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

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

*k.* Provide necessary telecommunications cabling to provide state communications.

2003 Acts, ch 145, §286

Confirmation, see §2.32

Contingent appropriation of funds for network technology conversion based on federal certification of network as defense security network test bed; notice received by Code editor of filing with secretary of state of 28E agreement between commission and army national guard for use of network as defense security network test bed for homeland defense initiatives on July 8, 2002; see 2002 Acts, ch 1173, §1

Terminology change applied

#### 8D.4 Executive director appointed.

The commission, in consultation with the director of the department of administrative services, shall appoint an executive director of the commission, subject to confirmation by the senate. Such individual shall not serve as a member of the commission. The executive director shall serve at the pleasure of the commission. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation. The governor shall establish the salary of the executive director within range nine as established by the general assembly. The salary and support of the executive director shall be paid from funds deposited in the Iowa communications network fund.

2003 Acts, ch 145, §126

Confirmation, see §2.32

Section amended

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

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

2. *a.* A private or public agency which certifies to the commission pursuant to subsection 1 that

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

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

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

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

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

3. A facility that is considered a public agency pursuant to section 8D.2, subsection 5, paragraph “b”, shall be authorized to access the Iowa communications network strictly for homeland security communication purposes. Any utilization of the network that is not related to communications concerning homeland security is expressly prohibited.

2003 Acts, ch 44, §3  
NEW subsection 3

#### **8D.12 Disposition of network — approval of general assembly and governor.**

Notwithstanding any provision to the contrary, the commission or the department of administrative services shall not sell, lease, or otherwise dispose of the network without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor.

2003 Acts, ch 145, §286  
Terminology change applied

#### **8D.13 Iowa communications network.**

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

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

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

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

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

3. The financing for the procurement costs for the entirety of Part I except for the communications connections between central switching and institutions under the control of the board of regents, and nonprofit institutions of higher education eligible for tuition grants, and for the video, data, and voice capacity for state agencies and for Part II and Part III, shall be provided by the state. The financing for the procurement and maintenance costs for Part III shall be provided by the state. A local school board, governing authority of a nonpublic school, or an area education agency board may elect to provide one hundred percent of the financing for the procurement and maintenance costs for Part III to become part of the network. The basis for the amount of state financing is one hundred percent of a single interactive audio and interactive video connection for Part III, and such data and voice capacity as is necessary. If a school board, governing authority of a nonpublic school, or area education agency board elects to provide one hundred percent of the financing for the leasing costs for Part III, the school district or area education agency may become part of the network as soon as the network can reasonably connect the district or agency. A local school board, governing authority of a nonpublic school, or an area education agency board may also elect not to

become part of the network. Construction of Part III, related to a school board, governing authority of a nonpublic school, or area education agency board which provides one hundred percent of the financing for the leasing costs for Part III, may proceed as determined by the commission and consistent with the purpose of this chapter.

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

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

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

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

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

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

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

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

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

11. The fees charged for use of the network and state communications shall be based on the ongoing operational costs of the network and of providing state communications only. For the services rendered to state agencies by the commission, the commission shall prepare a statement of services rendered and the agencies shall pay in a manner consistent with procedures established by the department of administrative services.

12. The commission, on its own or as recommended by an advisory committee of the commission and approved by the commission, shall permit a fee to be charged by a receiving site to the origi-

nator of the communication provided on the network. The fee charged shall be for the purpose of recovering the operating costs of a receiving site. The fee charged shall be reduced by an amount received by the receiving site pursuant to a state appropriation for such costs, or federal assistance received for such costs. Fees established under this subsection shall be paid by the originator of the communication directly to the receiving site. For purposes of this section, “operating costs” include the costs associated with the management or coordination, operations, utilities, classroom, equipment, maintenance, and other costs directly related to providing the receiving site.

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

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

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

16. Access shall be offered to hospitals licensed pursuant to chapter 135B and physician clinics for diagnostic, clinical, consultative, data, and educational services for the purpose of devel-

oping a comprehensive, statewide telemedicine network, to an agency of the federal government, and to a post office defined as a public agency pursuant to section 8D.2, subsection 5. A hospital, physician clinic, an agency of the federal government, or a post office defined as a public agency pursuant to section 8D.2, subsection 5, shall be responsible for all costs associated with becoming a part of the network.

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

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

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

2003 Acts, ch 145, §286  
See Iowa Acts for provisions relating to appropriations for network costs in a given year  
Terminology change applied

## CHAPTER 8E

### STATE GOVERNMENT ACCOUNTABILITY (ACCOUNTABLE GOVERNMENT ACT)

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

1. The department, in consultation with the legislative services agency, the auditor of state, and agencies, shall establish and implement a system of periodic performance audits. The purpose of a performance audit is to assess the performance of an agency in carrying out its programs in light of the agency strategic plan, including the effectiveness of its programs, based on performance measures, performance targets, and performance data. The department may make recommendations to improve agency performance which may include modifying, streamlining, consolidating,

expanding, redesigning, or eliminating programs.

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

2003 Acts, ch 35, §45, 49  
Terminology change applied

#### **8E.301 Scope.**

The department, in cooperation with agencies, shall establish methodologies for use in making major investment decisions, including methodologies based on return on investment and cost-benefit analysis. The department and agencies may

also utilize these methodologies to review current investment decisions. The department shall establish procedures for implementing the methodologies, requiring independent verification and validation of investment results, and providing re-

ports to the governor and the legislative services agency regarding the implementation.

2003 Acts, ch 35, §45, 49  
See also §12B.10  
Terminology change applied

## CHAPTER 9

### SECRETARY OF STATE

#### 9.3 Commissions.

All commissions issued by the governor shall be countersigned by the secretary, who shall register each commission in a book to be kept for that purpose, specifying the office, name of officer, date of commission, and tenure of office, and forthwith forward to the directors of the departments of

management and of administrative services copies of the registration.

2003 Acts, ch 145, §127  
Section amended

**9.6 Iowa official register.** Repealed by 2003 Acts, ch 35, § 47 – 49. See § 2A.5.

## CHAPTER 9C

### TRANSIENT MERCHANTS

#### 9C.4 Bond required — applicability — forfeiture.

At the time of filing said application and as a part thereof, the applicant shall file with the secretary of state a bond, with sureties to be approved by the secretary of state, in a penal sum two times the value of the goods, wares or merchandise to be sold or offered for sale or the average inventory to be carried by such transient merchant engaged in or conducting an intermittent or temporary business as the case may be as shown by the application, running to the state of Iowa, for the use and benefit of any purchaser of any merchandise from such transient merchant who might have a cause of action of any nature arising from or out of such sale against the applicant or the owner of such merchandise if other than the applicant; the bond to be further conditioned on the payment by the applicant of all taxes that may be payable by, or due from, the applicant to the state of Iowa or any subdivision thereof, the bond to be further conditioned for the payment of any fines that may be assessed by any court against the applicant for violation of the provision of this chapter, and further conditioned for the payment and satisfaction of any and all causes of action against the applicant commenced within one year from the date of sale thereof, and arising from such sale, provided, however, that the aggregate liability of the surety for all such taxes, fines and causes of action shall in no event exceed the principal sum of such bond.

In such bond the applicant and surety shall appoint the secretary of state, the agent of the applicant and surety for the service of process. In the event of such service, the agent upon whom such

service is made shall within five days after the date of service, mail by ordinary mail a true copy of the process served upon the agent to each party for whom the agent is served, addressed to the last known address of such party. Failure to so mail said copy shall not, however, affect the jurisdiction of the court.

Such bond shall contain the consent of the applicant and surety that the district court of the county in which the plaintiff may reside or Polk county, Iowa shall have jurisdiction of all actions against the applicant or surety, or both, arising out of the sale. The state of Iowa, or any subdivision thereof, or any person having a cause of action against the applicant or surety arising out of said sale may join the applicant and surety on such bond in the same action, or may in such action sue either the applicant or the surety alone.

The requirements of this section also apply to transient merchants who are licensed in accordance with an ordinance of a city in the state of Iowa.

Notwithstanding the above provisions, the bond provided for in this section shall be forfeited to the state of Iowa upon the applicant's failure to pay the total of all taxes payable by or due from the applicant to the state which taxes are administered by the department of revenue. The department shall adopt administrative rules for the collection of the forfeiture. Notice shall be provided to the surety and to the applicant. Notice to the applicant shall be mailed to the applicant's last known address. The applicant or the surety shall have the opportunity to apply to the director of revenue for a hearing within thirty days after the giving of

such notice. Upon the failure to timely request a hearing, the bond shall be forfeited. If, after the hearing upon timely request, the director finds that the applicant has failed to pay the total of all taxes payable and the bond is forfeited, the director shall order the bond forfeited. The amount of the forfeiture shall be the amount of taxes payable or the amount of the bond. The surety shall not

have standing to contest the amount of any taxes payable. For purposes of this section “*taxes payable*” means all tax, penalties, interest, and fees that the department has previously determined to be due by assessment or in an appeal of an assessment.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 9F

### CENSUS

#### 9F.4 Publication — official register.

The legislative services agency may publish the federal census report in each copy of the Iowa official register as provided in section 2A.5.

2003 Acts, ch 35, §24, 48, 49  
Section amended

#### 9F.5 Evidence.

The certified census records in the office of the secretary of state shall be competent evidence of all matters therein contained.

2003 Acts, ch 35, §25, 49  
Section amended

## CHAPTER 9H

### CORPORATE OR PARTNERSHIP FARMING

#### 9H.1 Definitions.

For the purposes of this chapter:

1. “*Actively engaged in farming*” means that a natural person who is a shareholder and an officer, director or employee of the corporation or who is a member or manager of the limited liability company either:

*a.* Inspects the production activities periodically and furnishes at least half of the value of the tools and pays at least half the direct cost of production; or

*b.* Regularly and frequently makes or takes an important part in making management decisions substantially contributing to or affecting the success of the farm operation; or

*c.* Performs physical work which significantly contributes to crop or livestock production.

2. “*Agricultural land*” means land suitable for use in farming.

3. “*Authorized farm corporation*” means a corporation other than a family farm corporation founded for the purpose of farming and the ownership of agricultural land in which:

*a.* The stockholders do not exceed twenty-five in number; and

*b.* The stockholders are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations.

4. “*Authorized limited liability company*” means a limited liability company other than a family farm limited liability company founded for the purpose of farming and the ownership of agricultural land in which all of the following apply:

*a.* The members do not exceed twenty-five in number.

*b.* The members are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations.

5. “*Authorized trust*” means a trust other than a family trust in which:

*a.* The beneficiaries do not exceed twenty-five in number; and

*b.* The beneficiaries are all natural persons, who are not acting as a trustee or in a similar capacity for a trust as defined in subsection 22 of this section, or persons acting in a fiduciary capacity, or nonprofit corporations; and

*c.* Its income is not exempt from taxation under the laws of either the United States or the state of Iowa.

6. “*Beneficial ownership*” includes interests held by a nonresident alien individual directly or indirectly holding or acquiring a ten percent or greater share in the partnership, limited partnership, corporation, limited liability company, or trust, or directly or indirectly through two or more such entities. In addition, the term beneficial ownership shall include interests held by all nonresident alien individuals if the nonresident alien individuals in the aggregate directly or indirectly hold or acquire twenty-five percent or more of the partnership, limited partnership, corporation, limited liability company, or trust.

7. “*Corporation*” means a domestic or foreign corporation subject to chapter 490, a nonprofit corporation, or a cooperative.

8. “*Family farm corporation*” means a corporation:

a. Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related;

b. All of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts as defined in subsection 11 of this section; and

c. Sixty percent of the gross revenues of the corporation over the last consecutive three-year period comes from farming.

9. “*Family farm limited liability company*” means a limited liability company which meets all of the following conditions:

a. The limited liability company is founded for the purpose of farming and the ownership of agricultural land in which the majority of the members are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related.

b. All of the members of the limited liability company are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts.

c. Sixty percent of the gross revenues of the limited liability company over the last consecutive three-year period comes from farming.

10. “*Family farm limited partnership*” means a limited partnership which meets all of the following conditions:

a. The limited partnership is formed for the purpose of farming and the ownership of agricultural land in which the general partner and a majority of the partnership interest is held by and the majority of limited partners are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related.

b. The general partner manages and supervises the day-to-day farming operations on the agricultural land.

c. All of the limited partners are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts.

d. Sixty percent of the gross revenues of the partnership over the last consecutive three-year period come from farming.

11. “*Family trust*” means a trust:

a. In which a majority interest in the trust is held by and the majority of the beneficiaries are

persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related; and

b. In which all the beneficiaries are natural persons, who are not acting as a trustee or in a similar capacity for a trust, as defined in subsection 22 of this section, or persons acting in a fiduciary capacity, or nonprofit corporations; and

c. If the trust is established on or after July 1, 1988, the trust must be established for the purpose of farming and sixty percent of the gross revenues of the trust over the last consecutive three-year period must come from farming.

12. “*Farming*” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Farming shall not include the production of timber, forest products, nursery products, or sod and farming shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

13. “*Fiduciary capacity*” means an undertaking to act as executor, administrator, personal representative, guardian, conservator or receiver.

14. “*Grantor*” means a natural person, other than a nonresident alien as defined under this section, who is the creator of a revocable trust or a trust.

15. “*Indirect*” means to act or attempt to accomplish an act through an interest in a business association, through one or more affiliates or intermediaries, or by any method other than a direct approach, including by any circuitous or oblique method.

16. “*Limited liability company*” means a limited liability company as defined in section 490A.102.

17. “*Limited partnership*” means a partnership as defined in section 487.101, subsection 7, and a limited liability limited partnership under section 487.1301, which owns or leases agricultural land or is engaged in farming.

18. “*Nonprofit corporation*” means:

a. Corporations organized under the provisions of chapter 504, Code 1989, or chapter 504A; or

b. Corporations which qualify under Title 26, section 501(c)(3) of the United States Code.

19. “*Nonresident alien*” means:

a. An individual who is not a citizen of the United States and who is not domiciled in the United States.

b. A corporation incorporated under the law of any foreign country.

c. A corporation organized in the United States, beneficial ownership of which is held, di-

rectly or indirectly, by nonresident alien individuals.

*d.* A trust organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

*e.* A partnership or limited partnership organized in the United States or elsewhere if beneficial ownership is held, directly or indirectly, by nonresident alien individuals.

*f.* A limited liability company organized in the United States or elsewhere, beneficial ownership of which is held, directly or indirectly, by nonresident alien individuals.

20. “*Revocable trust*” means a trust which provides that the grantor retains the power to amend, modify, or revoke the trust at any time prior to the death of the grantor, regardless of whether, subsequent to the execution of the revocable trust and at any time prior to death, the grantor is legally competent to exercise the power to amend, modify, or revoke the trust and regardless of when the trust is created.

21. “*Testamentary trust*” means a trust created by devising or bequeathing property in trust in a will as such terms are used in the Iowa probate code as provided in chapter 633. Testamentary trust includes a revocable trust that has not been revoked prior to the grantor’s death.

22. “*Trust*” means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. Trust does not include a person acting in a fiduciary capacity, as defined in subsection 13, or a revocable trust. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney in fact, and in any similar capacity.

2003 Acts, ch 108, §1, 2; 2003 Acts, ch 115, §11, 16, 19

Former subsections 6, 8 – 13, 22, 27 – 29, 31, and 32 transferred to §202B.102 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19

New subsection 26A, enacted in 2003 Acts, ch 115, §1, transferred to §202B.102 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19

Subsection 6 transferred to §202B.102, subsection 1, and former subsection 7 renumbered as 6

Subsections 8 – 13 transferred to §202B.102, subsections 2 – 7, and former subsections 14 – 21 renumbered as 7 – 14

Subsection 22 transferred to §202B.102, subsection 8

NEW subsection 15 and former subsections 23 – 26 renumbered as 15 – 19

Subsection 18, paragraph a amended

Subsections 27 – 29 transferred to §202B.102, subsections 10 – 12, and former subsection 30 renumbered as 20

Subsections 31 and 32 transferred to §202B.102, subsections 13 and 14, and former subsections 33 and 34 renumbered as 21 and 22

Subsection 21 amended

**9H.2 Prohibited operations and activities — exceptions.** Transferred unnumbered paragraph 1 to § 202B.101; subsections 1 – 3 to § 202B.201; subsection 4 to § 202B.202; 2003 Acts, ch 115, § 16, 19.

**9H.2A Compliance requirements.** Transferred to § 202B.202; 2003 Acts, ch 115, § 16, 19.

**9H.3 Penalties — injunctive relief.** Transferred to § 202B.401; 2003 Acts, ch 115, § 16, 19.

**9H.3A Penalties — injunctive relief.**

The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

2003 Acts, ch 115, §12, 19  
NEW section

**9H.4 Restriction on increase of holdings — exceptions — penalty.**

A corporation, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, family trust, authorized trust, revocable trust, or testamentary trust shall not, either directly or indirectly, acquire or otherwise obtain or lease any agricultural land in this state. However, the restrictions provided in this section shall not apply to the following:

1. A bona fide encumbrance taken for purposes of security.

2. Agricultural land acquired for research or experimental purposes. Agricultural land is used for research or experimental purposes if any of the following apply:

*a.* Research and experimental activities are undertaken on the agricultural land and commercial sales of products produced from farming the agricultural land do not occur or are incidental to the research or experimental purposes of the corporation or limited liability company. Commercial sales are incidental to the research or experimental purposes of the corporation or limited liability company when such sales are less than twenty-five percent of the gross sales of the primary product of the research.

*b.* The agricultural land is used for the primary purpose of testing, developing, or producing seeds or plants for sale or resale to farmers as seed stock. Grain which is not sold as seed stock is an incidental sale and must be less than twenty-five percent of the gross sales of the primary product of the research and experimental activities.

*c.* The agricultural land is used by a corporation or limited liability company, including any trade or business which is under common control, as provided in 26 U.S.C. § 414 for the primary purpose of testing, developing, or producing animals for sale or resale to farmers as breeding stock. However, after July 1, 1989, to qualify under this

paragraph, the following conditions must be satisfied:

(1) The corporation or limited liability company must not hold the agricultural land other than as a lessee. The term of the lease must be for not more than twelve years. The corporation or limited liability company shall not renew a lease. The corporation or limited liability company shall not enter into a lease under this paragraph, if the corporation or limited liability company has ever entered into another lease under this paragraph "c", whether or not the lease is in effect. However, this subparagraph does not apply to a domestic corporation organized under chapter 504, Code 1989, or chapter 504A.

(2) A term or condition of sale, including resale, of breeding stock must not relate to the direct or indirect control by the corporation or limited liability company of the breeding stock or breeding stock progeny subsequent to the sale.

(3) The number of acres of agricultural land held by the corporation or limited liability company must not exceed six hundred forty acres.

(4) The corporation or limited liability company must deliver a copy of the lease to the secretary of state. The secretary of state shall notify the lessee of receipt of the copy of the lease. However, this subparagraph does not apply to a domestic corporation organized under chapter 504, Code 1989, or chapter 504A.

Culls and test animals may be sold under this paragraph "c". For a three-year period beginning on the date that the corporation or limited liability company acquires an interest in the agricultural land, the gross sales for any year shall not be greater than five hundred thousand dollars. After the three-year period ends, the gross sales for any year shall not be greater than twenty-five percent of the gross sales for that year of the breeding stock, or five hundred thousand dollars, whichever is less.

3. Agricultural land, including leasehold interests, acquired by a nonprofit corporation organized under the provisions of chapter 504, Code 1989, and chapter 504A including land acquired and operated by or for a state university for research, experimental, demonstration, foundation seed increase or test purposes and land acquired and operated by or for nonprofit corporations organized specifically for research, experimental, demonstration, foundation seed increase or test purposes in support of or in conjunction with a state university.

4. Agricultural land acquired by a corporation or limited liability company for immediate or potential use in nonfarming purposes.

5. Agricultural land acquired by a corporation or limited liability company by process of law in the collection of debts, or pursuant to a contract for deed executed prior to August 15, 1975, or by any procedure for the enforcement of a lien or claim

thereon, whether created by mortgage or otherwise.

6. A municipal corporation.

7. Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as trustee for a family trust, authorized trust or testamentary trust or for nonprofit corporations.

8. A corporation or its subsidiary organized under chapter 490 or a limited liability company organized under chapter 490A and to which section 312.8 is applicable.

9. Agricultural land held or leased by a corporation on July 1, 1975, as long as the corporation holding or leasing the land on this date continues to hold or lease such agricultural land.

10. Agricultural land held or leased by a trust on July 1, 1977, as long as the trust holding or leasing such land on this date continues to hold or lease such agricultural land.

11. Agricultural land acquired by a trust for immediate use in nonfarming purposes.

A corporation, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, family trust, authorized trust, revocable trust, or testamentary trust, violating this section shall be assessed a civil penalty of not more than twenty-five thousand dollars and shall divest itself of any land held in violation of this section within one year after judgment. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this section.

2003 Acts, ch 108, §3 - 5  
Exception to restrictions for cooperative corporations organized under chapter 501; requirements; see §501.103  
Subsection 2, paragraph c, subparagraphs (1) and (4) amended  
Subsection 3 amended

**9H.5A Reports.** Repealed by 2003 Acts, ch 115, § 17, 19.

**9H.5B Reports by contract feeders.** Transferred to § 202B.301; 2003 Acts, ch 115, § 16, 19.

**9H.6 Lessees conducting research or experiments — reports.** Transferred to § 10B.7; 2003 Acts, ch 115, § 16, 19.

**9H.9 Reports by processors.** Transferred to § 202B.302; 2003 Acts, ch 115, § 16, 19.

**9H.10 Signing reports.** Transferred to § 202B.303; 2003 Acts, ch 115, § 16, 19.

**9H.11 Penalties — reports.** Transferred to § 202B.402; 2003 Acts, ch 115, § 16, 19.

**9H.14 Duties of secretary of state.** Transferred to § 202B.304; 2003 Acts, ch 115, § 16, 19.

**9H.15 Additional information.** Transferred to § 202B.305; 2003 Acts, ch 115, § 16, 19.

## CHAPTER 10

### AGRICULTURAL LANDHOLDING RESTRICTIONS

#### 10.1 Definitions.

As used in this chapter and in chapter 10B, unless the context otherwise requires:

1. *“Actively engaged in farming”* means that a natural person, including a shareholder or an officer, director, or employee of a corporation, or a member or manager of a limited liability company, does any of the following:

*a.* Inspects the production activities periodically and furnishes at least half of the value of the tools used for crop or livestock production and pays at least half the direct cost of crop or livestock production.

*b.* Regularly and frequently makes or takes an important part in making management decisions substantially contributing to or affecting the success of the farm operation.

*c.* Performs physical work which significantly contributes to crop or livestock production.

2. *“Agricultural land”* means the same as defined in section 9H.1.

3. *“Authorized entity”* means an authorized farm corporation; authorized limited liability company; limited partnership, other than a family farm limited partnership; or an authorized trust as defined in section 9H.1.

4. *“Commodity share landlord”* means a natural person or a general partnership as provided in chapter 486A in which all partners are natural persons, who owns at least one hundred fifty acres of agricultural land, if the owner receives rent on a commodity share basis, which may be either a share of the crops or livestock produced on the land.

5. *“Cooperative association”* means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a) and which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.

6. *“Family farm entity”* means a family farm corporation, family farm limited liability company, family farm limited partnership, or family trust, as defined in section 9H.1.

7. *“Farm estate”* means the real and personal property of a decedent, a ward, or a trust as provided in chapter 633, if at least sixty percent of the gross receipts from the estate comes from farming.

8. *“Farmers cooperative association”* means a cooperative association organized under chapter 490 or 499, if all of the following conditions are satisfied:

*a.* All of the following apply:

(1) Qualified farmers must hold at least a fifty-one percent equity interest in the cooperative association, including fifty-one percent of each class of members' equity.

(2) The following persons must hold at least a seventy percent equity interest in the cooperative association, including seventy percent of each class of members' equity:

(a) A qualified farmer.

(b) A family farm entity.

(c) A commodity share landlord.

*b.* As used in this subsection, *“members' equity”* includes but is not limited to issued shares, including common stock or preferred stock, regardless of a right to receive dividends or earning distributions. However, *“members' equity”* does not include nonvoting common stock or nonvoting membership interests. A security such as a warrant or option that may be converted to voting stock shall be considered as issued shares.

*c.* For purposes of this subsection, a person who was a qualified person within the last ten years shall be treated as a qualified person.

9. *“Farmers cooperative limited liability company”* means a limited liability company organized under chapter 490A, if cooperative associations hold one hundred percent of all membership interests in the limited liability company. Farmers cooperative associations must hold at least seventy percent of all membership interests in the limited liability company. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, farmers cooperative associations must hold at least seventy percent of all membership interests of that type.

10. *“Farmers entity”* means a networking farmers entity, farmers cooperative limited liability company, or farmers cooperative association.

11. *“Farming”* means the same as defined in section 9H.1.

12. *“Grain”* means the same as defined in section 203.1.

13. *“Intra-company loan agreement”* means an agreement involving a loan, if the parties to the agreement are members of the same farmers cooperative limited liability company, and according to the terms of the loan a member which is a regional cooperative association directly or indirectly loans money to a member which is a farmers cooperative association, on condition that the

money, including any interest, must be repaid by the member which is a farmers cooperative association to the regional cooperative association or another person. A loan agreement does not include an operating loan agreement, in which all of the following apply:

*a.* The money is required to be repaid within ninety days from the date that the farmers cooperative association receives the money, and the money is actually repaid by that date.

*b.* The money is used to pay for reasonable and ordinary expenses of the farmers cooperative association in conducting its affairs.

14. “*Livestock*” means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus, farm deer as defined in section 170.1, or poultry.

15. “*Networking farmers corporation*” means a corporation, other than a family farm corporation as defined in section 9H.1, organized under chapter 490 if all of the following conditions are satisfied:

*a.* All of the following apply:

(1) Qualified farmers must hold at least fifty-one percent of all issued shares of the corporation. If more than one class of shares is authorized, qualified farmers must hold at least fifty-one percent of all issued shares in each class.

(2) Qualified persons must hold at least seventy percent of all issued shares of the corporation. If more than one class of shares is authorized, qualified persons must hold at least seventy percent of all issued shares in each class.

*b.* As used in paragraph “*a*”, “*issued shares*” includes but is not limited to common stock or preferred stock, or each class of common stock or preferred stock, regardless of voting rights or a right to receive dividends or earning distributions. A security such as a warrant or option that may be converted to stock shall be considered as issued shares.

16. “*Networking farmers entity*” means a networking farmers corporation or networking farmers limited liability company.

17. “*Networking farmers limited liability company*” means a limited liability company, other than a family farm limited liability company as defined in section 9H.1, organized under chapter 490A if all of the following conditions are satisfied:

*a.* Qualified farmers must hold at least fifty-

one percent of all membership interests in the limited liability company. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, qualified farmers must hold at least fifty-one percent of all membership interests of that type.

*b.* Qualified persons must hold at least seventy percent of all membership interests in the limited liability company. If more than one type of membership interest is established, including any series as provided in section 490A.305 or any class or group as provided in section 490A.307, qualified persons must hold at least seventy percent of all membership interests of that type.

18. “*Operation of law*” means a transfer by inheritance, devise, or bequest, court order, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure, execution sale, the execution of a judgment, the foreclosure of a real estate mortgage, the forfeiture of a real estate contract, or a transfer resulting from a decree for specific performance.

19. “*Qualified farmer*” means any of the following:

*a.* A natural person actively engaged in farming.

*b.* A general partnership as provided in chapter 486A in which all partners are natural persons actively engaged in farming.

*c.* A farm estate.

20. “*Qualified commodity share landlord*” means a commodity share landlord, if the owner of the agricultural land was actively engaged in farming the land or a family member of the owner is or was actively engaged in farming the land, if the family member is related to the owner as a spouse, parent, grandparent, lineal ascendant of a grandparent or spouse, or other lineal descendant of a grandparent or spouse.

21. “*Qualified person*” means a person who is any of the following:

*a.* A qualified farmer.

*b.* A family farm entity.

*c.* A qualified commodity share landlord.

22. “*Regional cooperative association*” means a cooperative association other than a farmers cooperative association.

2003 Acts, ch 149, §1, 23  
Subsection 14 amended

## CHAPTER 10A

### DEPARTMENT OF INSPECTIONS AND APPEALS

#### 10A.101 Definitions.

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

1. “*Administrator*” means a person coordinat-

ing the administration of a division of the department.

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

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

2003 Acts, ch 44, §4  
Subsection 2 stricken and former subsections 3 and 4 renumbered as 2 and 3

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

The director or designees of the director shall:

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

2. Appoint the administrators of the divisions within the department and all other personnel deemed necessary for the administration of this chapter, except the state public defender, assistant state public defenders, administrator of the racing and gaming commission, members of the employment appeal board, and administrator of the child advocacy board created in section 237.16. All persons appointed and employed in the department are covered by the provisions of chapter 8A, subchapter IV, but persons not appointed by the director are exempt from the merit system provisions of chapter 8A, subchapter IV.

3. Prepare an annual budget for the department.

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

5. Adopt rules deemed necessary for the implementation and administration of this chapter in accordance with chapter 17A.

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

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

8. Establish by rule standards and procedures for certifying that targeted small businesses are eligible to participate in the procurement program established in sections 73.15 through 73.21. The procedure for determination of eligibility shall not include self-certification by a business. The direc-

tor shall maintain a current directory of targeted small businesses that have been certified pursuant to this subsection.

9. Administer and enforce this chapter, and chapters 99B, 135B, 135C, 135H, 135J, 137C, 137D, and 137F.

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

11. Administer inspection and licensing of social and charitable gambling pursuant to chapter 99B.

2003 Acts, ch 145, §128  
Subsection 2 amended

**10A.601 Employment appeal board — created — duties.**

1. A full-time employment appeal board is created within the department of inspections and appeals to hear and decide contested cases under chapter 8A, subchapter IV, and chapters 80, 88, 89A, 91C, 96, and 97B.

2. The employment appeal board is composed of three members appointed by the governor, subject to confirmation by the senate, to six-year staggered terms beginning and ending as provided in section 69.19. One member shall be qualified by experience and affiliation to represent employers, one member shall be qualified by experience and affiliation to represent employees, and one member shall represent the general public. No more than two members shall be members of the same political party. A vacancy in membership shall be filled in the same manner as the original appointment. A member of the appeal board may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office. The members of the employment appeal board shall receive an annual salary as set by the governor.

3. The members of the appeal board shall select a chairperson and vice chairperson from their membership. The appeal board shall meet at least once per month but may meet as often as necessary. Meetings shall be set by a majority of the appeal board or upon the call of the chairperson, or in the chairperson’s absence, upon the call of the vice chairperson. The employment appeal board, subject to the approval of the director, may appoint personnel necessary for carrying out its functions and duties.

4. The appeal board may on its own motion affirm, modify, or set aside a decision of an administrative law judge on the basis of the evidence previously submitted in the contested case, or direct the taking of additional evidence, or may permit

any of the parties to the decision to initiate further appeals before the appeal board. The appeal board shall permit further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

5. The appeal board may order testimony to be taken by deposition, and may compel persons to appear and testify and to produce books, papers, and documents in the same manner as witnesses may be deposed and compelled to appear and testify and produce documentary evidence before the district court. In the discharge of the duties imposed by this chapter, the chairperson of the appeal board and any duly authorized representative designated by the appeal board, may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas. Persons deposed or compelled to testify or produce documentary evidence shall be allowed the same fees and traveling expenses as allowed witnesses in the district court.

6. The appeal board shall adopt rules pursuant to chapter 17A to establish the manner in which contested cases are to be presented, reports are to be required from the parties, and hearings and appeals are to be conducted. The appeal board shall keep a full and complete record of all proceedings in connection with a contested case. All testimony at a hearing shall be recorded, but need not be transcribed unless the contested case is further appealed. The appeal board shall retain the record for at least sixty days following the final date for appeal of a contested case. A decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court. Any party to a contested case may appeal the decision to the district court.

7. An application for rehearing before the appeal board shall be filed pursuant to section 17A.16, unless otherwise provided in chapter 8A, subchapter IV, or chapter 80, 88, 89A, 91C, 96, or 97B. A petition for judicial review of a decision of the appeal board shall be filed pursuant to section 17A.19. The appeal board may be represented in any such judicial review by an attorney who is a regular salaried employee of the appeal board or who has been designated by the appeal board for that purpose, or at the appeal board's request, by the attorney general. Notwithstanding the petitioner's residency requirement in section 17A.19, subsection 2, a petition for judicial review may be filed in the district court of the county in which the petitioner was last employed or resides, provided that if the petitioner does not reside in this state, the action shall be brought in the district court of

Polk county, Iowa, and any other party to the proceeding before the appeal board shall be named in the petition. Notwithstanding the thirty-day requirement in section 17A.19, subsection 6, the appeal board shall, within sixty days after filing of the petition for judicial review or within a longer period of time allowed by the court, transmit to the reviewing court the original or a certified copy of the entire records of a contested case. The appeal board may also certify to the court, questions of law involved in any decision by the appeal board. Petitions for judicial review and the questions so certified shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state. No bond shall be required for entering an appeal from any final order, judgment, or decree of the district court to the supreme court.

2003 Acts, ch 145, §129  
Confirmation, see §2.32  
Subsections 1 and 7 amended

#### 10A.702 Responsibilities.

The administrator shall coordinate the division's conduct of various inspections and investigations as otherwise provided by law including, but not limited to, all of the following:

1. Investigations relative to the standards and practices of hospitals, hospices, and health care facilities.
2. Inspections and other licensing procedures relative to the hospice program, hospitals, and health care facilities. The division is designated as the sole licensing authority for these programs and facilities.
3. Inspections relative to hospital and health care facility construction projects.
4. Inspections of child foster care facilities and private institutions for the care of dependent, neglected, and delinquent children.

Employees of the department of elder affairs performing functions related to certification and monitoring of or complaint investigations related to assisted living programs as of June 30, 2003, shall become employees of the department of inspections and appeals without loss of classification, pay, or benefits, effective July 1, 2003; 2003 Acts, ch 166, §29  
Section not amended; footnote added

#### 10A.801 Division of administrative hearings — creation, powers, duties.

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

- a. "*Administrator*" means the person coordinating the administration of the division.
- b. "*Division*" means the administrative hearings division of the department of inspections and appeals.

2. The administrator shall coordinate the division's conduct of appeals and administrative hearings as provided by law.

3. a. The department shall employ a sufficient number of administrative law judges to conduct proceedings for which agencies are required, by

section 17A.11 or any other provision of law, to use an administrative law judge employed by the division. An administrative law judge employed by the division shall not perform duties inconsistent with the judge's duties and responsibilities as an administrative law judge and shall be located in an office that is separated from the offices of the agencies for which that person acts as a presiding officer. Administrative law judges shall be covered by the merit system provisions of chapter 8A, subchapter IV.

b. The division shall facilitate, insofar as practicable, specialization by its administrative law judges so that particular judges may become expert in presiding over cases in particular agencies. An agency may, by rule, identify particular classes of its contested cases for which the administrative law judge who acts as presiding officer shall have specified technical expertise. After the adoption of such a rule, the division may assign administrative law judges to preside over those identified particular classes of contested cases only if the administrative law judge possesses the technical expertise specified by agency rule. The division may charge the applicable agency for the costs of any training required by the division's administrative law judges to acquire or maintain the technical expertise specified by agency rule.

4. If the division cannot furnish one of its administrative law judges in response to an agency request, the administrator shall designate in writing a full-time employee of an agency other than the requesting agency to serve as administrative law judge for the proceeding, but only with the consent of the employing agency. The designee must possess the same qualifications required of administrative law judges employed by the division.

5. The division may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding.

6. After July 1, 1999, a person shall not be newly employed by the division as an administrative law judge to preside over contested case proceedings unless that person has a license to practice law in this state.

7. The division shall adopt rules pursuant to this chapter and chapter 17A to do all of the following:

a. To establish procedures for agencies to request and for the administrator to assign administrative law judges employed by the division.

b. To establish procedures and adopt forms, consistent with chapter 17A and other provisions of law, to govern administrative law judges employed by the division, but any rules adopted under this paragraph shall be applicable to a particular contested case proceeding only to the extent that they are not inconsistent with the rules of the agency under whose authority that proceeding is conducted. Nothing in this paragraph precludes an agency from establishing procedural require-

ments otherwise within its authority to govern its contested case proceedings, including requirements with respect to the timeliness of decisions rendered for it by administrative law judges.

c. To establish standards and procedures for the evaluation, training, promotion, and discipline for the administrative law judges employed by the division. The procedures shall include provisions for each agency for whom a particular administrative law judge presides to submit to the division on a periodic basis the agency's views with respect to the performance of that administrative law judge or the need for specified additional training for that administrative law judge. However, the evaluation, training, promotion, and discipline of all administrative law judges employed by the division shall remain solely within the authority of the department.

d. To establish, consistent with the provisions of this section and chapter 17A, a code of administrative judicial conduct that is similar in function and substantially equivalent to the Iowa code of judicial conduct, to govern the conduct, in relation to their quasi-judicial functions in contested cases, of all persons who act as presiding officers under the authority of section 17A.11, subsection 1. The code of administrative judicial conduct shall separately specify which provisions are applicable to agency heads or members of multimembered agency heads when they act as presiding officers, taking into account the objectives of the code and the fact that agency heads, unlike administrative law judges, have other duties imposed upon them by law. The code of administrative judicial conduct may also contain separate provisions, that are appropriate and consistent with the objectives of such a code, to govern the conduct of agency heads or the members of multimember agency heads when they act as presiding officers. However, a provision of the code of administrative judicial conduct shall not be made applicable to agency heads or members of multimember agency heads unless the application of that provision to agency heads and members of multimember agency heads has previously been approved by the administrative rules coordinator.

e. To facilitate the performance of the responsibilities conferred upon the division by this section, chapter 17A, and any other provision of law.

8. The division may do all of the following:

a. Provide administrative law judges, upon request, to any agency that is required to or wishes to utilize the services of an administrative law judge employed by the division.

b. Maintain a staff of reporters and other personnel.

c. Administer the provisions of this section and rules adopted under its authority.

9. The division may charge agencies for services rendered and the payment received shall be considered repayment receipts as defined in section 8.2.

10. Except to the extent specified otherwise by statute, decisions of administrative law judges employed by the division are subject to review by the agencies for which they act as presiding offi-

cers as provided by section 17A.15 or any other provision of law.

2003 Acts, ch 145, §130  
Subsection 3, paragraph a amended

## CHAPTER 10B

### AGRICULTURAL LANDHOLDING REPORTING

#### 10B.1 Definitions.

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

1. “*Agricultural land*” means the same as defined in section 9H.1.

2. “*Cooperative association*” means any entity organized on a cooperative basis, including an association of persons organized under chapter 497, 498, or 499; an entity composed of entities organized under those chapters; or a cooperative organized under chapter 501.

3. “*Corporation*” means a domestic or foreign corporation, including an entity organized pursuant to chapter 490, or a nonprofit corporation.

4. “*Farming*” means the same as defined in section 9H.1.

5. “*Foreign business*” means the same as defined in section 9I.1.

6. “*Foreign government*” means the same as defined in section 9I.1.

7. “*Limited liability company*” means a foreign or domestic limited liability company, including a limited liability company as defined in section 490A.102.

8. “*Limited partnership*” means a foreign or domestic limited partnership, including a limited partnership as defined in section 487.101, subsection 7, and a domestic or foreign limited liability limited partnership under section 487.1301 or 487.1303.

9. “*Nonprofit corporation*” means any of the following:

a. A corporation organized under the provisions of chapter 504, Code 1989, or chapter 504A.

b. A corporation which qualifies under Title 26, section 501, of the United States Code.

10. “*Nonresident alien*” means the same as defined in section 9I.1.

11. “*Reporting entity*” means any of the following:

a. A corporation, other than a family farm corporation as defined in section 9H.1, including an authorized farm corporation as defined in section 9H.1 or networking farmers corporation as defined in section 10.1, holding an interest in agricultural land in this state.

b. A cooperative association holding an interest in agricultural land in this state.

c. A limited partnership, other than a family farm limited partnership as defined in section 9H.1, holding an interest in agricultural land in

this state.

d. A person acting in a fiduciary capacity or as a trustee on behalf of a person, including a corporation, cooperative association, limited liability company, or limited partnership, which holds in a trust, other than through a family trust as defined in section 9H.1, including through an authorized trust, an interest in agricultural land in this state.

e. A limited liability company, other than a family farm limited liability company as defined in section 9H.1, including an authorized limited liability company as defined in section 9H.1, or a networking farmers limited liability company or farmers cooperative limited liability company as defined in section 10.1, holding an interest in agricultural land in this state.

f. A foreign business holding an interest in agricultural land in this state as provided in chapter 9I.

g. A foreign government holding an interest in agricultural land in this state as provided in chapter 9I.

h. A nonresident alien holding an interest in agricultural land in this state as provided in chapter 9I.

2003 Acts, ch 108, §6  
Subsection 9, paragraph a amended

#### 10B.4A Suspension of other filing requirements.

The secretary of state shall not prepare or distribute forms for reports or file reports otherwise required pursuant to section 9I.8 or 501.103. A person required to file a report pursuant to this chapter is not required to file a report under those sections. A person required to file a report pursuant to this chapter is not required to register with the secretary of state as otherwise required in section 9I.7.

2003 Acts, ch 44, §5; 2003 Acts, ch 115, §14, 19  
See Code editor’s note to §2.9  
Section amended

#### 10B.7 Lessees conducting research or experiments — reports.

Lessees of agricultural land under section 9H.4, subsection 2, paragraph “c”, for research or experimental purposes, shall file a report with the secretary of state on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state. The report shall contain the following information for the last year:

1. The name and principal place of business of the lessee.
2. The location of the agricultural land used for research or experimental purposes.
3. The date that the lease became effective.
4. The name and address of each person purchasing breeding stock produced on the agricul-

tural land.

5. The number or volume of breeding stock purchased by each person purchasing breeding stock produced on the agricultural land.

2003 Acts, ch 115, §16, 19  
Section transferred from §9H.6 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19

## CHAPTER 10C

### LIFE SCIENCE PRODUCTS

#### 10C.1 Definitions.

1. “*Actively engaged in farming*” means the same as defined in section 10.1.
2. “*Agricultural commodity*” means the same as defined in section 190C.1.\*
3. “*Agricultural land*” means land suitable for use in farming as defined in section 9H.1.
4. “*Animal*” means a creature belonging to the bovine, caprine, equine, ovine, or porcine species.
5. “*Corporation*” means a domestic or foreign corporation subject to chapter 490, a nonprofit corporation, or a cooperative.
6. “*Economic development board*” or “*board*” means the economic development board created pursuant to section 15.103.
7. “*Family farm entity*” means the same as defined in section 10.1.
8. “*Life science by-product*” means a commodity, other than a life science product, if the commodity derives from the production of a life science product and the commodity is not intended or used for human consumption.

9. “*Life science enterprise*” or “*enterprise*” means a corporation or limited liability company organized for the purpose of using biotechnological systems or techniques for the production of life science products.

10. “*Life science product*” or “*product*” means a product derived from an animal by using biotechnological systems or techniques and which includes only the following:

- a. Embryos or oocytes for use in animal implantation.
- b. Blood, milk, or urine for use in the manufacture of pharmaceuticals or nutraceuticals.
- c. Cells, tissue, or organs for use in animal or human transplantation.

11. “*Limited liability company*” means a limited liability company as defined in section 490A.102.

\*Definition of agricultural commodity eliminated by strike and rewrite of §190C.1 in 2003 Acts, ch 104, §1  
Section not amended; footnote added

## CHAPTER 11

### AUDITOR OF STATE

Advisory role of auditor in managed competition process of department of administrative services; 2003 Acts, ch 145, §290

#### 11.2 Annual settlements.

1. The auditor of state shall annually, and more often if deemed necessary, make a full settlement between the state and all state officers and departments and all persons receiving or expending state funds, and shall annually make a complete audit of the books and accounts of every department of the state.

Provided, that the accounts, records, and documents of the treasury department shall be audited daily.

Provided further, that a preliminary audit of the educational institutions and the state fair board shall be made periodically, at least quarterly, to check the monthly reports submitted to the director of the department of administrative services as required by section 8A.502, subsection 9, and that

a final audit of such state agencies shall be made at the close of each fiscal year.

2. In conjunction with the audit of the state board of regents required under this section, the auditor of state, in accordance with generally accepted auditing standards, shall perform audit testing on the state board of regents’ investments. The auditor shall report to the state board of regents concerning compliance with state law and state board of regents’ investment policies. The state board of regents is responsible for remedying any reported noncompliance with its own policy or practices.

The state board of regents shall make available to the auditor of state and treasurer of state the most recent annual report of any investment entity or investment professional employed by an in-

stitution governed by the board.

All contracts or agreements with an investment entity or investment professional employed by an institution governed by the state board of regents shall require the investment entity or investment professional employed by an institution governed by the state board of regents to notify in writing the state board of regents within thirty days of receipt of all communication from an independent auditor or the auditor of state or any regulatory authority of the existence of a material weakness in internal control structure, or regulatory orders or sanctions against the investment entity or investment professional, with regard to the type of services being performed under the contracts or agreements. This provision shall not be limited or avoided by another contractual provision.

The audit under this section shall not be certified until the most recent annual reports of any investment entity or investment professional employed by an institution governed by the state board of regents are reviewed by the auditor of state.

The review of the most recent annual report to shareholders of an open-end management investment company or an unincorporated investment company or investment trust registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), pursuant to 17 C.F.R. § 270.30d-1 or the review, by the person performing the audit, of the most recent annual report to shareholders, call reports, or the findings pursuant to a regular examination under state or federal law, to the extent the findings are not confidential, of a bank, savings and loan association, or credit union shall satisfy the review requirements of this paragraph.

As used in this subsection, “*investment entity*” and “*investment professional*” exclude a bank, savings and loan association, or credit union when acting as an approved depository pursuant to chapter 12C.

2003 Acts, ch 145, §131

Subsection 1, unnumbered paragraph 3 amended

#### **11.5B Repayment of audit expenses by state departments and agencies.**

The auditor of state shall be reimbursed by a department or agency for performing examinations of the following state departments or agencies, or funds received by a department or agency:

1. Department of commerce.
2. Department of human services.
3. State department of transportation.
4. Iowa department of public health.
5. State board of regents.
6. Department of agriculture and land stewardship.
7. Iowa veterans home.
8. Department of education.
9. Department of workforce development.
10. Department of natural resources.

11. Offices of the clerks of the district court of the judicial branch.

12. The Iowa public employees’ retirement system.

13. Federal financial assistance, as defined in Pub. L. No. 98-502, received by all other departments.

14. Department of administrative services.

2003 Acts, ch 145, §286

Terminology change applied

#### **11.20 Bills — audit and payment.**

If the examination is made by the auditor of state under this chapter, each auditor shall file with the auditor of state an itemized, certified and sworn voucher of expense for the time the auditor is actually engaged in the examination. The salaries shall be included in a two-week payroll period. Upon approval of the auditor of state the director of the department of administrative services may issue warrants for the payment of the vouchers and salary payments, including a prorated amount for vacation and sick leave, from any unappropriated funds in the state treasury. Repayment to the state shall be made as provided by section 11.21.

2003 Acts, ch 145, §286

Terminology change applied

**11.24 Title of Act.** Repealed by 2003 Acts, ch 44, § 110.

#### **11.28 Individual audit reports.**

The individual audit reports shall include exhibits and schedules to report data similar to that now required by section 11.4, and shall as nearly as possible correspond and be prepared similar in form to the audit reports rendered by certified public accountants, and such reports shall include information as to the assets and liabilities of the various departments and institutions audited as of the beginning and close of the fiscal year audited, the receipts and expenditures of cash, the disposition of materials and other properties, and the net income and net operating cost. These reports shall also set forth the cost as to each inmate, member, or student per year in the various classifications of expenses, and shall make comparisons thereof, and shall give such other information, suggestions, and recommendations as may be deemed of advantage and to the best interests of the taxpayers of the state; provided, that the daily audit report of the state treasury shall be submitted to the director of the department of administrative services and the director of the department of management; provided, further, that copies of all individual audit reports of all state departments and establishments shall be transmitted to the directors’ offices after the completion of each audit, and that copies of all local government audits shall, until otherwise provided, be also supplied to the directors’ offices; provided,

further, that copies of such audit reports shall also be supplied to the officers of the counties, schools, and cities, as now provided by law; and, provided further, that summaries of the findings, recommendations, and comparisons, together with any

other information deemed essential, shall be printed and distributed to members of the general assembly.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 12

### TREASURER OF STATE

#### 12.3 Record and payment of warrants.

The treasurer of state shall keep a record of warrants issued as certified by the director of the department of administrative services, and receive in payment of public dues the warrants so issued in conformity with law, and redeem the same, if there be money in the treasury not otherwise appropriated, and on receiving any such warrant shall cause the person presenting it to endorse it, and shall indicate on its face in a suitable manner that it has been redeemed, and keep a record of warrants redeemed showing the name of the person to whom paid, date of payment, and amount of interest paid.

2003 Acts, ch 145, §286  
Terminology change applied

#### 12.4 Receipts.

When money is paid to the treasurer, the treasurer shall execute receipts in duplicate therefor, stating the fund to which it belongs, one of which must be delivered to the director of the department of administrative services in order to obtain the proper credit, and the treasurer must be charged therewith.

2003 Acts, ch 145, §286  
Terminology change applied

#### 12.5 Payment.

The treasurer shall pay no money from the treasury but upon the warrants of the director of the department of administrative services, and only in the order of their presentation.

2003 Acts, ch 145, §286  
Warrants not paid for want of funds, chapter 74  
Terminology change applied

#### 12.6 Report to and account with director of the department of administrative services.

Once in each week the treasurer shall certify to the director of the department of administrative services the number, date, amount, and payee of each warrant taken up by the treasurer, with the date when taken up, and the amount of interest allowed; and on the first Monday of January, and the first day of April, July, and October, annually, the treasurer is directed to account with the director of the department of administrative services and deposit with the department of administrative services all such warrants received at the trea-

sury, and take the director's receipt therefor.

2003 Acts, ch 145, §286  
Terminology change applied

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

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

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

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

employees' retirement system.

2003 Acts, ch 145, §286  
Investment or deposit, §12B.10  
Terminology changes applied

#### 12.14 Statement itemized.

Each deposit shall be accompanied by an itemized statement of the sources from which the money has been collected, and the funds to be credited, a duplicate of which shall, at the time, be filed with the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

#### 12.15 Director and treasurer to keep account.

The treasurer and director of the department of administrative services shall each keep an accurate account of the moneys so deposited.

2003 Acts, ch 145, §286  
Terminology change applied

#### 12.26 Issuance of revenue anticipation notes.

1. In anticipation of the collection of revenues in and for a fiscal year, the treasurer of state may borrow money, and issue notes for the money, in an amount not exceeding the estimated state revenues for that year. The sums so anticipated are appropriated for the payment of the notes with interest at maturity. The notes may be issued prior to the beginning of a fiscal year, but the notes shall be payable not later than the end of the fiscal year for which they are issued. More than one series of notes may be issued in a fiscal year and the proceeds of notes may be used to retire a prior issue of notes provided that the total outstanding at any one time shall not exceed the limit prescribed in this section. The proceeds from the issuance of notes shall be invested in the same manner as other public funds and shall be used only for the purposes for which the anticipated tax revenues were levied, collected, and appropriated.

2. The principal of and the interest on notes are payable solely out of the taxes and revenues of the state for the fiscal year for which the notes are issued. The notes of each issue shall be dated, shall bear interest at a rate or rates which may be variable according to a method approved by the treasurer of state, without regard to any limit contained in chapter 74A or any other law of this state, and shall mature at a time or times not later than the end of the fiscal year, all as determined by the treasurer of state. The notes may be made redeemable before maturity, at the option of the treasurer of state, at the price and under the terms and conditions provided by the treasurer of state. The treasurer of state shall determine the form of the notes and shall fix the denomination of the notes and the place of payment of principal and interest which may be at any bank within or without

the state. The notes shall be executed by the manual or facsimile signatures of the treasurer of state, the director of management, and the director of the department of administrative services. If an official whose signature or a facsimile of whose signature appears on any notes ceases to hold office before the delivery of the notes, the signature or the facsimile is valid and sufficient for all purposes the same as if the official had remained in office until the delivery. All notes issued under this section have the qualities and incidents of negotiable instruments under the laws of this state and without regard to any other law. The notes shall be issued in registered form. The notes may be sold in a manner, at public or private sale, as the treasurer of state may determine without regard to chapter 75.

3. Notes may be issued under this section without obtaining the consent of any officer or agency of this state, and without any other proceedings or conditions other than those proceedings and conditions which are specifically required by this section. The treasurer of state, the director of management, and the director of the department of administrative services are not liable personally on the notes or subject to any personal liability or accountability by reason of the issuance of the notes.

4. As used in this section, "notes" means notes and other obligations, including short term obligations backed by a commercial letter of credit, issued by the treasurer of state pursuant to this section.

2003 Acts, ch 145, §286  
Terminology change applied

#### 12.28 Centralized financing for state agency purchase of real and personal property.

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

a. "Financing agreement" means any lease, lease-purchase agreement, or installment acquisition contract in which the lessee may purchase the leased property at a price which is less than the fair market value of the property at the end of the lease term, or any lease, agreement, or transaction which would be considered under criteria established by the internal revenue service to be a conditional sale agreement for tax purposes.

b. "State agency" means a board, commission, bureau, division, office, department, or branch of state government. However, state agency does not mean the state board of regents, institutions governed by the board of regents, or authorities created under chapter 16, 16A, 175, 257C, 261A, or 327I.

2. The treasurer of state shall have sole authority to enter into financing agreements on behalf of state agencies. The treasurer of state may enter into financing agreements, including master

lease-purchase agreements, for the purpose of funding state agency requests for the financing of real or personal property, wherever located within the state, including equipment, buildings, facilities, and structures, or additions or improvements to existing buildings, facilities, and structures. Subject to the selection procedures of section 12.30, the treasurer may employ financial consultants, banks, trustees, insurers, underwriters, accountants, attorneys, and other advisors or consultants as necessary to implement the provisions of this section. The costs of professional services and any other costs of entering into the financing agreements may be included in the financing agreement as a cost of the property being financed.

3. The financing agreement may provide for ultimate ownership of the property by the state. Title to all property acquired in this manner shall be taken and held in the name of the state. The state shall be the lessee or contracting party under all financing agreements entered into pursuant to this section. The financing agreements may contain provisions pertaining, but not limited to, interest, term, prepayment, and the state's obligation to make payments on the financing agreement beyond the current budget year subject to availability of appropriations. All projects financed under this section shall be deemed to be for an essential governmental purpose.

4. The treasurer of state may contract for additional security or liquidity for a financing agreement and may enter into agreements for letters of credit, lines of credit, insurance, or other forms of security with respect to rental and other payments due under a financing agreement. Fees for the costs of additional security or liquidity are a cost of entering into the financing agreement and may be paid from funds annually appropriated by the general assembly to the state agency for which the property is being obtained, from other funds legally available, or from proceeds of the financing agreement. The provision of a financing agreement which provides that a portion of the periodic rental or lease payment be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 does not apply to financing agreements entered into pursuant to this section.

5. Payments and other costs due under financing agreements entered into pursuant to this section shall be payable from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available. The treasurer of state, in cooperation with the department of administrative services, shall implement procedures to ensure that state agencies are timely in making payments due under the financing agreements.

6. The maximum principal amount of financ-

ing agreements which the treasurer of state can enter into shall be one million dollars per state agency in a fiscal year, subject to the requirements of section 8.46. For the fiscal year, the treasurer of state shall not enter into more than one million dollars of financing agreements per state agency, not considering interest expense. However, the treasurer of state may enter into financing agreements in excess of the one million dollar per agency per fiscal year limit if a constitutional majority of each house of the general assembly, or the legislative council if the general assembly is not in session, and the governor, authorize the treasurer of state to enter into additional financing agreements above the one million dollar authorization contained in this section. The treasurer of state shall not enter into a financing agreement for real or personal property which is to be constructed for use as a prison or prison-related facility without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor of the use, location, and maximum cost, not including interest expense, of the real or personal property to be financed. However, financing agreements for an energy conservation measure, as defined in section 7D.34, are exempt from the provisions of this subsection, but are subject to the requirements of section 7D.34 or 473.20A. In addition, financing agreements funded through the materials and equipment revolving fund established in section 307.47 are exempt from the provisions of this subsection.

7. The treasurer of state shall decide upon the most economical method of financing a state agency's request for funds. The treasurer of state may utilize master lease-purchase agreements, issue certificates of participation in lease-purchase agreements, or use any other financing method or method of sale which the treasurer believes will provide savings to the state in issuance or interest costs.

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

9. Publication of any notice, whether under section 73A.12 or otherwise, and other or further proceedings with respect to the financing agreements referred to in this section are not required except as set forth in this section, notwithstanding any provisions of other statutes of the state to the contrary.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 12B

### SECURITY OF THE REVENUE

#### 12B.2 Interest on warrants.

When interest is due and allowed by the treasurer of state on the redemption of state warrants, or by the county treasurer on the redemption of county warrants, the same shall be receipted on the warrants by the holder, with the date of the payment, and no interest shall be allowed by the department of administrative services or board of supervisors except such as is thus receipted.

2003 Acts, ch 145, §286  
Analogous section, §74.7  
Terminology change applied

#### 12B.3 Discounting warrants.

If the treasurer of state or any county treasurer, personally or through another, discounts the director of revenue's or auditor's warrants, either directly or indirectly, the treasurer shall be guilty of a serious misdemeanor.

2003 Acts, ch 145, §286  
Terminology change applied

#### 12B.10 Public funds investment standards.

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

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

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

- a. Safety of principal is the first priority.
- b. Maintaining the necessary liquidity to

match expected liabilities is the second priority.

c. Obtaining a reasonable return is the third priority.

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

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

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

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

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

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

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

d. Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is rated within the two highest classifications, as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than thirty percent of the investment portfolio of the treasurer of state or any other state agency shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

e. Repurchase agreements whose underlying collateral consists of the investments set out in paragraphs "a" through "d" if the treasurer of state or state agency takes delivery of the collateral.

al either directly or through an authorized custodian. Repurchase agreements do not include reverse repurchase agreements.

*f.* Investments authorized for the Iowa public employees' retirement system in section 97B.7A, except that investment in common stocks is not permitted.

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

Futures and options contracts are not permissible investments.

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

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

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

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

*d.* Commercial paper or other short-term corporate debt that matures within two hundred seventy days and that is rated within the two highest classifications, as established by at least one of the standard rating services approved by the superintendent of banking by rule adopted pursuant to chapter 17A, provided that at the time of purchase no more than five percent of all amounts invested in commercial paper and other short-term corporate debt shall be invested in paper and debt rated in the second highest classification, and provided further that at the time of purchase no more than ten percent of the investment portfolio shall be in investments authorized by this paragraph and that at the time of purchase no more than five percent of the investment portfolio shall be invested in the securities of a single issuer.

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

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

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

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

Futures and options contracts are not permissible investments.

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

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

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

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

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

(1) Those investments set out in subsection 4.

(2) The common fund for nonprofit organizations.

(3) Common stocks.

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

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

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

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

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

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

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

(2) Investment in common stocks.

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

*k.* Investments by municipal utility retire-

ment systems governed under chapter 412.

2003 Acts, ch 179, §91  
Subsection 6, paragraph d, subparagraph (4) amended

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*c.* The Iowa finance authority governed by chapter 16.

*d.* The state board of regents. However, investments by the state board of regents or institutions governed by the state board of regents are

limited to the following:

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

(2) The common fund for nonprofit organizations.

(3) Common stocks.

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

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

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

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

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

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

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

2003 Acts, ch 179, §92  
Subsection 6, paragraph d, subparagraph (4) amended

**12B.11 Manner and details of settlement.**

At the time of any examination of any such office, or at the time of any settlement with the treasurer in charge of any such public funds, the treasurer shall produce and count in the presence of the officer or officers making such examination or settlement, all moneys or funds then on deposit in the safe or vault in the treasurer’s office, and shall produce a statement of all money or funds on deposit with any depository wherein the treasurer is authorized to deposit such funds, and shall correctly show the balance remaining on deposit in such depository at the close of business on the day preceding the day of such settlement. The treasurer shall also file a statement setting forth the numbers, dates, and amounts of all outstanding checks, or other items of difference, reconciling the balance as shown by the treasurer’s books with those of the depositories. The state treasurer shall also file a statement showing the numbers, dates and amounts of all United States government bonds held as part of said public fund.

2003 Acts, ch 24, §1  
Section amended

**12B.16 Refund to counties.**

The director of the department of administrative services shall draw the warrant on the state treasury in favor of any county in the state for the amount of any excess in any fund or tax due the

state from said county, excepting the state taxes.

2003 Acts, ch 145, §286  
Terminology change applied

#### 12B.17 Warrant for excess.

When it shall appear from the books in the department of administrative services that there is a balance due any county in excess of any revenue due the state, except state taxes, the director of the department of administrative services shall draw a warrant for such excess in favor of the county entitled thereto, and forward the same by mail, or otherwise, to the county auditor of the county to

which it belongs, and charge the amount so sent to such county.

2003 Acts, ch 145, §286  
Terminology change applied

#### 12B.18 Delivery to treasurer.

The auditor to whom said warrant is sent shall immediately, upon receipt thereof, deliver it to the treasurer of the county, and charge the amount thereof to the treasurer, and shall acknowledge the receipt of the amount to the director of the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 12C

### DEPOSIT OF PUBLIC FUNDS

#### 12C.1 Deposits in general — definitions.

1. All funds held by the following officers or institutions shall be deposited in one or more depositories first approved by the appropriate governing body as indicated: for the treasurer of state, by the executive council; for judicial officers and court employees, by the supreme court; for the county treasurer, recorder, auditor, and sheriff, by the board of supervisors; for the city treasurer or other designated financial officer of a city, by the city council; for the county public hospital or merged area hospital, by the board of hospital trustees; for a memorial hospital, by the memorial hospital commission; for a school corporation, by the board of school directors; for a city utility or combined utility system established under chapter 388, by the utility board; for a library service area established under chapter 256, by the library service area board of trustees; and for an electric power agency as defined in section 28F.2 or 476A.20, by the governing body of the electric power agency. However, the treasurer of state and the treasurer of each political subdivision or the designated financial officer of a city shall invest all funds not needed for current operating expenses in time certificates of deposit in approved depositories pursuant to this chapter or in investments permitted by section 12B.10. The list of public depositories and the amounts severally deposited in the depositories are matters of public record. This subsection does not limit the definition of “public funds” contained in subsection 2. Notwithstanding provisions of this section to the contrary, public funds of a state government deferred compensation plan established by the executive council may also be invested in the investment products authorized under section 509A.12.

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

a. “*Bank*” means a corporation engaged in the business of banking authorized by law to receive

deposits and whose deposits are insured by the bank insurance fund or the savings association insurance fund of the federal deposit insurance corporation and includes any office of a bank. “*Bank*” also means a savings and loan or savings association.

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

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

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

e. “*Public funds*” and “*public deposits*” mean any of the following:

(1) The moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision. Moneys of the state include moneys which are transmitted to a depository for purposes of completing an electronic financial transaction pursuant to section 159.35.

(2) The moneys of any court or public body noted in subsection 1.

(3) The moneys of a legal or administrative entity created pursuant to chapter 28E.

(4) The moneys of an electric power agency as defined in section 28F.2 or 476A.20.

(5) Federal and state grant moneys of a quasi-public state entity that are placed in a depository pursuant to this chapter.

(6) Moneys placed in a depository for the purpose of completing an electronic financial transaction pursuant to section 8A.222 or 331.427.

f. “Public officer” means the person authorized by and acting for a public body to deposit public funds of the public body.

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

h. “Uninsured public funds” means any amount of public funds of a public funds depositor on deposit in an account at a financial institution that exceeds the amount of public funds in that account that are insured by the federal deposit insurance corporation or the national credit union administration.

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

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

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

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

2003 Acts, ch 18, §1; 2003 Acts, ch 48, §1; 2003 Acts, ch 179, §58, 84  
Subsection 2, paragraph e amended

#### 12C.4 Location of depositories.

Deposits by the treasurer of state shall be in depositories located in this state; by a county officer or county public hospital officer or merged area hospital officer, in depositories located in the county or in an adjoining county within this state; by a memorial hospital treasurer, in a depository located within this state which shall be selected by the memorial hospital treasurer and approved by the memorial hospital commission; by a city treasurer or other city financial officer, in depositories located in the county in which the city is located or in an adjoining county, but if there is no depository in the county in which the city is located or in an adjoining county then in any other depository located in this state which shall be selected as a depository by the city council; by a school treasurer or by a school secretary in a depository within this state which shall be selected by the board of directors or the trustees of the school district; by a township clerk in a depository located within this state which shall be selected by the township clerk and approved by the trustees of the township. However, deposits may be made in depositories outside of Iowa for the purpose of paying principal and interest on bonded indebtedness of any municipality when the deposit is made not more than ten days before the date the principal or interest becomes due. Further, the treasurer of state may maintain an account or accounts outside the state of Iowa for the purpose of providing custodial ser-

vices for the state and state retirement fund accounts. Deposits made for the purpose of completing an electronic financial transaction pursuant to section 8A.222 or 331.427 may be made in any depository located in this state.

2003 Acts, ch 18, §2; 2003 Acts, 1st Ex, ch 2, §35, 209  
Section amended

#### 12C.19 Withdrawals, exchanges of security.

1. Securities pledged pursuant to this chapter may be withdrawn on application of the pledging depository institution, and as to securities pledged by a credit union upon approval of the public officer to whom the securities are pledged, if the deposit of securities is no longer necessary to comply with this chapter, or withdrawal is required for collection by virtue of maturity or exchange. The depository institution shall replace securities so withdrawn for collection or exchange.

2. In an exchange of deposited securities for new securities, the amount of security on deposit at any time shall not be decreased below that otherwise required by this chapter.

3. In the event of substitution, addition, or exchange of securities, the holder or custodian of the securities shall, on the same day, forward by regular mail to the public officer and the credit union, a receipt specifically describing and identifying both the substituted or additional securities.

4. The public officer which deposits public funds with a credit union shall require, if the market value of the securities deposited with or for the benefit of the officer falls below one hundred ten percent of the deposit liability to the public officer, the deposit of additional security to bring the total market value of the security to one hundred ten percent of the amount of public funds held by the credit union.

2003 Acts, ch 44, §6  
Subsection 1 amended

#### 12C.23A Payment of losses in a bank.

1. The acceptance of public funds by a bank pursuant to this chapter constitutes all of the following:

a. Agreement by the bank to pledge collateral as required by section 12C.22.

b. Consent by the bank to the disposition of the collateral in accordance with this section.

c. Consent by the bank to assessments by the treasurer of state in accordance with this chapter.

d. Agreement by the bank to provide accurate information and to otherwise comply with the requirements of this chapter.

2. A bank is liable for payment if the bank fails to pay a check, draft, or warrant drawn by a public funds depositor or to account for a check, draft, warrant, order, or certificate of deposit, or any public funds entrusted to the bank if, in failing to pay, the bank acts contrary to the terms of an agreement between the bank and the public funds depositor. The bank is also liable to the treasurer

of state for payment if the bank fails to pay an assessment by the treasurer of state under subsection 3 when the assessment is due.

3. If a bank is closed by its primary state or federal regulator, each public funds depositor with deposits in the bank shall notify the treasurer of state of the amount of any claim within thirty days of the closing. The treasurer of state shall implement the following procedures:

*a.* In cooperation with the responsible regulatory officials for the closed bank, the treasurer shall validate the amount of public funds on deposit at the closed bank and the amount of deposit insurance applicable to the deposits.

*b.* Any loss to a public funds depositor shall be satisfied first by any federal deposit insurance, then by the sale or other disposition of collateral pledged by the closed bank, then from the assets of the closed bank. To the extent permitted by federal law, the priority of claims are those established pursuant to section 524.1312, subsection 2. To the extent permitted by federal law, in the distribution of an insolvent federally chartered bank's assets, the order of payment of liabilities, if its assets are insufficient to pay in full all its liabilities for which claims are made, shall be in the same order as for a state bank as provided in section 524.1312, subsection 2.

*c.* The claim of a public funds depositor for purposes of this section shall be the amount of the depositor's public funds deposits plus interest to the date the funds are distributed to the public funds depositor at the rate the bank agreed to pay on the public funds reduced by the portion of the public funds that is insured by federal deposit insurance.

*d.* If the loss of public funds is not covered by federal deposit insurance and the proceeds of the closed bank's assets that are liquidated within thirty days of the closing of the bank are not sufficient to cover the loss, then any further payments to cover the loss will come from the state sinking fund for public deposits in banks. If the balance in that sinking fund is inadequate to pay the entire loss, then the treasurer shall obtain the additional amount needed by making an assessment against other banks whose public funds deposits exceed federal deposit insurance coverage. A bank's assessment shall be determined by multiplying the total amount of the remaining loss to all public depositors in the closed bank by a percentage that represents the assessed bank's proportional share of the total of uninsured public funds deposits held by all banks and all branches of out-of-state banks, based upon the average of the uninsured public funds of the assessed bank or branch of an out-of-state bank as of the end of the four calendar quarters prior to the date of closing of the closed bank and the average of the uninsured public funds in all banks and branches of out-of-state banks as of the end of the four calendar quarters prior to the date of closing of the closed bank, excluding the

amount of uninsured public funds held by the closed bank at the end of the four calendar quarters. Each bank shall pay its assessment to the treasurer of state within three business days after it receives notice of assessment.

*e.* If a bank fails to pay its assessment when due, the treasurer of state shall satisfy the assessment by liquidating collateral pledged by the bank upon such notice as is required by chapter 554. If the collateral pledged by the bank is inadequate to pay the assessment, the treasurer of state shall make additional assessments as may be necessary against other banks that hold uninsured public funds to satisfy any unpaid assessment. Any additional assessments shall be determined, collected, and satisfied in the same manner as the first assessment except that in calculating the amount of each such additional assessment, the amount of uninsured public funds held by the bank that fails to pay the assessment shall not be counted.

*f.* If the treasurer of state liquidates collateral pledged by a bank, the bank shall within three business days following receipt of notice from the treasurer of state deposit additional collateral to provide the collateral required under section 12C.22.

*g.* If a bank fails to pay its assessment when due and the proceeds from liquidation of the collateral pledged by the bank are not sufficient to pay the assessment against the bank, the treasurer of state shall notify the superintendent or the comptroller of the currency, as applicable, of the failure to pay the assessment. If the bank that has failed to pay the assessment is a nationally chartered financial institution, the superintendent shall immediately notify the bank's primary federal regulator. If the assessment is not paid within thirty days after the bank received the notice of assessment, the treasurer of state shall initiate a lawsuit to collect the amount of the assessment. If a bank is found to have failed to pay the assessment as required by this subsection and is ordered to pay the assessment, the court shall also order that the bank pay court costs and reasonable attorney fees based on the amount of time the attorney general's office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state.

*h.* Following collection of the assessments, the treasurer of state shall distribute funds to the public depositors of the closed bank according to their validated claims unless a public depositor requests in writing that the claims of other public depositors be paid prior to payment to the public depositor making the request. By receiving payment under this section, a public depositor shall be deemed to have assigned to the treasurer of state any claim the public depositor may have against the closed bank by reason of the deposit of its public funds and all rights the public depositor may have in funds that subsequently become available

to depositors of the closed bank.

2003 Acts, ch 44, §7  
Subsection 3, paragraph d amended

### **12C.27 Failure to maintain required collateral.**

If the treasurer of state determines that a bank fails to comply with section 12C.22, subsections 2

and 3, the treasurer of state may restrict that bank from accepting uninsured public funds and shall notify the office of thrift supervision, the office of the comptroller of the currency, or the superintendent as applicable, who may take such action against the bank, its board of directors and officers as permitted by law.

2003 Acts, ch 179, §93  
Section stricken and rewritten

## CHAPTER 12D

### IOWA EDUCATIONAL SAVINGS PLAN TRUST

#### **12D.5 Cancellation of agreements.**

1. A participant may cancel a participation agreement at will. Upon cancellation of a participation agreement, a participant shall be entitled to the return of the participant's account balance, less endowment fund investment earnings, and less a refund penalty levied by the trust against the participant's account balance earnings, if any. The penalty shall be deposited into the administrative fund.

2. *a.* Upon the occurrence of any of the following circumstances, no refund penalty shall be levied by the trust in the event of cancellation of a participation agreement:

- (1) Death of the beneficiary.
- (2) Permanent disability or mental incapacity of the beneficiary.
- (3) The beneficiary is awarded a scholarship, as defined in section 529 of the Internal Revenue Code, but only to the extent the refund of earnings does not exceed the scholarship amount.

(4) Attendance of the designated beneficiary at the United States military academy, the United States naval academy, the United States air force academy, the United States coast guard academy, or the United States merchant marine academy, to the extent that the amount of the payment or distribution does not exceed the costs of advanced education, as defined by 10 U.S.C. § 2005(e)(3), as in effect on the date of the enactment of this subparagraph, attributable to such attendance.

*b.* In the event of cancellation of a participation agreement for any of the causes listed in paragraph "a", the participant shall be entitled to receive the participant's account balance, less endowment fund investment income.

2003 Acts, ch 142, §1, 11

1999 amendments to subsection 1 and subsection 2, paragraph b, apply retroactively to July 1, 1998; 99 Acts, ch 122, §10

2003 amendment adding new subparagraph (4) to paragraph a of subsection 2 takes effect May 21, 2003, and applies retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 142, §11

Subsection 2, paragraph a, NEW subparagraph (4)

#### **12D.9 Tax considerations.**

1. For federal income tax purposes, the Iowa educational savings plan trust shall be considered

a qualified state tuition program exempt from taxation pursuant to section 529 of the Internal Revenue Code. The Iowa educational savings plan trust meets the requirements of section 529(b), of the Internal Revenue Code, as follows:

*a.* Pursuant to section 12D.3, subsection 1, paragraph "a", a participant may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account.

*b.* Pursuant to section 12D.3, subsection 1, a maximum contribution level is established.

*c.* Pursuant to section 12D.4, subsection 1, paragraph "b", a separate account is established for each beneficiary.

*d.* Pursuant to section 12D.4, subsection 1, paragraph "f", contributions may only be made in the form of cash.

*e.* Pursuant to section 12D.4, subsection 1, paragraph "g", a participant or beneficiary shall not provide investment direction regarding program contributions or earnings held by the trust.

*f.* Pursuant to section 12D.5, subsection 1, penalties are provided on refunds of earnings which are not used for qualified higher education expenses of the beneficiary, made on account of the death or disability of the designated beneficiary, made due to scholarship, allowance, or payment receipt as provided in section 529(b)(3) of the Internal Revenue Code, or made in the amount of the costs for attendance at the United States military, naval, air force, coast guard, or merchant marine academy.

*g.* Pursuant to section 12D.6, subsection 7, a participant shall not pledge any interest in the trust as security for a loan.

2. State income tax treatment of the Iowa educational savings plan trust shall be as provided in section 422.7, subsections 32, 33, and 34, and section 422.35, subsection 14.

2003 Acts, ch 142, §2, 11

1999 amendment to subsection 1, paragraph f applies retroactively to July 1, 1998; 99 Acts, ch 122, §10

2003 amendment to subsection 1, paragraph f takes effect May 21, 2003, and applies retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 142, §11

Subsection 1, paragraph f amended

## CHAPTER 12E

### TOBACCO SETTLEMENT AUTHORITY

#### 12E.8 General powers.

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

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

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

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

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

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

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

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

*h.* The power to procure insurance, other credit enhancements, and other financing arrangements, and to execute instruments and contracts and to enter into agreements convenient or necessary to facilitate financing arrangements of the authority and to fulfill the purposes of the authority under this chapter, including but not limited to such arrangements, instruments, contracts, and agreements as municipal bond insurance, liquidity facilities, interest rate agreements, and letters of credit.

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

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

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

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

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

2. The authority is exempt from the requirements of chapter 8A, subchapter III.

2003 Acts, ch 145, §132  
Subsection 2 amended

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

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

*b.* The fund shall consist of the following accounts:

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

(2) The endowment for Iowa's health account. The net proceeds of any taxable bonds or tax-exempt bonds issued to provide funds for the purposes specified in section 12.65 which the authority is directed to deposit in the account, any por-

tion of the state's share which is not sold to the authority, and any other moneys appropriated by the state for deposit in the account shall be deposited in the account and shall be used for the purposes specified in section 12.65.

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

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

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

- a. Hold the funds.
- b. Invest the portion of the funds which, as deemed by the authority, is not necessary for current payment of sums to the state under this chapter or the program plan.
- c. Disburse funds, if directed by the authority.
- d. Sell any securities or other property held by the fund and reinvest the proceeds as directed by the authority, when deemed advisable by the authority for the protection of the fund or the preservation of the value of the investment. Such sale of securities or other property held by the fund shall only be made with the advice of the board in the manner and to the extent provided in this chapter with regard to the purchase of investments.
- e. Subscribe, at the direction of the authority, for the purchase of securities for future delivery in anticipation of future income. Such securities shall be paid for by such anticipated income or from funds from the sale of securities or other property held by the fund.
- f. Pay for securities, as directed by the authority, on the receipt of the purchasing entity's paid statement or paid confirmation of purchase.

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

a. In establishing the investment policy and goal statement of the fund, the standard utilized by the board shall be the exercise of judgment and care, under the prevailing circumstances, which persons of prudence, discretion, and intelligence

exercise in the management of their own financial affairs, not for the purpose of speculation, but with regard to the permanent disposition of the funds, considering the probable income, as well as the probable safety, of their capital.

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

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

- (1) The composition of the fund with regard to diversification.
- (2) The liquidity and current return of the investments in the fund relative to the anticipated cash flow requirements of the program plan.
- (3) The projected return of the investments relative to the funding objectives of the program plan.
- d. Investments of moneys in the funds are not subject to sections 73.15 through 73.21.
- e. If consistent with the investment policy established by the board, the authority may invest moneys of or held by the authority in structured notes and investment agreements, the repayment of the principal amount of which is protected or guaranteed.

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

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

6. a. Expenses incurred in the sale and purchase of securities belonging to the fund shall be charged to the fund, and the amount required for the investment management expenses may be paid from the fund, subject to the limitations

stated in this subsection. The amount paid for investment management expenses for a fiscal year under this section shall not exceed the reasonable and customary charge to similar funds for similar purposes. The authority shall report the investment management expenses for a fiscal year as a percent of the market value of the fund in the annual report to the governor submitted pursuant to section 12E.15.

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

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

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

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

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

8. With respect to the payment of certain debt service, the debt service to be paid shall be those installments of debt service on bonds selected by the treasurer of state and identified in the authority's tax certificate delivered at the time of the issuance of the bonds issued pursuant to this chapter, or as otherwise selected by the treasurer of state. Once the bonds and the installments of debt service thereon are so selected, that debt service and bonds shall not be paid, or provided to be paid, from any other source including the state or any of its departments or agencies. Provided, however, that if funds are not appropriated to pay debt service on such bonds when due, the issuing agency shall pay the debt service from any available source as provided in the bond covenants. To the extent that this section does not allow proceeds of previously issued refunding bonds to be applied for the purpose of the refunding, the issuing agency may expend such proceeds to improve, remodel, or repair buildings or other infrastructure upon authorization of the issuing agency's authority.

2003 Acts, ch 145, §286; 2003 Acts, ch 179, §94, 159

See annual Iowa Acts for temporary exceptions, changes, or other non-codified enactments modifying these statutory provisions

Terminology change applied

Subsection 8 amended

### 12E.13 Moneys of the authority.

1. Moneys of the authority, except as otherwise provided in this chapter or specified in a trust indenture or resolution pursuant to which the bonds are issued, shall be paid to the authority and shall be deposited in a financial institution designated by the authority. The moneys shall be withdrawn on the order of the authority or its designee. Deposits shall be secured in the manner determined by the authority.

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

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

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

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

2003 Acts, ch 35, §45, 49

Terminology change applied

## CHAPTER 13

### ATTORNEY GENERAL

**13.5 Assistant for department of revenue.**  
The attorney general may appoint one assistant

attorney general to perform and supervise the legal work of the department of revenue, and in such

event the salary and necessary traveling expenses of such assistant attorney general shall be paid from the appropriation to said department of revenue, and upon request of the attorney general the department of revenue shall provide and equip a suitable office and the necessary secretarial assistance for such assistant attorney general.

2003 Acts, ch 145, §286  
Terminology change applied

### 13.13 Farm assistance program coordinator — contract for mediation services.

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

2. The farm assistance program coordinator shall contract with a nonprofit organization chartered in this state to provide mediation services as provided in chapters 654A, 654B, and 654C. The contract may be terminated by the coordinator upon written notice and for good cause. The organization awarded the contract is designated as the farm mediation service for the duration of the contract. The organization may, upon approval by the coordinator, provide mediation services other than as provided by law. The farm mediation service is not a state agency for the purposes of chapter 8A, subchapter IV, and chapters 20 and 669.

2003 Acts, ch 145, §133  
Subsection 2 amended

### 13.22 Program requirements.

A legal services provider which enters into a contract with the coordinator under authority of section 13.20 shall:

1. Offer direct representation of individual farmers in litigation and administrative cases.
2. Offer technical support to individual farmers.
3. Cooperate to the fullest extent feasible with the Iowa state university agricultural extension service so that its economic and farm management counseling services are utilized by eligible persons.
4. Utilize, to the fullest extent feasible, existing resources of accredited law schools within the state of Iowa to provide consulting assistance to attorneys in the agricultural law field.
5. Assist, to the fullest extent feasible, accredited law schools within the state of Iowa in enhancing their expertise in the area of agricultural law so that all attorneys within the state will have a resource available to provide training and experience in the agricultural law field.
6. Cooperate to the fullest extent feasible with the existing informational and referral networks among farmers, farmer advocates, and others concerned with the economic crisis in agricultural areas. The legal services provider is not a state agency for the purposes of chapter 8A, subchapter

IV, and chapters 20 and 669.

2003 Acts, ch 145, §134  
Subsection 6 amended

### 13.34 Legal services for persons in poverty grant program.

1. For the purposes of this section, "*eligible individual*" means an individual or household with an annual income which is less than one hundred twenty-five percent of the poverty guidelines established by the United States office of management and budget. The attorney general shall contract with an eligible nonprofit organization to provide legal assistance to eligible individuals in poverty. The contract shall be awarded within thirty days after May 30, 1996. The contract may be terminated by the attorney general after a hearing upon written notice and for good cause.

2. A nonprofit organization must comply with all of the following to be eligible for a contract under this section:

- a. Be a nonprofit organization incorporated in this state.
- b. Has lost or will lose funding due to a reduction in federal funding for the legal services corporation for federal fiscal year 1995-1996.
- c. Employ attorneys admitted to practice before the Iowa supreme court and the United States district courts.
- d. Employ attorneys and staff qualified to address legal problems experienced by eligible individuals.

3. The contracting nonprofit organization shall do all of the following:

- a. Offer direct representation of eligible individuals in litigation and administrative cases, in accordance with priorities established by the organization's board.
- b. Offer technical support to eligible individuals.
- c. Involve private attorneys through volunteer lawyer projects to represent eligible individuals.
- d. Utilize, to the fullest extent feasible, existing resources of accredited law schools within this state to provide consulting assistance to attorneys in the practice of law in their representation of persons in poverty.
- e. Assist, to the fullest extent feasible, accredited law schools within this state in enhancing the schools' expertise in the practice of law representing persons in poverty so that all attorneys within the state will have a resource available to provide training and experience in the practice of law representing persons in poverty.
- f. Cooperate, to the fullest extent feasible, with existing informational and referral networks among persons in poverty, providers of assistance to persons in poverty, and others concerned with assistance to persons in poverty.

4. The contracting nonprofit organization is not a state agency for the purposes of chapter 8A, subchapter IV, and chapters 20 and 669.

5. An individual is eligible to obtain legal representation and legal assistance from the contracting nonprofit organization if the eligible individual meets all of the following criteria:

*a.* The eligible individual is a resident of this state.

*b.* The eligible individual is financially unable to acquire legal assistance, in accordance with criteria established by the organization's board.

2003 Acts, ch 145, §135  
Subsection 4 amended

## CHAPTER 13B

### PUBLIC DEFENDERS

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

1. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under chapter 229A, in juvenile proceedings, on appeal in criminal cases, on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and on a reopening of a sentence proceeding, and may provide for the representation of indigents in proceedings instituted pursuant to section 908.11. The state public defender shall not engage in the private practice of law.

2. The state public defender shall file with the clerk of the district court in each county served by a public defender a designation of which local public defender office shall receive notice of appointment of cases. Except as otherwise provided, in each county in which the state public defender files such designation, the state public defender or its designee shall be appointed by the court to represent all eligible indigents, in all of the cases and proceedings specified under subsection 1. The appointment shall not be made if the state public defender notifies the court that the local public defender will not provide legal representation in cases as identified in the designation by the state public defender.

3. The state public defender may contract with persons admitted to practice law in this state for the provision of legal services to indigent persons.

4. *a.* The state public defender shall establish fee limitations for particular categories of cases. The fee limitations shall be reviewed at least every three years. In establishing and reviewing the fee limitations, the state public defender shall consider public input during the establishment and review process, and any available information regarding ordinary and customary charges for like services; the number of cases in which legal services to indigents are anticipated; the seriousness of the charge; an appropriate allocation of resources among the types of cases; experience with existing hourly rates, claims, and fee limitations; and any other factors determined to be relevant.

*b.* The state public defender shall establish a procedure for the submission of all claims for payment of indigent defense costs, including the submission of interim claims in appropriate cases.

*c.* The state public defender may review any claim for payment of indigent defense costs and may take any of the following actions:

(1) If the charges are appropriate and reasonable, approve the claim for payment.

(2) Deny the claim under any of the following circumstances:

(a) If it is not timely.

(b) If it is not payable as an indigent defense claim under chapter 815.

(c) If it is not payable under the contract between the claimant and the state public defender.

(d) If the appointment of the claimant was obtained without complying with section 814.11, subsection 6, or section 815.10, subsection 5.

(3) Request additional information or return the claim to the attorney, if the claim is incomplete.

(4) If any portion of the claim is excessive, notify the attorney that the claim is excessive and will be reduced to an amount which is not excessive, and reduce and approve the balance of the claim.

(5) If any portion of the claim is not payable within the scope of appointment of the attorney, notify the attorney that a portion of the claim is not within the scope of appointment and is not payable, deny those portions of the claim that are not payable, and approve the balance of the claim.

*d.* Notwithstanding chapter 17A, the attorney may seek review of any action or intended action denying or reducing any claim by filing a motion with the court with jurisdiction over the original appointment for review.

(1) The motion must be filed within twenty days of any action taken by the state public defender.

(2) The motion shall be set for hearing by the court and the state public defender shall be provided with at least ten days' notice of the hearing. The state public defender shall not be required to file a resistance to the motion filed under this paragraph "d".

(3) The state public defender or the attorney

may participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for all telephone charges.

(4) The filing of a motion shall not delay the payment of the amount approved by the state public defender.

(5) If a claim or portion of the claim is denied, the action of the state public defender shall be affirmed unless the action conflicts with an administrative rule or the law.

(6) If the claim is reduced for being excessive, the attorney shall have the burden to establish by a preponderance of the evidence that the amount of compensation and expenses is reasonable and necessary to competently represent the client.

(7) Any court order entered after the state public defender has taken action on a claim, which affects that claim, without first notifying the state public defender and permitting the state public defender an opportunity to be heard, is void.

5. In reviewing a claim for compensation submitted by an attorney who had been retained or agreed to represent an indigent person prior to appointment, the state public defender may consider any moneys earned or paid to the attorney prior to the appointment in determining whether the claim is reasonable and necessary or excessive. The attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

6. The state public defender is authorized to contract with county attorneys to provide collection services related to court-ordered indigent defense restitution of court-appointed attorney fees or the expense of a public defender.

7. The state public defender shall not revise the allocations to the office of the state public defender and the allocations for fees of court-appointed attorneys for indigent adults and juveniles, unless notice of the revisions is given prior to their effective date to the legislative services agency, the cochairpersons and ranking members of the joint appropriations subcommittee on the justice system, and the cochairpersons and ranking members of the house and senate committees on appropriations.

8. The state public defender shall adopt rules, as necessary, pursuant to chapter 17A to administer this chapter and chapter 815.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 51, §1 – 3  
 Intent that state public defender provide for defense of major felony case defendants by public defenders on regional basis; 91 Acts, ch 268, §440  
 Terminology change applied  
 Subsection 4, paragraph d, subparagraph (2) amended  
 Subsection 4, paragraph d, NEW subparagraph (7)  
 NEW subsection 7 and former subsection 7 renumbered as 8

### 13B.5 Staff.

The state public defender may appoint assistant state public defenders who, subject to the direction of the state public defender, shall have the

same duties as the state public defender and shall not engage in the private practice of law. The salaries of the staff shall be fixed by the state public defender. The state public defender and the state public defender's staff shall receive actual and necessary expenses, including travel at the state rate set forth in section 8A.363.

2003 Acts, ch 145, §136  
 Section amended

### 13B.9 Powers and duties of local public defenders — referrals to outside counsel.

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

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

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

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

2. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

3. The local public defender shall handle every case to which the local public defender is appointed if the local public defender can reasonably handle the case. The local public defender shall be responsible for assigning cases to individual attorneys within the local public defender office and for

making decisions concerning cases in which the local public defender has been appointed.

4. If a conflict of interest arises or if the local public defender is unable to handle a case because of a temporary overload of cases, the local public defender shall return the case to the court. If the case is returned and the state public defender has filed a successor designation, the court shall appoint the successor designee. If there is no succes-

sor designee on file, the court shall make the appointment pursuant to section 815.10. As used in this subsection, “*successor designee*” may include another local public defender office or a nonprofit organization that has a contract with the office of the state public defender for the provision of legal services to indigent persons.

2003 Acts, ch 51, §4  
Subsection 4 amended

## CHAPTER 14B

### INFORMATION TECHNOLOGY DEPARTMENT

Repealed by 2003 Acts, ch 145, §291; see chapter 8A, subchapter II

For transition provisions relating to the department of administrative services created in chapter 8A, including the status of administrative rules in effect on July 1, 2003, see 2003 Acts, ch 145, §287, 288

With respect to proposed amendments to former §14B.105 in 2003 Acts, ch 44, §8, see Code editor’s note to §2.9

With respect to amendments to former §14B.103, 14B.105, and 14B.206 in 2003 Acts, ch 35, §45, see Code editor’s note

## CHAPTER 15

### DEPARTMENT OF ECONOMIC DEVELOPMENT

#### 15.104 Duties of the board.

The board shall:

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

2. Develop a method of evaluation of the attainment of goals and objectives from pursuing the policies of the three-year plan which shall include performance measures and benchmarks. The method of evaluation shall provide for a review of the organizational structure of the state’s economic growth efforts.

3. Implement the requirements of chapter 73.

4. Review and approve or disapprove a life science enterprise plan or amendments to that plan as provided in chapter 10C as that chapter exists on or before June 30, 2004, and according to rules adopted by the board. A life science plan shall make a reasonable effort to provide for participation by persons who are individuals or family farm entities actively engaged in farming as defined in section 10.1. The persons may participate in the life science enterprise by holding an equity position in the life science enterprise or providing

goods or service to the enterprise under contract. The plan must be filed with the board not later than June 30, 2004. The life science enterprise may file an amendment to a plan at any time. A life science enterprise is not eligible to file a plan, unless the life science enterprise files a notice with the board. The notice shall be a simple statement indicating that the life science enterprise may file a plan as provided in this section. The notice must be filed with the board not later than June 30, 2001. The notice, plan, or amendments shall be submitted by a life science enterprise as provided by the board. The board shall consult with the department of agriculture and land stewardship during its review of a life science plan or amendments to that plan. The plan shall include information regarding the life science enterprise as required by rules adopted by the board, including but not limited to all of the following:

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

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

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

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

e. The type and extent of participation in the life science enterprise by persons who are individuals or family farm entities. If the plan does not provide for participation or minimal participation,

the plan shall include a detailed explanation of the reasonable effort made by the life science enterprise to provide for participation.

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

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

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

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

2003 Acts, ch 72, §1  
Subsections 1 and 2 amended

### 15.106 Duties of the director.

The director shall:

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

2. Employ personnel as necessary to carry out the duties and responsibilities of the department, consistent with the merit system provisions of chapter 8A, subchapter IV, for nonprofessional employees. Professional staff of the department are exempt from the merit system provisions of chapter 8A, subchapter IV.

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

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

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

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

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

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

9. Implement the requirements of chapter 73.  
2003 Acts, ch 145, §137  
Subsection 2 amended

### 15.108 Primary responsibilities.

The department has the following areas of primary responsibility:

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

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

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

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

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

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

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

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

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

(4) The department may deny permission to use the label or trademark if the department believes that the planned use would adversely affect the use of the label or trademark as a marketing tool for Iowa products or its use would be inconsistent with the marketing objectives of the department. Notwithstanding chapter 17A, the Iowa administrative procedure Act, the department may

suspend permission to use the label or trademark prior to an evidentiary hearing which shall be held within a reasonable period of time following the denial.

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

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

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

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

(1) Provide the mechanisms to promote and facilitate the coordination of management and technical assistance services to Iowa businesses and industries and to communities by the department, by the community colleges, and by the state board of regents institutions, including the small business development centers, the center for industrial research and service, and extension activities. In order to achieve this goal, the department may establish periodic meetings with representatives from the community colleges and the state board of regents institutions to develop this coordination. The community colleges and the state board of regents institutions shall cooperate with the department in seeking to avoid duplication of economic development services through greater coordinating efforts in the utilization of space, personnel, and materials and in the development of referral and outreach networks. The department shall annually report on the degree to which economic development activities have been coordinated and the degree to which there are future coordination needs, and the community colleges and the state board of regents institutions shall be given an opportunity to review and comment on this report prior to its printing or release. The department shall also establish a registry of applications for federal funds related to management and technical assistance programs.

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

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

(4) Train field experts in local development

and through them provide continuing support to small local organizations.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Recommendations regarding state involve-

ment in export trade financing requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. *Employee training and retraining.* To develop employee training and retraining strategies in coordination with the department of education and department of workforce development as tools for business development, business expansion, and enhanced competitiveness of Iowa industry, which will promote economic growth and the cre-

ation of new job opportunities and to administer related programs. To carry out this responsibility, the department shall:

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

*b.* In performing the duties set out in paragraph “*a*”, the department shall:

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

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

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

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

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

(6) Review workforce development initiatives as they relate to the state’s economic development agenda, recommending action as necessary to meet the needs of Iowa’s communities and businesses.

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

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

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

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

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

(1) The director, in conjunction with the director of the department of management, shall publi-

cize the procurement goal program for targeted small businesses and to agencies of state government, attempt to locate targeted small businesses able to perform contracts, and encourage program participation. The director may request the cooperation of the department of administrative services, the state department of transportation, the state board of regents, or any other agency of state government in publicizing this program.

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

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

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

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

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

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

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

(1) Developing a uniform small business vendor application form which can be adopted by all agencies and departments of state government to identify small businesses and targeted small businesses which desire to sell goods and services to the state. This form shall also contain information

which can be used to determine certification as a targeted small business pursuant to section 10A.104, subsection 8.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Submit recommendations for legislative or administrative action.

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

(e) Initiate small business studies as deemed necessary.

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

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

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

*a.* Collect and assemble, or cause to have collected and assembled, all pertinent information available regarding the industrial, agricultural, and public and private recreation and tourism opportunities and possibilities of the state of Iowa, including raw materials and products that may be produced from them; power and water resources; transportation facilities; available markets; the banking and financing facilities; the availability of industrial sites; the advantages of the state as a whole, and the particular sections of the state, as industrial locations; the development of a grain alcohol motor fuel industry and its related products; and other fields of research and study as the board deems necessary. This information, as far as possible, shall consider both the encouragement of new industrial enterprises in the state and the expansion of industries now existing within the state, and allied fields to those industries. The information shall also consider the changing composition of the Iowa family and the level of poverty among different age groups and different family structures in Iowa society and their impact on Iowa families.

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

*c.* Except as otherwise provided in sections 8A.110, 260C.14, and 262.9, provide that an inventor whose research is funded in whole or in part by the state shall assign to the state a proportionate part of the inventor's rights to a letter patent resulting from that research. Royalties or earnings derived from a letter patent shall be paid to the treasurer of state and credited by the treasurer to the general fund of the state. However, the department in conjunction with other state agencies, including the board of regents, shall provide incentives to inventors whose research is funded in whole or in part by the state for having their products produced in the state. These incentives may include taking a smaller portion of the inventor's

royalties or earnings than would otherwise occur under this paragraph or other provisions of the law.

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

*e.* At the director's discretion, accept payment by credit card of any fees, interest, penalties, subscriptions, registrations, purchases, or other payments, or any portion of such payments, which are due or collected by the department. The department may adjust the amount of the payment to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

*f.* Provide technical assistance to individuals who are pursuing the purchase and operation of employee-owned businesses.

*g.* Administer the marketing strategy selected pursuant to section 15G.109.

10. *Economic development planning and research activities.* To provide leadership and support for economic and community development activities statewide. To carry out this responsibility, the department may establish a research center for economic development programs and services whose duties may include but are not limited to the following:

*a.* Implementation of a comprehensive statewide economic development planning process and provision of leadership, coordination, and support to regional and local economic and community planning efforts.

*b.* Coordination of the delivery of economic and community development programs with other local, regional, state, federal, and private sector programs and activities.

*c.* Collection and analysis of data and information, development of databases and performing research to keep abreast of Iowa's present economic base, changing market demands, and emerging trends, including identification of targeted markets and development of marketing strategies.

*d.* Provision of access to databases to facilitate sales and exports by Iowa businesses.

*e.* Establishment of a database of community and economic information to aid local, regional, and statewide economic development and service delivery efforts.

11. *Housing development.*

*a.* To provide assistance to local governments, housing organizations, economic development groups, and other local entities to increase the development of housing in the state and to improve the quality of existing housing in order to maximize the effects of other economic development efforts.

*b.* To carry out this responsibility, the department shall:

(1) Provide housing needs assessments.

(2) Provide a one-stop source, in coordination with other agencies of the state, for housing development assistance.

(3) Establish programs which assist communities or local entities in developing housing to meet a range of community needs, including programs to assist homeless shelter operations and programs to assist in the development of housing to enhance economic development opportunities in the community.

2003 Acts, ch 44, §9; 2003 Acts, ch 71, §1; 2003 Acts, ch 145, §138, 286; 2003 Acts, 1st Ex, ch 1, §76, 133

Confirmation, see §2.32

For future repeal of subsection 9, paragraph g, effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114

Terminology change applied

Subsection 6, paragraph b, subparagraph (1) amended

Subsection 7, paragraph i stricken

Subsection 9, paragraph c amended

Subsection 9, NEW paragraph g

### 15.113 Economic development assistance — report.

In order for the general assembly to have accurate and complete information regarding expenditures for economic development and job training incentives and to respond to the job training needs of Iowa workers, the department shall provide to the legislative services agency by January 15 of each year data on all assistance or benefits provided under the community economic betterment program, the new jobs and income program, and the Iowa industrial new jobs training Act during the previous calendar year. The department shall meet with the legislative services agency prior to submitting the data to assure that its form and specificity are sufficient to provide accurate and complete information to the general assembly. The department shall also contact other state agencies providing financial assistance to Iowa businesses and, to the extent practical, coordinate the submission of the data to the legislative services agency.

2003 Acts, ch 35, §45, 49

Terminology change applied

### 15.241 Iowa "self-employment loan program". Repealed by 2003 Acts, ch 71, § 6.

### 15.246 Case management program.

The department shall establish and administer a case management program, contingent upon the availability of funds authorized for the program, and conducted in coordination with other state or federal programs providing financial or technical assistance administered by the department. The case management program shall assist in furnishing information about available assistance to clients seeking to establish or expand small business ventures, furnishing information about available financial or technical assistance, evaluating small business venture proposals, completing viable business start-up or expansion plans, and completing applications for financial or technical as-

sistance under the programs administered by the department.

In administering the program, the department may contract with service providers to deliver case management assistance under this section. A service provider may be any entity which the department determines is qualified to deliver case management assistance, including a state agency, a private for-profit or not-for-profit corporation, or other association or organization. The department shall establish rules necessary to carry out this section, including schedules for providing contract payments to service providers, based on the number of hours of case management assistance provided to a client.

2003 Acts, ch 71, §2

Unnumbered paragraph 1 amended

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

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

2. A “targeted small business financial assistance program account” is established within the strategic investment fund created in section 15.313, to provide for loans, loan guarantees, revolving loans, loans secured by accounts receivable, or grants to targeted small businesses and to low-income persons establishing or expanding small business ventures. A targeted small business or low-income person in any year shall receive under this program not more than fifty thousand dollars in a loan, grant, or guarantee, or a combination of loans, grants, or guarantees. The program shall provide guarantees not to exceed seventy-five percent for loans made by qualified lenders. The department shall establish a financial assistance reserve account from funds allocated to the program account, from which any default on a guaranteed loan under this section shall be paid. In administering the program the department shall not guarantee loan values in excess of the amount credited to the reserve account and only moneys set aside in the loan reserve account may be used for the payment of a default. The department shall maintain records of all financial assistance approved pursuant to this section and information regarding the effectiveness of the financial assistance in establishing or expanding small business ventures.

3. All moneys designated for the targeted small business financial assistance program shall be credited to the program account. The department shall determine the actuarially sound reserve requirement for the amount of guaranteed loans outstanding.

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

5. The general assembly is not obligated to ap-

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

6. Payments of interest, recaptures of awards, and repayments of moneys loaned under this program shall be deposited into the strategic investment fund.

2003 Acts, ch 71, §3  
Subsection 2 amended

#### 15.269 Cogeneration pilot program.

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

a. “*Cogeneration pilot project facility*” means either a utility-owned cogeneration pilot project facility or a qualified cogeneration pilot project facility. Both a utility-owned cogeneration pilot project facility and a qualified cogeneration pilot project facility must be approved by the department of economic development for participation in the cogeneration pilot program established pursuant to subsection 2.

b. “*Energy sales agreement*” means a negotiated agreement for the sale of the electric output from the cogeneration pilot project, between a qualified cogeneration pilot project facility and an electric utility.

c. “*Qualified cogeneration pilot project facility*” means a qualifying facility as defined in the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 et seq., and related federal regulations.

d. “*Utility-owned cogeneration pilot project facility*” means a cogeneration facility owned, in whole or in part, by a rate-regulated electric utility that produces electric energy and thermal energy for commercial purposes and is not a qualifying facility as defined in the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 et seq., and related federal regulations.

2. *Pilot program established.*

a. It is the policy of this state to foster both the development of cogeneration in Iowa and related economic development associated with cogeneration projects.

It is the policy of this state that cogeneration projects operate to the mutual benefit of businesses, industry, and electric utilities in Iowa, financially and otherwise.

b. A cogeneration pilot program is established within the department of economic development to obtain reliable energy and economic benefits associated with successful development of new, Iowa-based, electric power cogeneration strategies. The department shall develop and administer the cogeneration pilot program, according to the following:

(1) The department may choose up to two projects for participation in the cogeneration pilot program:

(a) Each cogeneration pilot project facility must involve two hundred megawatts or less of electricity, in combination with one or more other cogeneration project facilities.

(b) Each cogeneration pilot project facility must be constructed in Iowa.

(c) Each project chosen for participation in the cogeneration pilot program must also have the approval and support of the department for economic development purposes.

(2) The department may adopt specific application guidelines and deadlines by rule pursuant to chapter 17A, or follow established departmental procedures and guidelines, if applicable. The guidelines, rules, and procedures shall not require participation in a cogeneration pilot project or program by any rate-regulated public utility providing retail electric service to more than five hundred twenty thousand customers in the state as of January 1, 2003, but any such utility shall have the option to participate.

(3) The department shall assist in the implementation of the cogeneration pilot program and monitor the progress of the participants. The department shall file its initial report assessing the results of the pilot program with the general assembly by December 1, 2004, and shall also file yearly pilot program progress updates with the general assembly through December 1, 2007.

c. The selection of a cogeneration project under this program does not authorize an electric utility to furnish or offer to furnish electric services to the public outside its assigned area of service established under sections 476.22 through 476.26.

3. *Future repeal.* This section is repealed July 1, 2007. However, any utilities board proceeding that involves a cogeneration pilot project facility that is pending on July 1, 2007, and that is being conducted pursuant to section 476.53 shall be completed notwithstanding the repeal of this section.

2003 Acts, ch 159, §1  
NEW section

**15.270** Reserved.

### **15.313 Strategic investment fund.**

1. An Iowa strategic investment fund is created as a revolving fund consisting of any money appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund. The fund shall also include all of the following:

a. All unencumbered and unobligated funds from the special community economic betterment

program fund created under 1990 Iowa Acts, chapter 1262, section 1, subsection 18, remaining on June 30, 1992, all repayments of loans or other awards made under the community economic betterment account or under the community economic betterment program during any fiscal year beginning on or after July 1, 1985, and recaptures of awards.

b. All unencumbered and unobligated funds from the targeted small business financial assistance program, the microenterprise development revolving fund, financing rural economic development or successor loan program, and the value-added agricultural products and processes financial assistance fund remaining on June 30, 1992, and all repayments of loans or other awards or recaptures of awards made under these programs.

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

2. The assets of the fund shall be used by the department to assist in relocation or expansion projects for existing businesses as well as entrepreneurial start-up and expansion projects. Moneys in the fund shall be used for projects designed to meet any of the following purposes:

a. To assist communities in the state by providing financial assistance for small business gap financing, new business opportunities, and new product and entrepreneurial development.

b. To provide financial and technical assistance to early-stage industry companies and entrepreneurs.

c. To provide financial and technical assistance to targeted small businesses as defined in section 15.102.

d. To provide comprehensive management assistance for applicants or recipients of assistance from the fund.

e. To access federal funds available under any federal microloan demonstration program.

f. To provide technical and financial assistance to help persons with disabilities become self-sufficient by establishing or expanding business ventures.

g. To assist businesses in retooling or upgrading production equipment to meet contemporary technology standards.

3. At the beginning of each fiscal year, the board shall establish goals for the strategic investment fund relating to the intended strategic focus for the fiscal year. The director shall report on a monthly basis to the board on the status of the fund. Unobligated and unencumbered moneys remaining in the strategic investment fund or any of its accounts on June 30 of each year shall be considered part of the fund for purposes of the next year's allocation.

2003 Acts, ch 71, §4  
Subsection 1, paragraph b amended

**15.327 Definitions.**

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

1. “*Community*” means a city, county, or entity established pursuant to chapter 28E.

2. “*Contractor or subcontractor*” means a person who contracts with the eligible business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the economic development area, of the eligible business or a supporting business.

3. “*Department*” means the Iowa department of economic development.

4. “*Director*” means the director of the department or the director’s designee.

5. “*Economic development area*” means a site or sites designated by the department of economic development for the purpose of attracting an eligible business and supporting businesses to locate facilities within the state.

6. “*Eligible business*” means a business meeting the conditions of section 15.329.

7. “*Program*” means the new jobs and income program.

8. “*Project completion*” means the first date upon which the average annualized production of finished product for the preceding ninety-day period at the manufacturing facility operated by the eligible business within the economic development area is at least fifty percent of the initial design capacity of the facility. The eligible business shall inform the department of revenue in writing within two weeks of project completion.

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

2003 Acts, ch 145, §286  
Terminology change applied

**15.331 New jobs credit from withholding.**

An eligible business may enter into an agreement with the department of revenue and a community college for a supplemental new jobs credit from withholding from jobs created under the program. The agreement shall be for program services for an additional job training project, as defined in chapter 260E. The agreement shall provide for the following:

1. That the project shall be administered in the same manner as a project under chapter 260E

and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the eligible business pursuant to section 422.16 is authorized to fund the program services for the additional project.

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

3. That the auditor of state shall perform an annual audit regarding how the training funds are being used.

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

2003 Acts, ch 145, §286  
Terminology change applied

**15.331A Sales, services, and use tax refund — contractor or subcontractor.**

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

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

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

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

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

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

2003 Acts, ch 145, §286  
For future amendment to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §152, 205  
Terminology change applied

#### **15.331B Exemption from land ownership restrictions for nonresident aliens.**

1. The eligible business, to the extent the eligible business is not actively engaged in farming within the economic development area, may acquire and own up to one thousand acres of land in the economic development area, notwithstanding the provisions of section 9I.3 if the eligible business has been designated an exempt business under subsection 3. An eligible business may lease up to an additional two hundred eighty acres of land in the economic development area.

The eligible business may receive one or more extensions of the time limit for complying with the requirements of section 9I.4. Each extension must be approved by the community prior to approval by the department. An eligible business may receive one five-year extension and one or more one-year extensions. The eligible business shall comply with the remaining provisions of chapter 9I to the extent they do not conflict with this subsection.

2. *“Actively engaged in farming”* means any of the following:

a. Inspecting agricultural production activities within the economic development area periodically and furnishing at least half of the value of the tools and paying at least half the direct cost of production.

b. Regularly and frequently making or taking an important part in making management decisions substantially contributing to or affecting the success of the farm operations within the economic development area.

c. Performing physical work which significantly contributes to crop or livestock production.

3. An eligible business shall not receive the exemption under this section unless it has applied to be designated an exempt business by July 1, 2002.

4. The department of economic development shall monitor the activities of eligible businesses receiving the exemption under this section and report to the general assembly by December 15 of

each year.

5. An eligible business that complies with this section shall be considered to be acquiring, owning, or leasing agricultural land for immediate or potential use in nonfarming purposes under section 9H.4, subsection 4.

2003 Acts, ch 34, §1  
Subsection 1, unnumbered paragraph 2 amended

#### **15.333 Investment tax credit.**

1. An eligible business may claim a corporate tax credit up to a maximum of ten percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business under the program. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. Subject to prior approval by the department of economic development in consultation with the department of revenue, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund of all or a portion of an unused tax credit. For purposes of this section, an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return. The refund may be used against a tax liability imposed under chapter 422, division II, III, or V. If the business is a partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

For purposes of this section, *“new investment directly related to new jobs created by the location or expansion of an eligible business under the program”* means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs “e” and “j”, purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, and the cost of improvements made to real property which is used in the operation of the eligible business.

2. An eligible business whose project primarily involves the production of value-added agricultural products, that elects to receive a refund of all or a portion of an unused tax credit, shall apply to the department of economic development for tax credit certificates. An eligible business whose project primarily involves the production of value-added agricultural products shall not claim a tax credit under this section unless a tax credit certifi-

cate issued by the department of economic development is attached to the taxpayer's tax return for the tax year for which the tax credit is claimed. For purposes of this section, an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return. For purposes of this section, an eligible business also includes a cooperative described in section 521 of the Internal Revenue Code which is required to file an Iowa corporate income tax return. Such cooperative may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro rata share of the member's earnings of the cooperative.

A tax credit certificate shall not be valid until the tax year following the date of the project completion. A tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of the tax credit, and other information required by the department of revenue. The department of economic development shall not issue tax credit certificates under this subsection and section 15.385, subsection 3, paragraph "c", which total more than four million dollars during a fiscal year. If the department receives and approves applications for tax credit certificates under this subsection and section 15.385, subsection 3, paragraph "c", in excess of four million dollars, the applicants shall receive certificates for a prorated amount. The tax credit certificates shall not be transferred except as provided in this subsection for a cooperative described in section 521 of the Internal Revenue Code which is required to file an Iowa corporate income tax return. For a cooperative described in section 521 of the Internal Revenue Code, the department of economic development shall require that the cooperative submit a list of its members and the share of each member's interest in the cooperative. The department shall issue a tax credit certificate to each member contained on the submitted list.

3. For purposes of this section, the purchase price of real property and any buildings and structures located on the real property will be considered a new investment in the location or expansion of an eligible business. However, if within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

*a.* One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one full year after being placed in service.

*b.* Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two full years after being placed in service.

*c.* Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three full years after being placed in service.

*d.* Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four full years after being placed in service.

*e.* Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five full years after being placed in service.

2003 Acts, ch 125, §8; 2003 Acts, ch 145, §286; 2003 Acts, ch 150, §1 – 3  
2003 amendments to subsections 1 and 2, by 2003 Acts, ch 150, apply to  
tax years beginning on or after July 1, 2003; 2003 Acts, ch 150, §3

See Code editor's note to §2.9

Terminology change applied

Subsection 1, unnumbered paragraph 1 amended

Section 2 amended

#### 15.334A Sales and use tax exemption.

An eligible business may claim an exemption from sales and use taxation under section 422.45, subsection 27, for property which is exempt from taxation under section 15.334, notwithstanding the requirements of section 422.45, subsection 27, or any other provision of the Code to the contrary.

For future amendments to this section, effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §153, 205

Section not amended; footnote added

#### 15.335 Research activities credit.

1. An eligible business may claim a corporate tax credit for increasing research activities in this state during the period the eligible business is participating in the program.

*a.* The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

*b.* In lieu of the credit amount computed in paragraph "a", subparagraph (1), an eligible business may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the

taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph "b", the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

2. The credit allowed in this section is in addition to the credit authorized in section 422.10 and section 422.33, subsection 5. However, if the alternative credit computation method is used in section 422.10 or section 422.33, subsection 5, the credit allowed in this section shall also be computed using that method.

3. If the eligible business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

4. For purposes of this section, "*base amount*", "*basic research payment*", and "*qualified research expense*" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state.

For purposes of this section, "*Internal Revenue Code*" means the Internal Revenue Code in effect on January 1, 2003.

5. Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following year.

2003 Acts, ch 139, §1, 11, 12

For 2000 amendment to former unnumbered paragraph 1 providing for corporate tax credits for increasing research activities, which takes effect April 26, 2000, and applies retroactively to tax years beginning on or after January 1, 1999, see 2000 Acts, ch 1146, §1, 9, 11

2000 amendments amending and renumbering former unnumbered paragraphs 1 and 2 as subsections 1 - 5, and providing alternative methods of computing the corporate tax credit for increasing research activities, apply retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1194, §21

2001 amendment to subsection 4 is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

2002 amendment to subsection 4 takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1069, §10, 14

2003 amendment to subsection 4 takes effect May 21, 2003, and applies retroactively to tax years beginning on or after January 1, 2002; 2003 Acts, ch 139, §11, 12

Subsection 4 amended

### 15.337 Waiver of program qualification requirements.

A community may request the waiver of the requirement for number of positions created under section 15.329. However, in no event shall the minimum number of jobs created be less than fifteen per application under the program. The department may grant a waiver for good cause shown and approve the program application.

As used in this section, "*good cause shown*" includes a county family poverty rate higher than the state average, a county unemployment rate higher than the state average, a unique opportunity to use existing unutilized facilities in the community, a significant downsizing or closure by one of the community's major employers, or an immediate threat posed to the community's workforce due to business downsizing or closure. "*Good cause shown*" may also include a proposed project by a business in one of the state's targeted industry clusters which will make a higher than average capital investment and which will pay an average starting wage for all the new jobs created as the result of the project that is significantly higher than the wage requirement in section 15.329. For purposes of this section, "*targeted industry clusters*" includes the industry clusters of life sciences, information solutions, and advanced manufacturing.

2003 Acts, ch 125, §9  
Section amended

### 15.343 Workforce development fund.

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

a. Notwithstanding section 8.33, all unencumbered and unobligated funds from 1994 Iowa Acts, chapter 1201, section 1, subsection 6, except paragraph "d"; section 3, subsections 1 and 3; and section 10, remaining on July 1, 1995, and all unencumbered and unobligated funds in the Iowa conservation corps escrow account established in section 84A.7 and the job training fund established in section 260F.6.

b. Moneys appropriated to the fund from the workforce development fund account established in section 15.342A.

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

penditure for subsequent fiscal years.

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

a. Training and retraining programs for targeted industries.

b. Projects under chapter 260F. The department shall require a match from all businesses participating in a training project under chapter 260F.

c. Apprenticeship programs under section 260C.44, including new or statewide building trades apprenticeship programs.

d. Innovative skill development activities.

e. To cover the costs of the administration of workforce development programs and services available through the department. A portion of these funds may be used to support efforts by the community colleges to provide workforce services to Iowa employers.

3. a. The director shall submit not later than January 1 of each year at a regular or special meeting, for approval by the economic development board, the proposed allocation of funds from the workforce development fund to be made for the next fiscal year for the programs and purposes contained in subsection 2. The director shall also submit a copy of the proposed allocation to the chairpersons of the joint economic development appropriations subcommittee of the general assembly. Notwithstanding section 8.39, the plan may provide for increased or decreased allocations if the demand for a program indicates that the need is greater or lesser than the allocation for that program. The director shall report on a quarterly basis to the board on the status of the funds and may present proposed revisions for approval by the board in January and April of each year. The director shall also provide quarterly reports to the legislative services agency on the status of the funds. Unobligated and unencumbered moneys remaining in the workforce development fund or any of its accounts on June 30 of each year shall be considered part of the fund for purposes of the next year's allocation.

b. Moneys in the workforce development fund shall be allocated as follows:

(1) Three million dollars shall be used for purposes provided in section 260F.6.

(2) One million dollars shall be used for purposes provided in section 260F.6B.

2003 Acts, ch 35, §45, 49  
Terminology change applied

**15.349 Shelter assistance fund.**

A shelter assistance fund is created as a revolving fund in the state treasury under the control of the department consisting of any moneys appropriated by the general assembly and received under section 428A.8 for purposes of the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic vio-

lence shelters. Of the moneys in the fund, not less than five hundred forty-six thousand dollars shall be spent annually on homeless shelter projects. Notwithstanding section 8.33, all moneys in the shelter assistance fund which remain unexpended or unobligated at the close of the fiscal year shall not revert to the general fund of the state but shall remain available for expenditure for subsequent fiscal years.

2003 Acts, ch 73, §1  
Section amended

**15.354 Local housing assistance program fund.**

1. The local housing assistance program fund is created consisting of one million dollars appropriated from the rebuild Iowa infrastructure fund each fiscal year starting with the fiscal year beginning July 1, 1997, and ending June 30, 1998, and ending with the fiscal year beginning July 1, 2001, and ending June 30, 2002, notwithstanding section 8.57, subsection 5, paragraph "c", and any other moneys appropriated to or received by the department for deposit in the fund.

2. Payments of interest, recaptures of awards, or other repayments to the fund shall be deposited in the fund. Moneys in the local housing assistance program fund are not subject to section 8.33.

3. The fund is subject to an annual audit by the auditor of state. Moneys in the fund, which may be subject to warrants written by the director of the department of administrative services, shall be drawn upon the written requisition of the director of the department of economic development or an authorized representative of the director.

2003 Acts, ch 145, §286  
Terminology change applied

**15.365 Payroll expenditure refund.**

1. An employer who employs a participant in a certified school-to-career program may claim a refund of twenty percent of the employer's payroll expenditures for each participant in the certified program or twenty percent of the employer's expenditures for participant experience expenses provided for in the certified program agreement which may include instructor expenses, instructional materials, up to one hundred fifty thousand dollars of training facility costs per program, and project coordination. The refund is limited to the first four hundred hours of payroll or participant experience expenditures per participant for each calendar year the participant is in the certified program, not to exceed three years per participant.

2. To receive a refund under subsection 1 for a calendar year, the employer shall file the claim by July 1 of the following calendar year. The claim shall be filed on forms provided by the department of economic development and the employer shall provide such information regarding the employer's participation in a certified school-to-career program as the department may require. Forms

should be designed such that claims for refunds for more than one participant may be made on a single form.

3. For each fiscal year of the fiscal period beginning July 1, 1999, and ending June 30, 2004, there is appropriated up to five hundred thousand dollars annually from the general fund of the state to the department of economic development to pay refunds under this section. If the amount appropriated in a fiscal year is insufficient to pay all refund claims for the calendar year in full, each claimant shall receive a proportion of the claimant's refund claim equal to the ratio of the amount appropriated to the total amount of refund claims. Any unpaid portion of a claim shall not be paid from a subsequent fiscal year appropriation.

4. The department of economic development shall consult with the department of revenue for purposes of this section. The department of economic development shall adopt rules as deemed necessary to carry out the purposes of the certified school-to-career program.

2003 Acts, ch 145, §286  
Terminology change applied

**15.374 through 15.380** Reserved.

#### PART 20

#### **15.381 Short title.**

This part shall be known as and may be cited as the "*New Capital Investment Program*".

2003 Acts, ch 125, §1  
NEW section

#### **15.382 Purpose.**

It is the purpose of this part to promote new economic development through new capital investments that upgrade and expand the capabilities of Iowa businesses by allowing the businesses to be more competitive in the world economy.

2003 Acts, ch 125, §2  
NEW section

#### **15.383 Definitions.**

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

1. "*Community*" means a city, county, or other entity established pursuant to chapter 28E.

2. "*Eligible business*" means a business which has been approved to receive incentives by the department pursuant to section 15.384, subsection 3.

2003 Acts, ch 125, §3  
NEW section

#### **15.384 Eligible business.**

1. To be eligible to receive incentives under this part, a business shall meet all of the following requirements:

*a.* The business has not closed or reduced its operation in one area of the state and relocated

substantially the same operation in the community.

*b.* The business is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

*c.* The business makes a capital investment of at least one million dollars.

*d.* The business creates high-quality jobs due to the capital investment. In determining whether high-quality jobs are created, the department shall place greater emphasis on jobs that have all the following characteristics:

(1) Have a wage equal to at least the average county wage.

(2) Are full-time or career-type positions.

(3) Provide comprehensive health benefits.

(4) Have other related characteristics which could be considered to be higher in quality than do other jobs.

*e.* The start-up, location, or expansion of the business occurs within a specified period which will be negotiated with the department and the community, but which shall be at least a period of three years.

*f.* The business provides the community and the department with an affidavit stating that the business has not, within the five years prior to the application date, violated state or federal environmental or worker safety statutes, rules, or regulations or, if such violation has occurred, that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

2. The community and the department may also consider a variety of factors, including the following, in determining the eligibility of a business to participate in the program:

*a.* The impact of the proposed project on the community and the state.

*b.* The impact the business will have on other businesses in competition with it.

*c.* The potential for future growth in the industry represented by the business.

*d.* The impact the proposed new capital investment will have on the ability of the business to expand, upgrade, or modernize its capabilities, and the extent to which the new capital investment will result in a more productive and competitive business enterprise and workforce.

*e.* The local funding match to be provided.

3. If the community determines that a business is eligible, the community shall approve by resolution the application for incentives. Once a business is found to be eligible, the community shall submit the application to the department. The department may approve, defer, or deny the application.

2003 Acts, ch 125, §4  
NEW section

#### **15.385 Incentives.**

For tax years beginning on or after January 1,

2003, an eligible business shall be eligible to receive some or all of the following incentives:

1. Sales, services, and use tax refund, as provided in section 15.331A.

2. Research activities credit, as provided in section 15.335.

3. *a.* An eligible business may claim a tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business under the program. The tax credit shall be allowed against taxes imposed under chapter 422, division II, III, or V. If the business is a partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust. The percentage shall be equal to the amount provided in paragraph "d". Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

Subject to prior approval by the department of economic development, in consultation with the department of revenue, an eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund of all or a portion of an unused tax credit. For purposes of this subsection, such an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose project primarily involves the production of ethanol. The refund may be applied against a tax liability imposed under chapter 422, division II, III, or V. If the business is a partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

*b.* For purposes of this subsection, "*new investment directly related to new jobs created by the location or expansion of an eligible business under the program*" means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs "e" and "j", purchased for use in the operation of the eligible business, the pur-

chase price of which has been depreciated in accordance with generally accepted accounting principles, the purchase price of real property and any buildings and structures located on the real property, and the cost of improvements made to real property which is used in the operation of the eligible business. If, however, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) One hundred percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within five full years after being placed in service.

*c.* (1) An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes, which elects to receive a refund of all or a portion of an unused tax credit, shall apply to the department of economic development for tax credit certificates. Such an eligible business shall not claim a tax credit refund under this subsection unless a tax credit certificate issued by the department of economic development is attached to the taxpayer's tax return for the tax year for which the tax credit refund is claimed. For purposes of this subsection, an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose project primarily involves the production of ethanol. For purposes of this subsection, an eligible business also includes a cooperative described in section 521 of the Internal Revenue Code which is required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol. Such cooperative may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro

rata share of the member's earnings of the cooperative.

(2) A tax credit certificate shall not be valid until the tax year following the date of the capital investment project completion. A tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of the tax credit, and other information required by the department of revenue. The department of economic development shall not issue tax credit certificates under this subsection and section 15.333, subsection 2, which total more than four million dollars during a fiscal year. If the department receives and approves applications for tax credit certificates under this subsection and section 15.333, subsection 2, in excess of four million dollars, the applicants shall receive certificates for a prorated amount. The tax credit certificates shall not be transferred except as provided in this subsection for a cooperative described in section 521 of the Internal Revenue Code which is required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol. For a cooperative described in section 521 of the Internal Revenue Code, the department of economic development shall require that the cooperative submit a list of its members and the share of each member's interest in the cooperative. The department shall issue a tax credit certificate to each member contained on the submitted list.

d. The amount of a tax credit claimed under this subsection shall be determined as follows:

(1) If the department determines, based on the application of the eligible business, that high-quality jobs are not created but economic activity within the state is advanced, the eligible business may claim a tax credit of up to one percent of the new investment.

(2) If the department determines, based on the application of the eligible business, that one to five high-quality jobs are created, the eligible business may claim a tax credit of up to two percent of the new investment.

(3) If the department determines, based on the application of the eligible business, that six to ten high-quality jobs are created, the eligible business may claim a tax credit of up to three percent of the new investment.

(4) If the department determines, based on the application of the eligible business, that eleven to fifteen high-quality jobs are created, the eligible business may claim a tax credit of up to four percent of the new investment.

(5) If the department determines, based on the application of the eligible business, that more than fifteen high-quality jobs are created, the eligible business may claim a tax credit of up to five percent of the new investment.

4. a. An eligible business may claim an insurance premium tax credit equal to a percentage of the new investment directly related to new jobs

created by the location or expansion of an eligible business under the program. The tax credit shall be allowed against taxes imposed in chapter 432. A tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The percentage shall be equal to the amount provided in paragraph "c".

b. For purposes of this subsection, "*new investment directly related to new jobs created by the location or expansion of an eligible business under the program*" means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs "e" and "j", purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, the purchase price of real property and any buildings and structures located on the real property, and the cost of improvements made to real property which is used in the operation of the eligible business. If, however, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) One hundred percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the tax credit claimed under this subsection if the property ceases to be eligible for the tax credit within five full years after being placed in service.

c. The amount of the tax credit claimed under this subsection shall be determined as follows:

(1) If the department determines, based on the application of the eligible business, that high-quality jobs are not created but economic activity within the state is advanced, the eligible business may claim an insurance premium tax credit of up to one percent of the new investment.

(2) If the department determines, based on the application of the eligible business, that one to five high-quality jobs are created, the eligible business

may claim an insurance premium tax credit of up to two percent of the new investment.

(3) If the department determines, based on the application of the eligible business, that six to ten high-quality jobs are created, the eligible business may claim an insurance premium tax credit of up to three percent of the new investment.

(4) If the department determines, based on the application of the eligible business, that eleven to fifteen high-quality jobs are created, the eligible business may claim an insurance premium tax credit of up to four percent of the new investment.

(5) If the department determines, based on the application of the eligible business, that more than fifteen high-quality jobs are created, the eligible business may claim an insurance premium tax credit of up to five percent of the new investment.

2003 Acts, ch 125, §5; 2003 Acts, ch 145, §286  
 NEW section  
 Terminology change applied

**15.386 Agreement.**

A business shall enter into an agreement with the department specifying the requirements that must be met to confirm eligibility pursuant to section 15.384. The department shall consult with the community during negotiations relating to the agreement. The agreement shall contain, at a minimum, the following provisions:

1. A business that is approved to receive incentives shall, for the length of the agreement, certify annually to the community and the department the compliance of the business with the requirements of the agreement.

2. The repayment of incentives by the business if the business has not met any of the requirements of this part or the resulting agreement.

3. If a business that is approved to receive incentives under this part experiences a layoff within the state or closes any of its facilities within the state, the department shall have the discretion to reduce or eliminate some or all of the incentives. If a business has received incentives under this part and experiences a layoff within the state or closes any of its facilities within the state, the business may be subject to repayment of all or a portion of the incentives that it has received.

2003 Acts, ch 125, §6  
 NEW section

**15.387 Other incentives.**

An eligible business may receive other applicable federal, state, and local incentives and tax credits in addition to those provided in this part. However, a business which participates in the program under this part shall not receive any funds, tax credits, or incentives under chapter 15, subchapter II, part 13, or chapter 15E, division XVIII.

2003 Acts, ch 125, §7  
 NEW section

**CHAPTER 15A**

**USE OF PUBLIC FUNDS  
 TO AID ECONOMIC DEVELOPMENT**

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

*1. Findings — zone designation.*

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

*b.* In order to assist a community or communities located within the state to secure new industrial manufacturing jobs, the state of Iowa makes economic development assistance available within the zone or zones, and the department of economic development shall designate a site or sites,

which shall not be larger than two thousand five hundred acres, within thirty days of March 4, 1994, as a quality jobs enterprise zone or zones for the purpose of attracting a primary business and supporting businesses to locate facilities within the state.

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

*2. Definitions.* As used in this section:

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

*b. "Primary business"* means a business which pays its full-time production employees at the facility average cash compensation, which shall not include the cost of the business's contribution to

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

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

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

e. *“Zone or zones”* means a quality jobs enterprise zone or zones.

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

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

b. That the supplemental new jobs credit from withholding shall be collected, accounted for, and

may be pledged by the community college in the same manner as described in section 260E.5.

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

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

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

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

5. *Property tax exemption.*

a. All property, as defined in section 427A.1, subsection 1, paragraphs “e” and “j”, Code 1993, used by the primary business or a supporting business and located within the zone, shall be exempt from property taxation for a period of twenty years beginning with the year it is first assessed for taxation. In order to be eligible for this exemption, the property shall be acquired or leased by the primary business or a supporting business or relocated by the primary business or a supporting business to the zone from outside the state prior to project completion.

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

6. *Sales, services, and use tax refund.* Taxes paid pursuant to chapter 422 or 423 on the gross receipts or rental price of property purchased or rented by the primary business or a supporting

business for use by the primary business or a supporting business within the zone or on gas, electricity, water, and sewer utility services prior to project completion shall be refunded to the primary business or supporting business if the item was purchased or the service was performed or received prior to project completion. Claims under this section shall be submitted on forms provided by the department of revenue not later than six months after project completion. The refund in this subsection shall not apply to furniture or furnishings, or intangible property.

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

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

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

b. The primary business or a supporting business shall, not more than six months after project completion, make application to the department for any refund of the amount of the taxes paid pursuant to chapter 422 or 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services. The application shall be made in the manner and upon forms to be provided by the department, and the department shall audit the claim and, if approved, issue a warrant to the primary business or supporting business in the amount of the sales or use tax which has been paid to the state of Iowa under a contract. A claim filed by the primary business or a supporting business in accordance with this subsection shall not be denied by reason of a limitation provision set forth in chapter 421, 422, or 423.

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

8. *Corporate tax research credit.* A corporate

tax credit shall be available to the primary business or a supporting business for increasing research activities in this state within the zone.

a. The credit equals the sum of the following:

(1) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Thirteen percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state within the zone to total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph "a", subparagraph (1), a business may elect to compute the credit amount for qualified research expenses incurred in this state within the zone in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph "b", the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are three and thirty hundredths percent, four and forty hundredths percent, and five and fifty hundredths percent, respectively.

d. Any credit in excess of the tax liability for the tax year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, the primary business or a supporting business may elect to have the overpayment shown on its final return credited to its tax liability for the following tax year.

e. For the purposes of this subsection, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state within the zone.

For purposes of this subsection, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2003.

f. The credit authorized in this subsection is in lieu of the credit authorized in section 422.10 and section 422.33, subsection 5.

9. *Exemption from land ownership restrictions*

for nonresident aliens.

a. The primary business and a supporting business, to the extent the primary business or the supporting business is not actively engaged in farming within the zone, may acquire, own, and lease land in the zone, notwithstanding the provisions of sections 9H.4, 9H.5, and 9I.3, and shall be exempt from the requirements of section 9I.4. The primary business and supporting business shall comply with the remaining provisions of chapters 9H and 9I to the extent they do not conflict with this subsection.

b. “Actively engaged in farming” means any of the following:

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

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

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

10. *Limitation on assistance.* Economic development assistance under subsections 3 through 9 shall only be available to the primary

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

2003 Acts, ch 35, §26, 49; 2003 Acts, ch 139, §2; 2003 Acts, ch 145, §286  
For future amendments to subsections 5, 6, and 7 effective July 1, 2004,  
see 2003 Acts, 1st Ex, ch 2, §154, 205

2003 amendment to subsection 8, paragraph e, takes effect May 21,  
2003, and applies retroactively to tax years beginning on or after January  
1, 2002; 2003 Acts, ch 139, §11, 12

Terminology change applied  
Subsection 8, paragraph e amended  
Subsection 11 stricken

## CHAPTER 15E

### DEVELOPMENT ACTIVITIES

#### 15E.11 Corporation for receiving and disbursing funds.

The Iowa development commission is hereby authorized to form a corporation under the provisions of chapter 504, Code 1989, for the purpose of receiving and disbursing funds from public or private sources to be used to further the overall development and well-being of the state.

2003 Acts, ch 108, §7  
Section amended

#### DIVISION III

#### REGULATORY INFORMATION AND ASSISTANCE

#### 15E.18 Cities, counties, and regions — site preparation for targeted economic development.

1. For purposes of this section, “region” means a group of two or more contiguous counties that establishes a single, focused economic development effort.

2. A city, county, or region, subject to the approval of the property owner, may designate an area within the boundaries of the city, county, or region for a specific type of targeted economic de-

velopment. The specific type of targeted economic development shall be one of the following:

- a. Manufacturing.
- b. Light industrial.
- c. Warehouse and distribution.
- d. Office parks.
- e. Business and commerce parks.
- f. Research and development.

3. A city, county, or region that designates an area for a specific type of targeted economic development may apply to the department for purposes of certifying the area as a preapproved development site. The department shall develop criteria for the certification process.

4. Prior to a specific project being developed, a city, county, or region designating the area for targeted economic development pursuant to this section may apply for and obtain appropriate licenses, permits, and approvals for the type of targeted economic development project desired for the area.

2003 Acts, ch 158, §1; 2003 Acts, 1st Ex, ch 1, §130, 133  
See Code editor's note to §2.9  
NEW section

#### 15E.19 Regulatory assistance.

1. The department of economic development shall coordinate all regulatory assistance for the

state of Iowa. Each state agency with regulatory programs for business shall maintain a coordinator within the office of the director or the administrative division of the state agency. Each coordinator shall do all of the following:

- a. Serve as the department of economic development's primary contact for regulatory affairs.
- b. Provide regulatory requirements to businesses and represent the agency in the private sector.
- c. Monitor permit applications and provide timely permit status information to the department of economic development.
- d. Have the ability to require regulatory staff participation in negotiations and discussions with businesses.
- e. Notify the department of economic development regarding proposed rulemaking activities that impact a regulatory program and any subsequent changes to a regulatory program.

2. The department of economic development shall, in consultation with the coordinators described in this section, examine, and to the extent permissible, assist in the implementation of methods, including the possible establishment of an electronic database, to streamline the process for issuing permits to business.

3. By January 15 of each year, the department of economic development shall submit a written report to the general assembly regarding the provision of regulatory assistance by state agencies, including the department's efforts, and its recommendations and proposed solutions, to streamline the process of issuing permits to business.

2003 Acts, 1st Ex, ch 1, §131, 133  
NEW section

**15E.20 Business start-up information — internet web site.**

The department shall provide information through an internet web site and a toll-free telephone service to assist persons interested in establishing a commercial facility or engaging in a commercial activity. The information shall include all of the following:

- 1. Assistance, information, and guidance for start-up businesses.
- 2. Information gathered by the department pursuant to section 15E.17, subsection 2.
- 3. Personal and corporate income tax information.
- 4. Information regarding financial assistance and incentives available to businesses.
- 5. Workforce availability in the state presented in a regional format.

2003 Acts, 1st Ex, ch 1, §107, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

**15E.21 through 15E.24** Reserved.

**15E.42 Definitions.**

For purposes of this division, unless the context otherwise requires:

- 1. "Affiliate" means a spouse, child, or sibling of an investor or a corporation, partnership, or trust in which an investor has a controlling equity interest or in which an investor exercises management control.
- 2. "Board" means the Iowa capital investment board created in section 15E.63.
- 3. "Investor" means an individual making a cash investment in a qualifying business or an individual taxed on income from a revocable trust's cash investment in a qualifying business or a person making a cash investment in a community-based seed capital fund. "Investor" does not include a person which is a current or previous owner, member, or shareholder in a qualifying business.
- 4. "Near equity" means debt that may be converted to equity at the option of the debt holder, and royalty agreements.
- 5. "Qualifying business" means a business meeting the criteria defined in section 15E.44.

2003 Acts, ch 108, §8; 2003 Acts, ch 179, §95, 159  
Section takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13  
2003 amendment to subsection 3 applies retroactively to January 1, 2002, for tax years beginning on or after that date; 2003 Acts, ch 179, §159  
Subsections 2 and 3 amended

**15E.43 Investment tax credits.**

1. a. For tax years beginning on or after January 1, 2002, a tax credit shall be allowed against the taxes imposed in chapter 422, division II, for a portion of an individual taxpayer's equity investment, as provided in subsection 2, in a qualifying business. An individual shall not claim a tax credit under this paragraph of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. However, an individual receiving income from a revocable trust's investment in a qualified business may claim a tax credit under this paragraph against the taxes imposed in chapter 422, division II, for a portion of the revocable trust's equity investment, as provided in subsection 2, in a qualified business.

b. For tax years beginning on or after January 1, 2002, a tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.24, for a portion of a taxpayer's equity investment, as provided in subsection 2, in a community-based seed capital fund. An individual may claim a tax credit under this paragraph of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The

amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

c. A tax credit shall be allowed only for an investment made in the form of cash to purchase equity in a qualifying business or in a community-based seed capital fund. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

d. In the case of a tax credit allowed against the taxes imposed in chapter 422, division II, where the taxpayer died prior to redeeming the entire tax credit, the remaining credit can be redeemed on the decedent's final income tax return.

2. A tax credit shall equal twenty percent of the taxpayer's equity investment. The maximum amount of a tax credit for an investment by an investor in any one qualifying business shall be fifty thousand dollars. Each year, an investor and all affiliates of the investor shall not claim tax credits under this section for more than five different investments in five different qualifying businesses.

3. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. An investment made prior to January 1, 2002, shall not qualify for a tax credit under this division.

4. The aggregate amount of tax credits issued pursuant to this division shall not exceed a total of ten million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2002, shall not exceed three million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2003, shall not exceed three million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2004, shall not exceed four million dollars.

5. A tax credit shall not be redeemed during any tax year beginning prior to January 1, 2005. A tax credit shall not be transferable to any other taxpayer.

6. The board shall develop a system for registration and authorization of tax credits authorized pursuant to this division and shall control distribution of all tax credits distributed to investors pursuant to this division. The board shall develop rules for the qualification and administration of qualifying businesses and community-based seed capital funds. The department of revenue shall adopt these criteria as administrative rules and any other rules pursuant to chapter 17A necessary for the administration of this division.

7. The board may cooperate with the small

business development centers in an effort to disseminate information regarding the availability of tax credits for investments in qualifying businesses under this division. The board may also cooperate with the small business development centers to develop a standard seed capital application form that the small business development centers may submit to the board on behalf of clients seeking seed capital. The board shall distribute copies of the application forms to all community-based seed capital funds and potential individual investors.

2003 Acts, ch 145, §286; 2003 Acts, ch 179, §96, 97, 159  
2003 amendments to subsection 1, paragraph a, and subsection 1, paragraph d, take effect May 30, 2003, and apply retroactively to January 1, 2002, for tax years beginning on or after that date; 2003 Acts, ch 179, §159  
Terminology change applied  
Subsection 1, paragraph a amended  
Subsection 1, NEW paragraph d

#### 15E.44 Qualifying businesses.

1. In order for an equity investment to qualify for a tax credit, the business in which the equity investment is made shall, within one hundred twenty days of the date of the first investment, notify the board of the names, addresses, taxpayer identification numbers, shares issued, consideration paid for the shares, and the amount of any tax credits, of all shareholders who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The list of shareholders who may qualify for the tax credits shall be amended as new equity investments are sold or as any information on the list shall change.

2. In order to be a qualifying business, a business must meet all of the following criteria:

a. The principal business operations of the business are located in this state.

b. The business has been in operation for three years or less.

c. The business has an owner who has successfully completed one of the following:

(1) An entrepreneurial venture development curriculum.

(2) Three years of relevant business experience.

(3) A four-year college degree in business management, business administration, or a related field.

(4) Other training or experience as the board may specify by rule or order as sufficient to increase the probability of success of the qualifying business.

d. The business is not a business engaged primarily in retail sales, real estate, or the provision of health care or other professional services.

e. The business shall not have a net worth that exceeds three million dollars.

f. The business shall have secured, within twenty-four months following the first date on which the equity investments qualifying for tax credits have been made, total equity or near equity financing equal to at least two hundred fifty thou-

sand dollars.

3. A qualifying business shall have the burden of proof to demonstrate to the board its qualifications under this section, and shall have the obligation to notify the board in a timely manner of any changes in the qualifications of the business or in the eligibility of investors to redeem the investment tax credits in any tax year.

4. After verifying the eligibility of a qualifying business, the board shall issue a tax credit certificate to be attached to the equity investor's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of credit, the name of the qualifying business, and other information required by the department of revenue. The tax credit certificate, unless rescinded by the board, shall be accepted by the department of revenue as payment for taxes imposed pursuant to chapter 422, division II, subject to any conditions or restrictions placed by the board upon the face of the tax credit certificate and subject to the limitations of section 15E.43.

2003 Acts, ch 145, §286  
Section is effective February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13  
Terminology change applied

#### **15E.45 Community-based seed capital funds.**

1. An investment in a community-based seed capital fund shall qualify for a tax credit under section 15E.43 provided that all requirements of sections 15E.43, 15E.44, and this section are met.

2. In order to be a community-based seed capital fund qualifying under this section, a community-based seed capital fund must meet all of the following criteria:

*a.* The fund is a limited partnership or limited liability company.

*b.* The fund has, on or after January 1, 2002, a total of both capital commitments from investors and investments in qualifying businesses of at least five hundred thousand dollars, but not more than three million dollars.

*c.* The fund has no fewer than ten investors who are not affiliates, with no single investor and affiliates of that investor together owning a total of more than twenty-five percent of the ownership interests outstanding in the fund.

3. *a.* In order for an investment in a community-based seed capital fund to qualify for a tax credit, the community-based seed capital fund in which the investment is made shall, within one hundred twenty days of the date of the first investment, notify the board of all of the following:

(1) The names, addresses, taxpayer identification numbers, equity interests issued, consideration paid for the interests, and the amount of any tax credits.

(2) All limited partners or members who may initially qualify for the tax credits.

(3) The earliest year in which the tax credits may be redeemed.

*b.* The list of limited partners or members who may qualify for the tax credits shall be amended as new equity interests are sold or as any information on the list shall change.

4. After verifying the eligibility of the community-based seed capital fund, the board shall issue a tax credit certificate to be attached to the taxpayer's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the tax credit, the name of the community-based seed capital fund, and other information required by the department of revenue. The tax credit certificate, unless rescinded by the board, shall be accepted by the department of revenue or a local taxing district, as applicable, as payment for taxes imposed pursuant to chapter 422, divisions II, III, and V, and chapter 432, and as payment for the moneys and credits tax imposed pursuant to section 533.24, subject to any conditions or restrictions placed by the board on the face of the tax credit certificate and subject to the limitations of section 15E.43.

5. The manager of the community-based seed capital fund shall have the burden of proof to demonstrate to the board the community-based seed capital fund's qualifications under this section, and shall have the obligation to notify the board in a timely manner of any changes in the qualifications of the community-based seed capital fund, in the qualifications of any qualifying business in which the fund has invested, or in the eligibility of limited partners or members to redeem the investment tax credits in any year.

6. In the event that a community-based seed capital fund fails to meet or maintain any requirement set forth in this section, or in the event that the community-based seed capital fund has not invested at least thirty-three percent of its invested capital in no fewer than two separate qualifying businesses, measured at the end of the thirty-sixth month after commencing the fund's investing activities, the board shall rescind any tax credit certificates issued to limited partners or members and shall notify the department of revenue that it has done so, and the tax credit certificates shall be null and void. However, a community-based seed capital fund may apply to the board for a one-year waiver of the requirements of this subsection.

7. An investor in a community-based seed capital fund shall receive a tax credit pursuant to this division only for the investor's investment in the community-based seed capital fund and shall not receive any additional tax credit for the investor's share of investments in a qualifying business made by the community-based seed capital fund. However, an investor in a community-based seed capital fund may receive a tax credit under this division with respect to a separate direct investment

made by the investor in the same qualifying business in which the community-based seed capital fund invests.

8. A community-based seed capital fund shall not invest in the Iowa fund of funds, if organized pursuant to section 15E.65.

2003 Acts, ch 44, §10; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §98, 159  
2003 amendment to subsection 2, paragraph c, is effective May 30, 2003, and applies retroactively to January 1, 2002, for tax years beginning on or after that date; 2003 Acts, ch 179, §159

Terminology change applied  
Subsection 1 amended  
Subsection 2, paragraph c amended  
Subsections 3, 6, and 8 amended

#### **15E.51 Venture capital fund investment tax credits.**

1. For purposes of this section, “*venture capital fund*” means a private seed and venture capital partnership or entity fund that has been certified by the Iowa capital investment board created in section 15E.63, pursuant to subsection 7.

2. A tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.24, for a portion of a taxpayer’s equity investment in a venture capital fund. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, estate, or trust.

3. The amount of a tax credit shall not exceed six percent of the taxpayer’s equity investment in venture capital funds.

4. A taxpayer shall not claim a tax credit under this section if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds created in section 15E.65 or an investor that receives a tax credit for the same investment in a community-based seed capital fund as described in section 15E.45.

5. *a.* The Iowa capital investment board created in section 15E.63 shall issue certificates which may be redeemed for tax credits. The Iowa capital investment board created in section 15E.63 shall issue certificates so that not more than a total of five million dollars of tax credits may be claimed. The certificates shall not be transferable.

*b.* The Iowa capital investment board created in section 15E.63 shall, in cooperation with the department of revenue, establish criteria and procedures for the allocation and issuance of tax credits by means of certificates issued by the Iowa capital investment board created in section 15E.63. The criteria shall include the contingencies that must be met for a certificate to be redeemable in order to receive a tax credit. The procedures established by the Iowa capital investment board created in section 15E.63, in cooperation with the depart-

ment of revenue, shall relate to the procedures for the issuance of the certificates and for the redemption of a certificate and related tax credit.

6. A taxpayer shall not redeem a certificate and related tax credit prior to the third tax year following the tax year in which the investment is made. Any tax credit in excess of the taxpayer’s liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

7. A venture capital fund shall submit an application for certification to the Iowa capital investment board created in section 15E.63. The board shall approve the application and certify the venture capital fund if all of the following criteria are met:

*a.* The venture capital fund is a private seed and venture capital partnership or entity fund.

*b.* The venture capital fund maintains a physical presence within the state of Iowa.

*c.* The venture capital fund makes a commitment to consider equity investments in businesses located within the state of Iowa.

2003 Acts, ch 44, §11; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §99, 159  
2003 amendment to subsection 4 by 2003 Acts, ch 179, §99, takes effect May 30, 2003, and applies retroactively to January 1, 2002, for tax years beginning on or after that date; 2003 Acts, ch 179, §159

See Code editor’s note to §2.9  
Terminology change applied  
Subsection 4 amended

#### **15E.63 Iowa capital investment board.**

1. The Iowa capital investment board is created as a state governmental board and the exercise by the board of powers conferred by this division shall be deemed and held to be the performance of essential public purposes. The purpose of the board shall be to mobilize venture equity capital for investment in such a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state.

2. The board shall consist of five voting members and two nonvoting advisory members. The five voting members shall be appointed by the governor and confirmed by the senate pursuant to section 2.32. The five voting members shall be appointed to five-year staggered terms that shall be structured to allow the term of one member to expire each year. One nonvoting member shall be appointed by the majority leader of the senate after consultation with the president of the senate and the minority leader of the senate. One nonvoting member shall be appointed by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. The nonvoting members shall be appointed for two-year terms which shall expire upon the convening of a new general assembly. Vacancies shall be filled in the same manner as the appointment of the original members. Members shall be compensated by the board for di-

rect expenses and mileage but members shall not receive a director's fee, per diem, or salary for service on the board. Members shall be selected based upon demonstrated expertise and competence in the supervision of investment managers, in the fiduciary management of investment funds, or in the management and administration of tax credit allocation programs. Members shall not have an interest in any person to whom a tax credit is allocated and issued by the board.

3. The board shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose, provided, however, that the board shall not hire employees.

4. Members of the board shall be indemnified against loss to the broadest extent permissible under chapter 669.

5. Meetings of the board shall, except to the extent necessary to protect confidential information with respect to investments in the Iowa fund of funds, be subject to chapter 21.

6. The board shall, in cooperation with the department of revenue, establish criteria and procedures for the allocation and issuance of tax credits to designated investors by means of certificates issued by the board. The criteria shall include the contingencies that must be met for a certificate to be redeemable by a designated investor or transferee in order to receive a tax credit. The contingencies for redemption shall be tied to the scheduled rates of return and scheduled redemptions of equity interests purchased by designated investors in the Iowa fund of funds. The procedures established by the board, in cooperation with the department of revenue, shall relate to the procedures for the issuance of the certificates and the related tax credits, for the transfer of a certificate and related tax credit by a designated investor, and for the redemption of a certificate and related tax credit by a designated investor or transferee. The board shall also establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors and transferees, including, without limitation, criteria and procedures for evaluating the value of investments made by the Iowa fund of funds and the returns from the Iowa fund of funds.

7. Pursuant to section 15E.66, the board shall issue certificates which may be redeemable for tax credits to provide incentives to designated investors to make equity investments in the Iowa fund of funds. The board shall issue the certificates so that not more than twenty million dollars of tax credits may be initially redeemable in any fiscal year. The board shall indicate on the tax certificate the principal amount of the tax credit and the taxable year or years for which the credit may be claimed.

8. The board may charge a placement fee to the Iowa fund of funds with respect to the issuance of

a certificate and related tax credit to a designated investor, but the fee shall be charged only to pay for reasonable and necessary costs of the board and shall not exceed one-half of one percent of the equity investment of the designated investor.

9. The board shall, in consultation with the Iowa capital investment corporation, publish an annual report of the activities conducted by the Iowa fund of funds, and present the report to the governor and the general assembly. The annual report shall include a copy of the audit of the Iowa fund of funds and a valuation of the assets of the Iowa fund of funds, review the progress of the investment fund allocation manager in implementing its investment plan, and describe any redemption or transfer of a certificate issued pursuant to this division, provided, however, that the annual report shall not identify any specific designated investor who has redeemed or transferred a certificate. Every five years, the board shall publish a progress report which shall evaluate the progress of the state of Iowa in accomplishing the purposes stated in section 15E.61.

10. The board shall redeem a certificate submitted to the board by a designated investor and shall calculate the amount of the allowable tax credit based upon the investment returns received by the designated investor and its predecessors in interest and the provisions of the certificate. Upon submission of a certificate for redemption, the board shall issue a verification to the department of revenue setting forth the maximum tax credit which may be claimed by the designated investor with respect to the redemption of the certificate.

11. The board shall adopt rules pursuant to chapter 17A necessary to administer the duties of the board.

2003 Acts, ch 145, §286  
Additional board duties; §15E.41 – 15E.46, 15E.51  
Terminology change applied

#### **15E.66 Certificates and tax credits.**

1. The board may issue certificates and related tax credits to designated investors which, if redeemed for the maximum possible amount, shall not exceed a total aggregate of one hundred million dollars of tax credits. The certificates shall be issued contemporaneously with an investment in the Iowa fund of funds by a designated investor. A certificate issued by the board shall have a specific calendar year maturity date designated by the board of not less than five years after the date of issuance and shall be redeemable on a schedule similar to the scheduled redemption of investments by designated investors. A certificate and the related tax credit shall be transferable by the designated investor. A tax credit shall not be claimed or redeemed except by a designated investor or transferee in accordance with the terms of a certificate from the board. A tax credit shall be claimed for a tax year that begins during the calendar year maturity date stated on the certificate.

An individual may claim the credit of a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the tax liability for the following seven years, or until depleted, whichever is earlier.

2. The board shall certify the maximum amount of a tax credit which could be issued to a designated investor and identify the specific calendar year the certificate may be redeemed pursuant to this division. The amount of the tax credit shall be limited to an amount equivalent to any difference between the scheduled aggregate return to the designated investor at rates of return authorized by the board and aggregate actual return received by the designated investor and any predecessor in interest of capital and interest on the capital. The rates, whether fixed rates or variable rates, shall be determined pursuant to a formula stipulated in the certificate. The board shall clearly indicate on the certificate the schedule, the amount of equity investment, the calculation formula for determining the scheduled aggregate return on invested capital, and the calculation formula for determining the amount of the tax credit that may be claimed. Once moneys are invested by a designated investor, the certificate shall be binding on the board and the department of revenue and shall not be modified, terminated, or rescinded.

3. If a designated investor elects to redeem a certificate, the certificate shall be redeemed on June 30 of the calendar year maturity date stated on the certificate. At the time of redemption, the board shall determine the amount of the tax credit that may be claimed by the designated investor based upon the returns received by the designated investor and its predecessors in interest and the provisions of the certificate. The board shall issue a verification to the department of revenue setting forth the maximum tax credit which can be claimed by the designated investor with respect to the redemption of the certificate.

4. The board shall, in conjunction with the department of revenue, develop a system for registration of any certificate and related tax credit issued or transferred pursuant to this section and a system that permits verification that any tax credit claimed upon a tax return is valid and that any transfers of the certificate and related tax credit are made in accordance with the requirements of this division.

5. The board shall issue the tax credits in such a manner that not more than twenty million dollars of tax credits may be initially redeemable in any fiscal year. The board shall indicate on the tax

certificate the principal amount of the tax credit and the taxable year or years for which the credit may be claimed.

6. A certificate or tax credit issued or transferred pursuant to this division shall not be considered a security pursuant to chapter 502.

7. In determining the one hundred million dollar maximum limit in subsection 1 and the twenty million dollar limitation in subsection 5, the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors. However, certificates and related tax credits which have expired shall not be included and certificates and related tax credits which have been redeemed shall be included only to the extent of tax credits actually allowed.

2003 Acts, ch 145, §286  
Terminology change applied

#### **15E.67 Powers and effectiveness.**

This division shall not be construed as a restriction or limitation upon any power which the board might otherwise have under any other law of this state and the provisions of this division are cumulative to such powers. This division shall be construed to provide a complete, additional, and alternative method for performing the duties authorized and shall be regarded as supplemental and additional to the powers conferred by any other law. The level, timing, or degree of success of the Iowa fund of funds or the investment funds in which the Iowa fund of funds invests in, or the extent to which the investment funds are invested in Iowa venture capital projects, or are successful in accomplishing any economic development objectives, shall not compromise, diminish, invalidate, or affect the provisions of any contract entered into by the board or the Iowa fund of funds.

2003 Acts, ch 44, §12  
Section amended

#### **15E.111 Value-added agricultural products and processes financial assistance program.**

1. *a.* The department shall establish a value-added agricultural products and processes financial assistance program. The department shall consult with Iowa commodity groups. The purpose of the program is to encourage the increased utilization of agricultural commodities produced in this state. The program shall assist in efforts to revitalize rural regions of this state by committing resources to provide financial assistance to new or existing value-added production facilities. The department of economic development may consult with other state agencies regarding any possible future environmental, health, or safety issues linked to technology related to the biotechnology industry. In awarding financial assistance, the department shall prefer producer-owned, value-added businesses and public and private joint ventures involving an institution of higher learning

under the control of the state board of regents or a private college or university acquiring assets, research facilities, and leveraging moneys in a manner that meets the goals of the grow Iowa values fund and shall commit resources to assist the following:

(1) Facilities which are involved in the development of new innovative products and processes related to agriculture. The facility must do either of the following: produce a good derived from an agricultural commodity, if the good is not commonly produced from an agricultural commodity; or use a process to produce a good derived from an agricultural process, if the process is not commonly used to produce the good.

(2) Renewable fuel production facilities. As used in this section, “*renewable fuel*” means an energy source which is derived from an organic compound capable of powering machinery, including an engine or power plant.

(3) Agricultural business facilities in the agricultural biotechnology industry, agricultural biomass industry, and alternative energy industry. For purposes of this subsection:

(a) “*Agricultural biomass industry*” means businesses that utilize agricultural commodity crops, agricultural by-products, or animal feedstock in the production of chemicals, protein products, or other high-value products.

(b) “*Agricultural biotechnology industry*” means businesses that utilize scientifically enhanced plants or animals that can be raised by producers and used in the production of high-value products.

(c) “*Alternative energy industry*” includes businesses involved in the production of ethanol, including gasoline with a mixture of seventy percent or more ethanol, biodiesel, biomass, hydrogen, or in the production of wind energy.

(4) Facilities that add value to Iowa agricultural commodities through further processing and development of organic products and emerging markets.

(5) Producer-owned, value-added businesses, education of producers and management boards in value-added businesses, and other activities that would support the infrastructure in the development of value-added agriculture. Public and private joint ventures involving an institution of higher learning under the control of the state board of regents or a private college or university to acquire assets, research facilities, and leverage moneys in a manner that meets the goals of the grow Iowa values fund. For purposes of this subsection, “*producer-owned, valued-added business*” means a person who holds an equity interest in the agricultural business and is personally involved in the production of crops or livestock on a regular, continuous, and substantial basis.

b. Financial assistance awarded under this section may be in the form of a loan, loan guarantee, grant, production incentive payment, or a

combination of financial assistance. The department shall not award more than twenty-five percent of the amount allocated to the value-added agricultural products and processes financial assistance fund during any fiscal year to support a single person. The department may finance any size of facility. However, the department may reserve up to fifty percent of the total amount allocated to the fund, for purposes of assisting persons requiring five hundred thousand dollars or less in financial assistance. The amount shall be reserved until the end of the third quarter of the fiscal year. The department shall not provide financial assistance to support a value-added production facility if the facility or a person owning a controlling interest in the facility has demonstrated a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of workforce development pursuant to chapter 84A, or rules enforced by the department of natural resources pursuant to chapter 455B or 459, subchapters II and III.

2. A person is eligible to apply for assistance under this section, if the person satisfies the following requirements:

a. The existing or proposed facility is located in this state.

b. The person applies to the department of economic development in a manner and according to procedures required by the department.

c. The person submits a business plan which demonstrates managerial and technical expertise.

3. The department of economic development shall grant financial assistance to a person determined by the department to be eligible to receive assistance under this section, upon review and evaluation of the person’s application by the agricultural products advisory council as established in section 15.203. The department shall consider the council’s evaluation in granting or denying assistance. The department shall not approve an application for assistance under this section to refinance an existing loan. The department shall not directly award financial assistance to support an activity directly related to farming as defined in section 9H.1, including the establishment or operation of a livestock production operation, regardless of whether the activity is related to a renewable fuel production facility.

4. The department shall select an applicant to receive financial assistance based on the following criteria:

a. The feasibility of the existing or proposed facility to remain a viable enterprise and the degree to which the facility will increase the utilization of

agricultural commodities produced in this state.

b. The extent to which the existing or proposed facility is located in a rural region of the state.

c. The proportion of local match to be contributed to the project.

d. The level of need of the region where the existing facility is or the proposed facility is to be located.

e. The degree to which the facility produces a coproduct which is marketed in the same locality as the facility.

5. An application based on innovation shall be considered if any of the following apply:

a. The production process is not commonly available in this state.

b. The product is not commonly produced in this state.

6. a. The department shall consider an application to assist a renewable fuel production facility. An application based on ethanol fuel production shall be considered by the department if all of the following apply:

(1) All fermentation, distillation, and dehydration of the ethanol will occur at the proposed facility.

(2) The ethanol produced at the proposed facility will be at least one hundred ninety proof and must be denatured. However, if the facility markets the ethanol for further refining, the facility must demonstrate that the refiner will produce one hundred ninety proof ethanol from the ethanol purchased from the facility.

b. The department shall give priority to supporting proposed renewable fuel production facilities which directly support livestock production operations. The highest priority shall be provided to a renewable fuel production facility which produces coproducts which are used to produce livestock raised in the same locality as the production facility. If the department has several proposals having the highest priority, a preference shall be given to a proposal in which the livestock operation:

(1) Is located in an agricultural area as provided in chapter 352.

(2) Is located in close proximity to and is an integral part of the renewable fuel production facility. However, the owner of the facility is not required to hold an interest in the land on which the livestock are produced. The livestock may be produced under the terms of a contract, in which a person regularly engaged in livestock production provides for the care and feeding of the livestock on behalf of the facility's owner.

c. The department shall cooperate with the office of renewable fuels and coproducts in order to carry out this subsection, as provided in section 159A.6B. The office shall be primarily responsible for providing technical expertise regarding the operation of a renewable fuel production facility, and specifically a facility which supports livestock pro-

duction operations. The department shall cooperate with any contract consultant supported by the office as provided in section 159A.6B. The agricultural products advisory council as established in section 15.203 shall coordinate the activities of the department and the office. In administering this part of the program, the department and the office shall cooperate with the department of natural resources which shall assist an applicant in complying with all applicable environmental regulations. The department of natural resources shall acknowledge receipt of a completed application for a permit not later than two weeks following receipt of a completed application by the department. Within twelve weeks following receipt of the application, the department shall issue the permit or reply to the applicant describing reasons why the permit cannot be issued.

7. The university of Iowa, Iowa state university, and the university of northern Iowa shall cooperate in assisting facilities receiving financial assistance under this section. Iowa state university, including the Iowa cooperative extension service in agriculture and home economics, shall cooperate in assisting each renewable fuel production facility supporting livestock operations, including advising producers regarding nutrition and management practices. Community colleges and private universities and colleges are not precluded from providing this assistance.

8. The department of economic development and the office of renewable fuels and coproducts shall prepare a report each six months detailing the progress of the department and other agencies provided in this section. The office of renewable fuels and coproducts, the department of natural resources, and Iowa state university may contribute a summary of their activities. The report shall be delivered to the secretary of the senate and the chief clerk of the house; the legislative services agency; the chairpersons and ranking members of the senate standing committee on agriculture; the senate standing committee on economic growth; the house of representatives standing committee on agriculture; and the house of representatives standing committee on economic growth.

2003 Acts, ch 35, §44, 49; 2003 Acts, ch 108, §9; 2003 Acts, 1st Ex, ch 1, §87, 133

For future repeal of 2003 amendment to subsection 1 effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114

See Code editor's note to §2.9

Terminology changes applied

Subsections 1 and 8 amended

### **15E.112 Value-added agricultural products and processes financial assistance fund.**

1. A value-added agricultural products and processes financial assistance fund is created within the state treasury under the control of the department. The fund shall consist of moneys allocated from the Iowa strategic investment fund created in section 15.313, those appropriated moneys, and any other moneys available to and ob-

tained or accepted by the department from the federal government or private sources for placement in the fund. The assets of the fund shall be used by the department only for administration and carrying out the purposes of section 15E.111.

2. In administering the fund and the value-added agricultural products and processes financial assistance program, the department may do any of the following:

a. Contract, sue and be sued, and adopt administrative rules necessary to carry out the provisions of this section and section 15E.111. However, the department shall not in any manner directly or indirectly pledge the credit of the state.

b. Authorize payment from the fund for costs, commissions, attorney fees, and other reasonable expenses, including expenses related to carrying out duties necessary for insuring or guaranteeing loans under section 15E.111, and for the recovery of loan moneys insured or guaranteed or the management of property acquired in connection with such loans.

3. Payments of interest, recaptures of awards, or repayments of moneys loaned under the value-added agricultural products and processes financial assistance program shall be deposited into the fund. Section 8.33 does not apply to any moneys in the fund.

4. The fund is subject to an annual audit by the auditor of state. Moneys in the fund, which may be subject to warrants written by the director of the department of administrative services, shall be drawn upon the written requisition of the director of the department of economic development or an authorized representative of the director.

2003 Acts, ch 145, §286  
Terminology change applied

#### **15E.117 Promotion of Iowa wine and beer.**

The department of economic development shall consult with the Iowa wine and beer promotion board on the best means to promote wine and beer made in Iowa. The department has the authority to contract with private persons for the promotion of beer and wine made in Iowa. At the direction of the department, the director of the department of administrative services shall issue warrants to the department of economic development on the barrel tax fund created in section 123.143 and the wine gallonage tax fund created in section 123.183, which moneys may be used by the department for the purpose of this section, including administrative expenses incurred under this section.

2003 Acts, ch 145, §286  
Terminology change applied

#### **15E.120 Loan repayments.**

1. Cities which have received loans under the former Iowa community development loan program, sections 7A.41 through 7A.49, Code 1985,

are still obligated to repay borrowed funds to the state and to comply with terms and conditions of existing promissory notes.

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

3. Loan agreements with cities receiving loans under the former Iowa community development loan program for projects which have not been completed as of July 1, 1986, shall be amended by substituting "Iowa department of economic development" for "office for planning and programming". The Iowa department of economic development shall assume the state's administrative responsibilities for these uncompleted projects.

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

5. Loan repayments received by the Iowa department of economic development shall be deposited into a special account to be used at its discretion as matching funds to attract financial assistance from and to participate in programs with national rural development and finance corporations. Funds in this special account shall not revert to the state general fund at the end of any fiscal year. If the programs for which the funds in the special account are to be used are terminated or expire, the funds in the special account and funds that would be repaid, if any, to the special account shall be transferred or repaid to the community economic betterment account of the strategic investment fund established in section 15.313.

2003 Acts, ch 71, §5  
Subsection 5 amended  
Subsection 6 stricken

#### **15E.192 Enterprise zones.**

1. A county may create an economic development enterprise zone as authorized in this division, subject to certification by the department of economic development, by designating up to one percent of the county area for that purpose. An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to chapter 28E regarding the establishment of the enterprise zone. A county may establish more than one enterprise zone.

2. A city with a population of twenty-four thousand or more, as shown by the 2000 certified federal census, may create an economic development enterprise zone as authorized in this division, subject to certification by the department of economic development, by designating one or more contigu-

ous census tracts, as determined in the most recent federal census, or designating other geographic units approved by the department of economic development for that purpose. If there is an area in the city which meets the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be designated by the state as an economic development enterprise zone. The area meeting the requirements for eligibility for an urban or rural enterprise community shall not be included for the purpose of determining the area limitation pursuant to subsection 3. In creating an enterprise zone, a city with a population of twenty-four thousand or more, as shown by the 2000 certified federal census, may designate as part of the area tracts or approved geographic units located in a contiguous city if such tracts or approved geographic units meet the criteria and the city agrees to being included. The city may establish more than one enterprise zone. Reference in this division to "city" means a city with a population of twenty-four thousand or more, as shown by the 2000 certified federal census.

3. *a.* An enterprise zone certified by the department pursuant to subsection 2 shall only be amended if the amendment consists of an area being added to the enterprise zone and the added area meets the criteria of section 15E.194, subsection 2. An enterprise zone certified by the department pursuant to subsection 1 or 2 may be decertified; however, if a subsequent enterprise zone is designated, the expiration date of the subsequent enterprise zone shall be the same as the expiration date of the decertified enterprise zone. A portion of a certified enterprise zone may be decertified, provided that the remaining portion of the certified enterprise zone meets the distress criteria provided in section 15E.194.

*b.* A county or city may apply to the department for an area to be certified as an enterprise zone at any time prior to July 1, 2005. However, the total amount of land designated as enterprise zones under subsections 1 and 2, and any other enterprise zones certified by the department, excluding those approved pursuant to section 15E.194, subsection 4, shall not exceed in the aggregate one percent of the total county area.

4. An enterprise zone designation shall remain in effect for ten years following the date of certification. Any state or local incentives or assistance that may be conferred must be conferred before the designation expires. However, the benefits of the incentive or assistance may continue beyond the expiration.

2002 Acts, ch 1145, §7, 10; 2003 Acts, ch 129, §1, 5 - 7

For 2003 amendment to subsection 3, paragraph a, extending the date to apply for an area to be certified as an enterprise zone from July 1, 2003, to December 1, 2003, which was in effect from May 15, 2003, until December 1, 2003, see Code editor's note

2002 strike of subsection 3, paragraph a, takes effect December 1, 2003;

2002 Acts, ch 1145, §7, 10; 2003 Acts, ch 129, §5 - 7

Subsection 3, paragraph a stricken

Subsection 3, paragraph b amended and redesignated as a

Subsection 3, paragraph c redesignated as b

### 15E.193 Eligible business.

1. A business which is or will be located in an enterprise zone is eligible to receive incentives and assistance under this division if the business has not closed or reduced its operation in one area of the state and relocated substantially the same operation into the enterprise zone and if the business meets all of the following:

*a.* Is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

*b.* Provides all full-time employees with the option of choosing one of the following:

(1) The business pays eighty percent of both of the following:

(a) The cost of a standard medical insurance plan.

(b) The cost of a standard dental insurance plan or an equivalent plan.

(2) The business provides the employee with a monetarily equivalent plan to the plan provided for in subparagraph (1).

*c.* Pays an average wage that is at or greater than ninety percent of the lesser of the average county wage or average regional wage, as determined by the department. However, the wage paid by the business shall not be less than seven dollars and fifty cents per hour.

*d.* Creates at least ten full-time positions and maintains them for at least ten years. For an existing business in counties with a population of ten thousand or less or in cities with a population of two thousand or less, the commission may adopt a provision that allows the business to create at least five initial jobs with the additional jobs to be added in five years. The business shall include in its strategic plan the timeline for job creation. If the existing business fails to meet the ten-job creation requirement within the five-year period, all incentives or assistance will cease immediately.

*e.* Makes a capital investment of at least five hundred thousand dollars. If the business will be occupying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed two hundred fifty thousand dollars, shall be counted toward the capital investment requirement. An existing business that has been operating in the enterprise zone for at least five years is exempt from the capital investment requirement of this paragraph of up to two hundred fifty thousand dollars of the fair market value, as established by an appraisal, of the building and land.

2. In addition to meeting the requirements under subsection 1, an eligible business shall provide the enterprise zone commission with all of the fol-

lowing:

*a.* The long-term strategic plan for the business which shall include labor and infrastructure needs.

*b.* Information dealing with the benefits the business will bring to the area.

*c.* Examples of why the business should be considered or would be considered a good business enterprise.

*d.* The impact the business will have on other businesses in competition with it.

*e.* An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

3. If a business has received incentives or assistance under section 15E.196 and fails to maintain the requirements of subsection 1 to be an eligible business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under section 15E.196. The value of state incentives provided under section 15E.196 includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of subsection 1. In addition, a business that fails to maintain the requirements of subsection 1 shall not receive incentives or assistance for each year during which the business is not in compliance.

4. If a business that is approved to receive incentives or assistance provided under section 15E.196 experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business has received incentives or assistance under section 15E.196 and experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business may be subject to repayment of all or a portion of the incentives and assistance that it has received.

2003 Acts, ch 129, §2; 2003 Acts, ch 145, §286  
Terminology change applied  
NEW subsection 4

### **15E.193B Eligible housing business.**

1. A housing business qualifying under this section is eligible to receive incentives and assistance only as provided in this section. An eligible housing business shall not receive incentives or assistance for a home or multiple dwelling unit built or rehabilitated in an enterprise zone designated pursuant to section 15E.194, subsection 4. Sections 15E.193 and 15E.196 do not apply to an eligible housing business qualifying under this section.

2. An eligible housing business under this section includes a housing developer, housing contractor, or nonprofit organization that builds or rehabilitates a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone.

3. The single-family homes and dwelling units which are rehabilitated or constructed by the eligible housing business shall include the necessary amenities. When completed and made available for occupancy, the single-family homes and dwelling units shall meet the United States department of housing and urban development's housing quality standards and local safety standards.

4. The eligible housing business shall complete its building or rehabilitation within two years from the time the business begins construction on the single-family homes and dwelling units. The failure to complete construction or rehabilitation within two years shall result in the eligible housing business becoming ineligible and subject to the repayment requirements and penalties enumerated in subsection 7. The department may extend the prescribed two-year completion period for any current or future project which has not been completed if the department determines that completion within the two-year period is impossible or impractical as a result of a substantial loss caused by flood, fire, earthquake, storm, or other catastrophe. For purposes of this subsection, "substantial loss" means damage or destruction in an amount in excess of thirty percent of the project's expected eligible basis as set forth in the eligible housing business's application.

5. An eligible housing business shall provide the enterprise zone commission with all of the following information:

*a.* The long-term strategic plan for the housing business which shall include labor and infrastructure needs.

*b.* Information dealing with the benefits the housing business will bring to the area.

*c.* Examples of why the housing business should be considered or would be considered a

good business enterprise.

*d.* An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

*e.* Information showing the total costs and sources of project financing that will be utilized for the new investment directly related to housing for which the business is seeking approval for a tax credit provided in subsection 6, paragraph “*a*”.

6. An eligible housing business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195 shall receive all of the following incentives and assistance for a period not to exceed ten years:

*a.* An eligible housing business may claim a tax credit up to a maximum of ten percent of the new investment which is directly related to the building or rehabilitating of a minimum of four single-family homes located in that part of a city or county in which there is a designated enterprise zone or one multiple dwelling unit building containing three or more individual dwelling units located in that part of a city or county in which there is a designated enterprise zone. The new investment that may be used to compute the tax credit shall not exceed the new investment used for the first one hundred forty thousand dollars of value for each single-family home or for each unit of a multiple dwelling unit building containing three or more units. The tax credit may be used to reduce the tax liability imposed under chapter 422, division II, III, or V, or chapter 432. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

*b.* Sales, services, and use tax refund for taxes paid by an eligible business including an eligible business acting as a contractor or subcontractor, as provided in section 15.331A.

7. If a business has received incentives or assistance under this section and fails to maintain the requirements of this section to be an eligible housing business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under this section. The value of state incentives provided un-

der this section includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of this section. In addition, a business that fails to maintain the requirements of this section shall not receive incentives or assistance for each year during which the business is not in compliance.

8. The amount of the tax credits determined pursuant to subsection 6, paragraph “*a*”, for each project shall be approved by the department of economic development. The department shall utilize the financial information required to be provided under subsection 5, paragraph “*e*”, to determine the tax credits allowed for each project. In determining the amount of tax credits to be allowed for a project, the department shall not include the portion of the project cost financed through federal, state, and local government tax credits, grants, and forgivable loans. Upon approving the amount of the tax credit, the department of economic development shall issue a tax credit certificate to the eligible housing business. An eligible housing business or transferee shall not claim the tax credit unless a tax credit certificate issued by the department of economic development is attached to the taxpayer's return for the tax year for which the tax credit is claimed. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue. The tax credit certificate shall be transferable if low-income housing tax credits authorized under section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. Tax credit certificates issued under this chapter may be transferred to any person or entity. Within ninety days of transfer, the transferee must submit the transferred tax credit certificate to the department of economic development along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the department of economic development shall issue one or more replacement tax credit certificates to the transferee. Each replacement certificate must contain the information required to receive the original certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the department of economic development shall not be transferable. A tax credit shall not be claimed by a transferee under subsection 6, paragraph “*a*”, until a replace-

ment tax credit certificate identifying the transferee as the proper holder has been issued.

The transferee may use the amount of the tax credit transferred against the taxes imposed under chapter 422, divisions II, III, and V, and chapter 432 for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

9. The department of economic development and the department of revenue shall each adopt rules to jointly administer this section.

2003 Acts, ch 129, §3; 2003 Acts, ch 133, §1, 4; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §100, 159; 2003 Acts, 1st Ex, ch 2, §15, 209

2000 amendments to subsections 2, 5, and 6 take effect May 26, 2000, and apply retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1213, §10

2001 amendments to subsection 2 and subsection 6, paragraph a, apply retroactively on and after January 1, 2001; 2001 Acts, ch 141, §§

2001 amendment to subsection 6, paragraph b, is effective May 16, 2001, and applies retroactively to July 1, 1998; 2001 Acts, ch 141, §8

2003 amendment to subsection 8 takes effect May 16, 2003, and applies retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 133, §4

Terminology change applied

Subsections 3, 4, and 8 amended

### 15E.193C Eligible development business.

1. A development business qualifying under this section is eligible to receive incentives and assistance only as provided in this section. Sections 15E.193, 15E.193B, and 15E.196 do not apply to an eligible development business qualifying under this section.

2. An eligible development business includes a developer or development contractor that constructs, expands, or rehabilitates a building space within a designated enterprise zone with a minimum capital investment of at least five hundred thousand dollars. A development business is eligible to receive incentives and assistance under this section if the business locating into the building space has not closed or reduced its operation in one area of the state or a city and relocated substantially the same operation in the enterprise zone. An eligible development business is eligible for one, but not both, of the following exemptions to the capital investment requirements:

*a.* For an eligible development business purchasing a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed two hundred fifty thousand dollars, as determined by the local enterprise zone commission, shall be deducted from the capital investment requirement.

*b.* For an eligible development business that rehabilitates a building space that has been in an enterprise zone for at least five years, the fair market value as established by an appraisal of the building, not to exceed two hundred fifty thousand dollars, shall be deducted from the capital invest-

ment requirement.

3. Upon completion of the construction, expansion, or rehabilitation project by the eligible development business, the building space shall not be occupied by a retail business.

4. An eligible development business shall complete its construction, expansion, or rehabilitation within three years from the time the eligible development business receives approval from the department. The failure to complete construction, expansion, or rehabilitation within three years shall result in the eligible development business becoming ineligible and subject to the repayment requirements and penalties provided in subsection 8.

5. Prior to receiving assistance under this section, an eligible development business shall enter into an agreement with at least one business for purposes of locating the business in all or a portion of the building space for a period of at least five years. Nonretail businesses locating in a building space must create at least ten full-time positions and meet the criteria provided in section 15E.193, subsection 1, paragraphs “a”, “b”, and “c”. If a nonretail business locating in a building space occupies ninety percent or less of the building space, the nonretail business shall not share common ownership or common management with the development business. A development business shall receive a pro rata share of the total incentives and assistance available to the development business based on the percentage of the building that is leased to nonretail businesses. The department shall determine the procedure for issuing the incentives and assistance on a pro rata basis.

6. An eligible development business shall provide the enterprise zone commission with all of the following information:

*a.* The long-term strategic plan for the development business which shall include infrastructure needs and a copy of any agreement entered into by the eligible development business as required under subsection 5.

*b.* Information relating to the benefits the development business will bring to the area.

*c.* Examples of why the development business should be considered or would be considered a good business enterprise.

*d.* An affidavit that the development business has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or the violations did not seriously affect public health or safety or the environment.

7. An eligible development business, which has been approved to receive incentives and assistance by the department of economic development pursuant to section 15E.195, shall be eligible to receive all of the following incentives and assistance for a period not to exceed ten years:

a. An eligible development business may claim a tax credit up to a maximum of ten percent of the new investment that is directly related to the construction, expansion, or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities. For purposes of this section, “*new investment*” includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business for the tax year in which the construction, expansion, or rehabilitation is completed. The tax credit may be used to reduce the tax liability imposed under chapter 422, division II, III, or V, or chapter 432. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. If the business is a partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of the partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

b. Sales, services, and use tax refund, as provided in section 15.331A.

c. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible development business constructs, expands, or rehabilitates property in an enterprise zone. The amount of value added for purposes of this paragraph shall be the amount of the increase in assessed valuation of the property following the construction, expansion, or rehabilitation by the development business in the enterprise zone. If an exemption provided pursuant to this paragraph is made applicable to only a portion of the property within an enterprise zone, the definition of that subset of eligible property must be by uniform criteria that further some planning objective established by the city or county enterprise zone commission and approved by the city or county. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible development business enters into an agreement with the county or city to construct, expand, or rehabilitate property in an enterprise zone.

8. If a development business has received incentives or assistance under this section and fails to maintain the requirements of this section to be an eligible development business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The

department of revenue shall have the authority to recover the value of state taxes or incentives provided under this section. The value of state incentives provided under this section includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into an agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be repaid in the event of failure to maintain the requirements of this section. In addition, a business that fails to maintain the requirements of this section shall not receive incentives or assistance for each year during which the business is not in compliance.

9. The department of economic development and the department of revenue shall each adopt rules pursuant to chapter 17A to jointly administer this section.

10. If, within five years of the completion of a construction, expansion, or rehabilitation project, the development business or its successor sells or leases any space to any retail business, the development business shall proportionally refund any tax credits, refunds, or exemptions which were claimed under this section.

11. An approved development business shall submit an annual report to the department of economic development detailing and certifying the number of signed leases, jobs created, and total occupancy of the building. An approved development business shall begin submitting annual reports the year upon approval of the application and shall continue to submit annual reports until incentives and assistance provided pursuant to this section are no longer received by the approved development business.

2003 Acts, ch 44, §13; 2003 Acts, ch 129, §4; 2003 Acts, ch 145, §286  
 2002 amendments to subsections 2 and 5 and striking former subsection 10 apply retroactively to April 30, 2002; 2002 Acts, ch 1145, §10; 2002 Acts, ch 1175, §99  
 2002 amendment to subsection 7, paragraph a, takes effect June 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, 2nd Ex, ch 1001, §49, 52  
 Terminology change applied  
 Subsection 2, unnumbered paragraph 1 amended  
 Subsection 5 amended

#### 15E.196 Incentives — assistance.

For purposes of determining the incentives or assistance provided in this section, “*eligible business*” means a business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195. The incentives and assistance provided under this division for businesses located in enterprise zones shall be for a period not to exceed ten years and shall include all of the following:

1. a. New jobs credit from withholding, as provided in section 15.331.

b. (1) As an alternative to paragraph “a”, a business may provide a housing assistance program in the form of down payment assistance or

rental assistance for employees in new jobs, as defined in section 260E.2, who buy or rent housing located within any certified enterprise zone. A business establishing a housing assistance program shall fund this program through a credit from withholding based on the wages paid to the employees participating in the housing assistance program. An amount equal to one and one-half percent of the gross wages paid by the employer to each employee participating in the housing assistance program shall be credited from the payment made by an employer pursuant to section 422.16. If the amount of the withholding by the employer is less than one and one-half percent of the gross wages paid to the employees, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall deposit the amount of the credit quarterly into a housing assistance fund created by the business out of which the business shall provide employees enrolled in the housing assistance program with down payment assistance or rental assistance.

(2) A business may enter into an agreement with the county or city designating the enterprise zone pursuant to section 15E.194 to borrow initial moneys to fund a housing assistance program. The county or city may appropriate from the general fund of the county or city for the assistance program an amount not to exceed an amount estimated by the department of revenue to be equal to the total amount of credit from withholding for employees determined by the business to be enrolled in the program during the first two years. The business shall pay the principal and interest on the loan out of moneys received from the credit from withholding provided for in subparagraph (1). The terms of the loan agreement shall include the principal amount, the interest rate, the terms of repayment, and the term of the loan. The terms of the loan agreement shall not extend beyond the period during which the enterprise zone is certified.

(3) The employer shall certify to the department of revenue that the credit from withholding is in accordance with an agreement and shall provide other information the department may require.

(4) An employee participating in the housing assistance program will receive full credit for the amount withheld as provided in section 422.16.

2. Sales, services, and use tax refund, as provided in section 15.331A.

3. Investment tax credit, as provided in section 15.333.

4. Research activities credit, as provided in section 15.335.

5. The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which

is used in the operation of the eligible business. The amount of value added for purposes of this subsection shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone. If an exemption provided pursuant to this subsection is made applicable to only a portion of the property within an enterprise zone, the definition of that subset of eligible property must be by uniform criteria which further some planning objective established by the city or county enterprise zone commission and approved by the eligible city or county. The exemption may be allowed for a period not to exceed ten years beginning the year the eligible business enters into an agreement with the county or city to locate or expand operations in an enterprise zone.

6. Insurance premium tax credit, as provided in section 15.333A.

7. A business eligible to receive incentives and assistance described in this section and located in a building for which incentives and assistance are or have been claimed by an approved development business under section 15E.193C is not eligible to receive the following incentives and assistance:

a. An investment tax credit under subsection 3 for the portion of the investment tax credit that is claimed on the purchase price of land or improvements to real property by an approved development business pursuant to section 15E.193C, subsection 7, paragraph "a".

b. Sales, services, and use tax refund under subsection 2 that is made pursuant to section 15E.193C, subsection 7, paragraph "b".

c. A property tax exemption under subsection 5 for improvements to real property that are exempted from property taxation pursuant to section 15E.193C, subsection 7, paragraph "c".

2003 Acts, ch 145, §286  
Subsection 7 applies retroactively on and after January 1, 2001; 2001 Acts, ch 141, §8  
Terminology change applied

### **15E.208 Qualified corporations — Iowa agricultural industry finance loans.**

1. The department may award an Iowa agricultural industry finance loan to an Iowa agricultural industry finance corporation if the department in its discretion determines that the corporation is qualified under this section.

2. The corporation must apply for an Iowa agricultural industry finance loan on forms and according to procedures required by the department.

3. The department shall loan all of the amounts available to the department pursuant to this division to a qualified corporation with provisions and restrictions as determined by the department and contained in a loan agreement executed between the department and the qualified corporation.

a. The department may attach conditions to

the granting of the loan as it deems desirable, including any restrictions on the subordination of the moneys loaned. The attorney general shall assist the department in drafting loan agreements and in collecting on the loan agreement.

b. The Iowa agricultural industry finance loan shall be repayable upon terms and conditions negotiated by the parties.

(1) The repayment period shall begin six years following the date when the Iowa agricultural industry finance loan is awarded and end twenty-five years after the date that the repayment period begins.

(2) At least four percent of the amount of the Iowa agricultural industry finance loan due shall be paid each year to the department. However, the department may accept an assignment of a loan made by the corporation providing financing to an eligible person pursuant to section 15E.209. The assigned loan shall grant to the department the corporation's right to payment under the loan. Any such assignment shall be made by an agreement executed by the department and the corporation. The assignment agreement shall be subject to all of the following:

(a) The period of assignment may be for any number of years. The department shall apply to the amounts due under the Iowa agricultural industry finance loan the principal, interest, and fees which the eligible person is obligated to pay under the assigned loan. The total amount of the principal, interest, and fees that the eligible person is obligated to pay to the department during the period of assignment plus any other repayment of the Iowa agricultural industry finance loan made by the corporation to the department must equal the amount of the Iowa agricultural industry finance loan that the corporation would otherwise be obligated to repay the department during that same period. However, the agreement may provide that during any year of the assignment period the eligible person may pay more or less than four percent of the amount of the Iowa agricultural industry finance loan that the corporation would otherwise be obligated to repay during that year.

(b) The assignment agreement shall contain conditions relating to the right of payment assigned to the department which may include securing the payment obligation in any manner that allows the department to enforce a debt against the property of the eligible person. The department shall not have a right of recourse against the corporation for any amount required to be applied from the assigned loan to the Iowa agricultural industry finance loan.

(3) The corporation shall not be subject to a prepayment penalty.

c. The corporation shall not expend moneys originating from the state, including moneys loaned under this section, on political activity or on any attempt to influence legislation.

4. A corporation shall not provide financing to support a person who is any of the following:

a. An agricultural producer, if any of the following applies:

(1) The agricultural producer is a party to a pending action for a violation of chapter 455B or 459, subchapters II and III, concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) The agricultural producer or a confinement feeding operation in which the agricultural producer holds a controlling interest is classified as a habitual violator under section 459.604.

b. An agricultural products processor, if the processor or a person owning a controlling interest in the processor has demonstrated, within the most recent consecutive three-year period prior to the application for financing, a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment. Violations of environmental protection statutes, rules, or regulations shall be reported for the most recent five-year period prior to application. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of workforce development pursuant to chapter 84A, or rules enforced by the department of natural resources pursuant to chapter 455B or 459, subchapters II and III.

c. A member of the economic development board, an employee of the department of economic development, an elected state official, or any director or other officer or an employee of the corporation.

5. In order to be eligible as a qualified Iowa agricultural industry finance corporation, all of the following conditions must be satisfied:

a. The corporation must only provide financing to persons and ventures eligible under section 15E.209.

b. The corporation must demonstrate that it complies with guiding principles for the corporation as provided in section 15E.207.

c. The corporation must adopt policies and procedures which maximize public oversight into the affairs of the corporation, by providing a forum for public comment, an opportunity for public review of the corporation's actions, and methods to ensure accountability for the expenditure of public moneys loaned to the corporation.

d. The corporation's articles of incorporation must comply with requirements established by the department relating to the capacity and integrity of the corporation to carry out the purposes of this division, including but not limited to all of the following:

(1) The capitalization of the corporation.

(2) The manner in which financing is provided by the corporation, including the manner in which an Iowa agricultural industry finance loan can be used by the corporation.

(3) The composition of the corporation's board of directors. The board must be composed of persons knowledgeable in Iowa agricultural industries including a representative number of individuals experienced and knowledgeable in financing new agricultural industries.

(4) The manner of oversight required by the department or the auditor of state. The articles must provide that the corporation shall submit a report to the governor, the general assembly, and the department. The report shall provide a description of the corporation's activities and a summary of its finances, including financial awards. The report shall be submitted not later than January 10 of each year. The articles shall provide that an audit of the corporation must be conducted each year for the preceding year by a certified public accountant licensed pursuant to chapter 542. The auditor of state may audit the books and accounts of the corporation at any time. The results of the annual audit and any audit for the current year conducted by the auditor of state shall be included as part of the report.

(5) The execution of an agreement between the corporation and an eligible recipient as required by the department as a condition of providing financing, in which the eligible recipient agrees to become a shareholder in the corporation. If the eligible recipient is an agricultural producer as provided in section 15E.209, the agreement shall provide that the agricultural producer becomes a shareholder of voting common stock in the corporation equal to at least five percent of the financing provided to the agricultural producer pursuant to the agreement. The agreement shall be for a period of not less than ten years. An agreement shall at least provide all of the following:

(a) The establishment of a common stock pricing system. The stock shall be frozen against price appreciation for the first five years of the life of the corporation. The articles shall contain waivers for death and disability.

(b) The maintenance of stock ownership by an eligible recipient until a financial assistance obligation due the corporation is satisfied.

(c) A requirement that the par value of participating common stock be established prior to providing financial assistance to an eligible recipient.

e. To the extent feasible and fiscally prudent, the corporation must maintain a portfolio which is diversified among the various types of agricultural commodities and agribusiness.

f. Not more than seventy-five percent of moneys originating from the state, including moneys loaned to the corporation pursuant to this section, may be used to finance any one Iowa agricultural

industry venture.

g. The corporation may only be terminated by the following methods, unless approved by the department:

(1) Merger or share exchange under chapter 490, division XI.

(2) Dissolution as provided in chapter 490, division XIV, part A.

(3) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

6. The department shall provide for the default of the loan if the qualified corporation does any of the following:

a. Violates a provision of the articles of incorporation or an amendment to the articles of incorporation that is required by this division which violation is not approved by the department.

b. Violates the terms of the loan agreement executed between the department and the corporation, which violation is not approved by the department.

c. Fails to comply with the requirements of section 15E.205.

d. Completes a transaction, if all of the following apply:

(1) The transaction involves any of the following:

(a) A merger or share exchange under chapter 490, division XI.

(b) The sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(2) The surviving entity of a merger or share exchange, or the entity acquiring the assets of the corporation fails to meet the requirements of section 15E.205.

7. In an action to enforce a judgment against a qualified corporation, the interest of the state shall be subrogated to the interests of holders of bonds issued by the corporation.

8. Moneys repaid or collected by the department under this section shall be deposited into the road use tax fund created pursuant to section 312.1.

2003 Acts, ch 122, §1, 2  
Subsection 3, paragraph b amended

**15E.212 through 15E.220** Reserved.

## DIVISION XX

IOWA ECONOMIC DEVELOPMENT  
LOAN AND CREDIT GUARANTEE FUND

For future repeal of the provisions contained  
within this division effective June 30, 2010,  
see 2003 Acts, 1st Ex, ch 1, §114;  
2003 Acts, 1st Ex, ch 2, §93

**15E.221 Short title.**

This division shall be known and may be cited as the “*Iowa Economic Development Loan and Credit Guarantee Fund Act*”.

2003 Acts, 1st Ex, ch 1, §101, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts,  
1st Ex, ch 1, §114  
NEW section

**15E.222 Legislative finding — purposes.**

1. The general assembly finds all of the following:

a. That small and medium-sized businesses, in general, and certain targeted industry businesses and other qualified businesses, in particular, may not qualify for conventional financing.

b. That the limited availability of credit for export transactions limits the ability of small and medium-sized businesses in this state to compete in international markets.

c. That, to enhance competitiveness and foster economic development, this state must focus on growth in certain specific targeted industry businesses and other qualified businesses, especially during a time of war.

d. That the challenge for the public economic sector is to create an atmosphere conducive to economic growth, in conjunction with financial institutions in the private sector, which fill the gaps in credit availability and export finance, and that allow the private sector to identify the lending opportunities and foster decision making at the local level.

2. The general assembly declares the purposes of this division to be all of the following:

a. To create incentives and assistance to increase the flow of private capital to targeted industry businesses and other qualified businesses.

b. To promote industrial modernization and technology adoption.

c. To encourage the retention and creation of jobs.

d. To encourage the export of goods and services sold by Iowa businesses in national and international markets.

2003 Acts, 1st Ex, ch 1, §102, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts,  
1st Ex, ch 1, §114  
NEW section

**15E.223 Definitions.**

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

1. “*Financial institution*” means an institution listed in section 422.61, subsection 1, or such other financial institution as defined by the de-

partment for purposes of this division.

2. “*Program*” means the loan and credit guarantee program established in this division.

3. “*Qualified business*” means an existing or proposed business entity with an annual average number of employees not exceeding two hundred employees. “*Qualified business*” does not include businesses engaged primarily in retail sales, real estate, or the provision of health care or other professional services. “*Qualified business*” includes professional services businesses that provide services to targeted industry businesses or other entities.

4. “*Targeted industry business*” means an existing or proposed business entity, including an emerging small business or qualified business which is operated for profit and which has a primary business purpose of doing business in at least one of the targeted industries designated by the department which include life sciences, software and information technology, advanced manufacturing, value-added agriculture, and any other industry designated as a targeted industry by the loan and credit guarantee advisory board.

2003 Acts, 1st Ex, ch 1, §103, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts,  
1st Ex, ch 1, §114  
NEW section

**15E.224 Loan and credit guarantee program.**

1. The department shall, with the advice of the loan and credit guarantee advisory board, establish and administer a loan and credit guarantee program. The department, pursuant to agreements with financial institutions, shall provide loan and credit guarantees, or other forms of credit guarantees for qualified businesses and targeted industry businesses for eligible project costs. A loan or credit guarantee provided under the program may stand alone or may be used in conjunction with or to enhance other loans or credit guarantees offered by private, state, or federal entities. The department may purchase insurance to cover defaulted loans meeting the requirements of the program. However, the department shall not in any manner directly or indirectly pledge the credit of the state. Eligible project costs include expenditures for productive equipment and machinery, working capital for operations and export transactions, research and development, marketing, and such other costs as the department may so designate.

2. A loan or credit guarantee or other form of credit guarantee provided under the program to a participating financial institution for a single qualified business or targeted industry business shall not exceed one million dollars in value. Loan or credit guarantees or other forms of credit guarantees provided under the program to more than one participating financial institution for a single qualified business or targeted industry business shall not exceed ten million dollars in value.

3. In administering the program, the department shall consult and cooperate with financial institutions in this state and with the loan and credit guarantee advisory board. Administrative procedures and application procedures, as practicable, shall be responsive to the needs of qualified businesses, targeted industry businesses, and financial institutions, and shall be consistent with prudent investment and lending practices and criteria.

4. Each participating financial institution shall identify and underwrite potential lending opportunities with qualified businesses and targeted industry businesses. Upon a determination by a participating financial institution that a qualified business or targeted industry business meets the underwriting standards of the financial institution, subject to the approval of a loan or credit guarantee, the financial institution shall submit the underwriting information and a loan or credit guarantee application to the department.

5. The department, with the advice of the loan and credit guarantee advisory board, shall adopt a loan or credit guarantee application procedure for a financial institution on behalf of a qualified business or targeted industry business.

6. Upon approval of a loan or credit guarantee, the department shall enter into a loan or credit guarantee agreement with the participating financial institution. The agreement shall specify all of the following:

- a. The fee to be charged to the financial institution.
- b. The evidence of debt assurance of, and security for, the loan or credit guarantee.
- c. A loan or credit guarantee that does not exceed fifteen years.
- d. Any other terms and conditions considered necessary or desirable by the department.

7. The department, with the advice of the loan and credit guarantee advisory board, may adopt loan and credit guarantee application procedures that allow a qualified business or targeted industry business to apply directly to the department for a preliminary guarantee commitment. A preliminary guarantee commitment may be issued by the department subject to the qualified business or targeted industry business securing a commitment for financing from a financial institution. The application procedures shall specify the process by which a financial institution may obtain a final loan and credit guarantee.

2003 Acts, 1st Ex, ch 1, §104, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

**15E.225 Terms — fees.**

1. When entering into a loan or credit guarantee agreement, the department, with the advice of the loan and credit guarantee advisory board, shall establish fees and other terms for participa-

tion in the program by qualified businesses and targeted industry businesses.

2. The department, with due regard for the possibility of losses and administrative costs and with the advice of the loan and credit guarantee advisory board, shall set fees and other terms at levels sufficient to assure that the program is self-financing.

3. For a preliminary guarantee commitment, the department may charge a qualified business or targeted industry business a preliminary guarantee commitment fee. The application fee shall be in addition to any other fees charged by the department under this section and shall not exceed one thousand dollars for an application.

2003 Acts, 1st Ex, ch 1, §105, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

**15E.226 Loan and credit guarantee advisory board.**

A loan and credit guarantee advisory board is established consisting of seven members appointed by the governor, subject to confirmation by the senate. The advisory board shall provide the department with technical advice regarding the administration of the program, including the adoption of administrative rules pursuant to chapter 17A. The advisory board shall review and provide recommendations regarding all applications under the program. Members of the advisory board are entitled to receive reimbursement for actual expenses incurred while engaged in the performance of official duties. Advisory board members may also be eligible to receive compensation as provided in section 7E.6. The director of the department shall budget moneys to pay the compensation and expenses of the advisory board. The provisions of this section relating to the adoption of administrative rules shall be construed narrowly.

2003 Acts, 1st Ex, ch 1, §106, 133  
Confirmation; §2.32  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

**15E.227 Loan and credit guarantee fund.**

1. A loan and credit guarantee fund is created and established as a separate and distinct fund in the state treasury. Moneys in the fund shall only be used for purposes provided in this section. The moneys in the fund are appropriated to the department to be used for all of the following purposes:

- a. Payment of claims pursuant to loan and credit guarantee agreements entered into under this division.
- b. Payment of administrative costs of the department for actual and necessary administrative expenses incurred by the department in administering the program.
- c. Purchase or buyout of superior or prior liens, mortgages, or security interests.

d. Purchase of insurance to cover the default of loans made pursuant to the requirements of the loan and credit guarantee program.

2. Moneys in the loan and credit guarantee fund shall consist of all of the following:

a. Moneys appropriated by the general assembly for that purpose and any other moneys available to and obtained or accepted by the department for placement in the fund.

b. Proceeds from collateral assigned to the department, fees for guarantees, gifts, and moneys from any grant made to the fund by any federal agency.

c. Moneys appropriated from the grow Iowa values fund created in section 15G.108.

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

4. a. The department shall only pledge moneys in the loan and credit guarantee fund and not any other moneys of the department. In a fiscal year, the department may pledge an amount not to exceed the total amount appropriated to the fund for the same fiscal year to assure the repayment of loan and credit guarantees or other extensions of credit made to or on behalf of qualified businesses or targeted industry businesses for eligible project costs.

b. The department shall not pledge the credit or taxing power of this state or any political subdivision of this state or make debts payable out of any moneys except for those in the loan and credit guarantee fund.

2003 Acts, 1st Ex, ch 2, §81, 209  
For future repeal of this section, effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93  
NEW section

**15E.228 through 15E.300** Reserved.

## DIVISION XXI

### ENDOW IOWA PROGRAM

Division is effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date;

2003 Acts, 1st Ex, ch 1, §93

For future repeal of the provisions contained within this division effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114; 2003 Acts, 1st Ex, ch 2, §93

#### 15E.301 Short title.

This division shall be known as and may be cited as the “*Endow Iowa Program Act*”.

2003 Acts, 1st Ex, ch 1, §88, 93  
Section is effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date; 2003 Acts, 1st Ex, ch 1, §93

For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

#### 15E.302 Purpose.

The purpose of this division is to enhance the quality of life for citizens of this state through increased philanthropic activity by providing capi-

tal to new and existing citizen groups of this state organized to establish endowment funds that will address community needs. The purpose of this division is also to encourage individuals, businesses, and organizations to invest in community foundations.

2003 Acts, 1st Ex, ch 1, §89, 93

Section is effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date; 2003 Acts, 1st Ex, ch 1, §93

For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

#### 15E.303 Definitions.

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

1. “*Board*” means the governing board of the lead philanthropic entity identified by the department pursuant to section 15E.304.

2. “*Business*” means a business operating within the state and includes individuals operating a sole proprietorship or having rental, royalty, or farm income in this state and includes a consortium of businesses.

3. “*Community affiliate organization*” means a group of five or more community leaders or advocates organized for the purpose of increasing philanthropic activity in an identified community or geographic area in this state with the intention of establishing a community affiliate endowment fund.

4. “*Endowment gift*” means an irrevocable contribution to a permanent endowment held by a qualified community foundation.

5. “*Lead philanthropic entity*” means the entity identified by the department pursuant to section 15E.304.

6. “*Qualified community foundation*” means a community foundation organized or operating in this state that meets or exceeds the national standards established by the national council on foundations.

2003 Acts, 1st Ex, ch 1, §90, 93

Section is effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date; 2003 Acts, 1st Ex, ch 1, §93

For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

#### 15E.304 Endow Iowa grants.

1. The department shall identify a lead philanthropic entity for purposes of encouraging the development of qualified community foundations in this state. A lead philanthropic entity shall meet all of the following qualifications:

a. The entity shall be a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code.

b. The entity shall be a statewide organization with membership consisting of organizations, such as community, corporate, and private foundations, whose principal function is the making of grants within the state of Iowa.

c. The entity shall have a minimum of forty

members and that membership shall include qualified community foundations.

2. A lead philanthropic entity may receive a grant from the department. The board shall use the grant moneys to award endow Iowa grants to new and existing qualified community foundations and to community affiliate organizations that do all of the following:

a. Provide the board with all information required by the board.

b. Demonstrate a dollar-for-dollar funding match in a form approved by the board.

c. Identify a qualified community foundation to hold all funds. A qualified community foundation shall not be required to meet this requirement.

d. Provide a plan to the board demonstrating the method for distributing grant moneys received from the board to organizations within the community or geographic area as defined by the qualified community foundation or the community affiliate organization.

3. Endow Iowa grants awarded to new and existing qualified community foundations and to community affiliate organizations shall not exceed twenty-five thousand dollars per foundation or organization unless a foundation or organization demonstrates a multiple county or regional approach. Endow Iowa grants may be awarded on an annual basis with not more than three grants going to one county in a fiscal year.

4. In ranking applications for grants, the board shall consider a variety of factors including the following:

a. The demonstrated need for financial assistance.

b. The potential for future philanthropic activity in the area represented by or being considered for assistance.

c. The proportion of the funding match being provided.

d. For community affiliate organizations, the demonstrated need for the creation of a community affiliate endowment fund in the applicant's geographic area.

e. The identification of community needs and the manner in which additional funding will address those needs.

f. The geographic diversity of awards.

5. Of any moneys received by a lead philanthropic entity from the state, not more than five percent of such moneys shall be used by the entity for administrative purposes.

2003 Acts, 1st Ex, ch 1, §91, 93  
Section is effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date; 2003 Acts, 1st Ex, ch 1, §93

For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

### 15E.305 Endow Iowa tax credit.

1. For tax years beginning on or after January

1, 2003, a tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.24 equal to twenty percent of a taxpayer's endowment gift to a qualified community foundation. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. A tax credit shall be allowed only for an endowment gift made to a qualified community foundation for a permanent endowment fund established to benefit a charitable cause in this state. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

2. The aggregate amount of tax credits authorized pursuant to this section shall not exceed a total of two million dollars. The maximum amount of tax credits granted to a taxpayer shall not exceed five percent of the aggregate amount of tax credits authorized.

3. A tax credit shall not be transferable to any other taxpayer.

4. A tax credit shall not be authorized pursuant to this section after December 31, 2005.

5. The department shall develop a system for registration and authorization of tax credits under this section and shall control the distribution of all tax credits to taxpayers providing an endowment gift subject to this section. The department shall adopt administrative rules pursuant to chapter 17A for the qualification and administration of endowment gifts.

2003 Acts, 1st Ex, ch 2, §83, 89  
Section is effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date; 2003 Acts, 1st Ex, ch 2, §89

For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93  
NEW section

### 15E.306 Reports.

By January 31 of each year, the lead philanthropic entity, in cooperation with the department, shall publish an annual report of the activities conducted pursuant to this division during the previous calendar year and shall submit the report to the governor and the general assembly. The annual report shall include a listing of endowment funds and the amount of tax credits authorized by the department.

2003 Acts, 1st Ex, ch 1, §92, 93  
Section is effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date; 2003 Acts, 1st Ex, ch 1, §93

For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

## CHAPTER 15F

### COMMUNITY ATTRACTION AND TOURISM DEVELOPMENT

#### 15F.202 Community attraction and tourism program.

1. The board shall establish and the department, subject to direction and approval by the board, shall administer a community attraction and tourism program to assist communities in the development, creation, and regional marketing of multiple-purpose attraction or tourism facilities.

2. A city or county in the state or public organization may submit an application to the board for financial assistance for a project under the program. The assistance shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, and credit enhancement and financing instruments. The application shall include, but not be limited to, the following information:

- a. The total capital investment of the project, including but not limited to costs for construction, site acquisition, and infrastructure improvement.
- b. The amount or percentage of local and pri-

vate matching moneys which will be or have been provided for the project.

c. The total number of jobs to be created or retained by the project.

d. The need of the community for the project and for the financial assistance.

e. The long-term tax-generating impact of the project.

3. A school district, in cooperation with a city or county, may submit a joint application for financial assistance for a project under the program. The assistance shall be provided only from funds, rights, and assets legally available to the board and shall be in the form of grants, loans, forgivable loans, and credit enhancement and financing instruments. In addition to the information required in subsection 2, the application shall include a demonstration that the intended future use of the project shall be by both joint applicants.

2003 Acts, ch 160, §1  
Subsection 1 amended

## CHAPTER 15G

### ECONOMIC GROWTH AND EXPANSION ACTIVITIES

For future repeal of this chapter effective June 30, 2010, see  
2003 Acts, 1st Ex, ch 1, §114

#### 15G.101 Definitions.

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

1. “*Board*” means the grow Iowa values board established in section 15G.102.
2. “*Department*” means the Iowa department of economic development created in section 15.105.
3. “*Director*” means the director of the department of economic development.
4. “*Fund*” means the grow Iowa values fund created in section 15G.108.
5. “*Grow Iowa values geographic regions*” means the geographic regions defined in section 15G.106.

2003 Acts, 1st Ex, ch 1, §77, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts,  
1st Ex, ch 1, §114  
NEW section

#### 15G.102 Grow Iowa values board.

1. The grow Iowa values board is established consisting of eleven voting members and four ex officio, nonvoting members. The grow Iowa values board shall be located for administrative purposes within the department and the director shall provide office space, staff assistance, and necessary

supplies and equipment for the board. The director shall budget moneys to pay the compensation and expenses of the board. In performing its functions, the board is performing a public function on behalf of the state and is a public instrumentality of the state.

2. a. The eleven voting members of the board shall be appointed by the governor, subject to confirmation by the senate.

b. The four ex officio, nonvoting members shall be appointed as follows:

(1) One member appointed by the president of the senate.

(2) One member appointed by the minority leader of the senate.

(3) One member appointed by the speaker of the house of representatives.

(4) One member appointed by the minority leader of the house of representatives.

c. All appointments shall comply with sections 69.16 and 69.16A.

d. At least one member of the board shall be from each grow Iowa values geographic region.

e. Each of the following areas of expertise shall be represented by at least one member of the board who has professional experience in that area of ex-

pertise:

- (1) Finance and investment banking.
- (2) Advanced manufacturing.
- (3) Statewide agriculture.
- (4) Life sciences.
- (5) Small business development.
- (6) Information technology.
- (7) Economics.
- (8) Labor.
- (9) Marketing.
- (10) Entrepreneurship.

f. At least nine voting members of the board shall be actively employed in the private, for-profit sector of the economy.

g. The board membership shall be balanced between representation by employers with less than two hundred employees and employers with two hundred or more employees.

3. The chairperson and vice chairperson shall be elected by the voting members of the board from the membership of the board. In the case of the absence or disability of the chairperson and vice chairperson, the voting members of the board shall elect a temporary chairperson by a majority vote of those voting members who are present and voting, provided a quorum is present.

4. The members of the board shall be appointed to three-year staggered terms and the terms shall commence and end as provided in section 69.19. If a vacancy occurs, a successor shall be appointed in the same manner and subject to the same qualifications as the original appointment to serve the unexpired term.

5. A majority of the voting members of the board constitutes a quorum.

6. A member of the board shall abstain from voting on the provision of financial assistance to a project which is located in the county in which the member of the board resides.

7. The members of the board are entitled to receive reimbursement for actual expenses incurred while engaged in the performance of official duties. A board member may also be eligible to receive compensation as provided in section 7E.6.

2003 Acts, 1st Ex, ch 1, §78, 133  
Confirmation; §2.32  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

**15G.103 Board duties.**

The board shall do all of the following:

1. Organize.
2. Receive advice and recommendations from the due diligence committee, the economic development marketing board, and the grow Iowa values review commission.
3. Assist the department in implementing programs and activities in a manner designed to achieve the goals set out in section 15G.107.
4. By December 15 of each year, submit a written report to the general assembly reviewing the activities of the board during the calendar year.

The report shall include information necessary for the review of the goals and performance measures set out in section 15G.107. State agencies and other entities receiving moneys from the fund shall cooperate with and assist the board in compilation of the report.

5. Adopt administrative rules pursuant to chapter 17A necessary to administer this chapter. This delegation shall be construed narrowly.

6. Adopt a strategic plan pursuant to section 8E.204 by July 1, 2004.

2003 Acts, 1st Ex, ch 1, §79, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

**15G.104 Due diligence committee.**

1. A due diligence committee is established consisting of five members and is located for administrative purposes within the department. The director of the department shall provide office space, staff assistance, and necessary supplies and equipment for the committee. The director shall budget moneys to pay the compensation and expenses of the committee. In performing its functions, the committee is performing a public function on behalf of the state and is a public instrumentality of the state.

2. a. Membership of the due diligence committee shall consist of five voting members of the grow Iowa values board elected annually by the voting members of the board. Committee members shall have expertise in the areas of banking and entrepreneurship.

b. The chairperson and vice chairperson of the committee shall be elected by and from the committee members. The terms of the members shall commence and end as provided by section 69.19. If a vacancy occurs, a successor shall be appointed in the same manner and subject to the same qualifications as the original appointment to serve the unexpired term. A majority of the committee constitutes a quorum.

3. The committee, after a thorough review, shall determine whether a proposed project using moneys from the grow Iowa values fund is practical and shall provide recommendations to the grow Iowa values board regarding any moneys proposed to be expended from the grow Iowa values fund, with the exception of moneys appropriated for purposes of the loan and credit guarantee program and regarding whether a proposed project is practical. The recommendations shall be based on whether the expenditure would make the achievement of the goals in accordance with the performance measures set out in section 15G.107 more likely. The recommendations may include conditions or that a proposed expenditure be rejected.

4. The members of the committee are entitled to receive reimbursement for actual expenses incurred while engaged in the performance of official duties. A committee member may also be eligible

to receive compensation as provided in section 7E.6.

2003 Acts, 1st Ex, ch 1, §80, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

#### **15G.105 Grow Iowa values review commission.**

1. A grow Iowa values review commission is established consisting of three members and is located for administrative purposes within the office of the auditor of state. The auditor of state shall provide office space, staff assistance, and necessary supplies and equipment for the review commission. The auditor of state shall budget moneys to pay the compensation and expenses of the commission, including the actual expenses of the auditor of state incurred while engaged in the performance of official commission duties. In performing its functions, the review commission is performing a public function on behalf of the state and is a public instrumentality of the state.

2. Membership of the review commission shall include the auditor of state, one member appointed by the governor subject to confirmation by the senate, and one member appointed by the legislative council. The members appointed by the governor and the legislative council shall possess experience and expertise in the field of economics. The appointments shall comply with sections 69.16 and 69.16A. The chairperson of the review commission shall be the auditor of state. The members shall be appointed to three-year staggered terms and the terms shall commence and end as provided by section 69.19. If a vacancy occurs, a successor shall be appointed in the same manner and subject to the same qualifications as the original appointment to serve the unexpired term. A majority of the review commission constitutes a quorum.

3. The review commission shall analyze all annual reports of the grow Iowa values board for purposes of determining if the goals and performance measures set out in section 15G.107 have been met. By January 1, 2007, the review commission shall submit a report to the grow Iowa values board, the department, and the general assembly. The report shall include findings, itemized by grow Iowa values geographic regions, regarding whether the goals and performance measures were met. The report shall also include recommendations regarding the continuation, elimination, or modification of any programs receiving moneys from the grow Iowa values fund and whether moneys should continue to be appropriated to and from the grow Iowa values fund. The recommendations shall be based on whether the goals in accordance with the performance measures are being achieved.

4. The members of the commission, including

the auditor of state, are entitled to receive reimbursement for actual expenses incurred while engaged in the performance of official duties. A commission member may also be eligible to receive compensation as provided in section 7E.6.

2003 Acts, 1st Ex, ch 1, §81, 133  
Confirmation; §2.32  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

#### **15G.106 Grow Iowa values geographic regions.**

For purposes of applying the goals and performance measurements, the state shall be divided into five grow Iowa values geographic regions. The regions shall be the following:

1. The northwest region shall include the counties of Lyon, Osceola, Dickinson, Emmet, Kossuth, Winnebago, Sioux, O'Brien, Clay, Palo Alto, Hancock, Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Woodbury, Ida, Sac, Calhoun, Webster, and Hamilton.

2. The northeast region shall include the counties of Worth, Mitchell, Howard, Winneshiek, Allamakee, Cerro Gordo, Floyd, Chickasaw, Fayette, Clayton, Franklin, Butler, Bremer, Hardin, Grundy, Black Hawk, Buchanan, Delaware, Dubuque, Tama, Benton, Linn, Jones, and Jackson.

3. The southeast region shall include the counties of Poweshiek, Iowa, Johnson, Cedar, Clinton, Scott, Muscatine, Mahaska, Keokuk, Washington, Louisa, Monroe, Wapello, Jefferson, Henry, Des Moines, Appanoose, Davis, Van Buren, and Lee.

4. The southwest region shall include the counties of Monona, Crawford, Carroll, Greene, Harrison, Shelby, Audubon, Guthrie, Pottawattamie, Cass, Adair, Mills, Montgomery, Adams, Union, Clarke, Lucas, Fremont, Page, Taylor, Ringgold, Decatur, and Wayne.

5. The central region shall include the counties of Boone, Story, Marshall, Dallas, Polk, Jasper, Madison, Warren, and Marion.

2003 Acts, 1st Ex, ch 1, §82, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

#### **15G.107 Goals — performance measures.**

1. In performing the duties provided in this chapter, chapter 15, and chapter 15E, the grow Iowa values board, the due diligence committee, the economic development marketing board, the grow Iowa values review commission, and the department shall achieve the goals of expanding and stimulating the state economy, increasing the wealth of Iowans, and increasing the population of the state. For purposes of this section, "upper mid-west region" includes the states of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

2. Goal achievement shall be examined on a regional basis using the grow Iowa values geo-

graphic regions on a statewide basis. Family farm performance indicators shall be calculated separately. The performance of the grow Iowa values geographic regions shall be compared to the performance of the state, the upper midwest region, and the United States. The baseline year shall be the calendar year 2002. In each grow Iowa values geographic region, the goal shall be to increase the baseline performance measure of Iowa's gross state product at a rate equal to or greater than the national economy.

3. *a.* In determining whether the goal of expanding and stimulating the state economy has been met, and using the calendar year 2002 as a baseline, performance measures shall be considered, including but not limited to the following, on a statewide basis or of those businesses that receive moneys originating from the grow Iowa values fund, as appropriate:

- (1) A net increase in a business's supplier network.
- (2) A net increase in business start-ups.
- (3) A net increase in business expansion.
- (4) A net increase in business modernization.
- (5) A net increase in attracting new businesses to the state.
- (6) A net increase in business retention.
- (7) A net increase in job creation and retention.
- (8) A decrease in Iowa of the ratio of the government employment as a percentage share of the total employment in Iowa at a rate at least equal to the ratio of the upper midwest region.

*b.* By December 15 of each year, the department shall submit a report to the grow Iowa values review commission and the grow Iowa values board that identifies information pertinent to the performance measures in paragraph "a", subparagraphs (3), (4), and (6), that the department gains through interviews with businesses in the state that close all or a portion of operations in the state. By December 15 of each year, based on the same interviews, the department shall submit a report to the general assembly providing suggested amendments to the Code of Iowa and the Iowa administrative code designed to stimulate and expand the state's economy.

*c.* By December 15 of each year the department shall submit a report to the grow Iowa values review commission and the grow Iowa values board that identifies prospective lost business development opportunities information pertinent to the performance measures in paragraph "a", subparagraphs (2) and (5), which indicate that the state has not been successful in the performance measures in paragraph "a", subparagraphs (2) and (5).

*d.* For purposes of the performance measure in paragraph "a", subparagraph (7), the department of economic development, in consultation with the department of workforce development and the au-

ditor of state, shall determine average annual job creation and retention rates based on the ten years prior to 2003, for the state and the upper midwest region. During the fiscal years beginning July 1, 2003, July 1, 2004, and July 1, 2005, the department of economic development shall report the job creation and retention rate of those businesses that receive moneys originating from the grow Iowa values fund and the job creation and retention rate of those businesses that do not receive moneys originating from the grow Iowa values fund. The ten-year average annual job creation and retention rate shall be compared to the job creation and retention rates determined under this paragraph for the fiscal years beginning July 1, 2003, July 1, 2004, and July 1, 2005. The department of economic development shall assist the department of workforce development in maintaining detailed employment statistics on businesses that receive moneys originating from the grow Iowa values fund, on businesses that do not receive moneys originating from the grow Iowa values fund, and on industries in Iowa that those businesses represent. The auditor of state shall audit the reliability and validity of the statistics compiled pursuant to this paragraph.

4. In determining whether the goal of increasing the wealth of Iowans has been met, the following earning performance measures shall be considered:

*a.* The per capita personal income in Iowa shall equal or exceed the average per capita personal income for the upper midwest region.

*b.* The average earnings per job in Iowa shall equal or exceed the average earnings per job in the upper midwest region.

*c.* The average manufacturing earnings per employee in Iowa shall equal or exceed the average manufacturing earnings per employee in the upper midwest region.

*d.* The average service earnings per employee in Iowa shall equal or exceed the average service earnings per employee in the upper midwest region.

*e.* The average earnings per employee in the financial, insurance, and real estate industries in Iowa shall equal or exceed the average earnings per employee in the financial, insurance, and real estate industries in the upper midwest region.

5. In determining whether the goal of increasing the population of the state has been met, the following performance measures shall be considered:

*a.* Using the calendar year 2002 as a baseline year, a net increase in the retention of Iowa high school graduates that are employed in the Iowa workforce following a higher education degree.

*b.* The increase in higher education graduates.

2003 Acts, 1st Ex, ch 1, §83, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

**15G.108 Grow Iowa values fund.**

A grow Iowa values fund is created in the state treasury under the control of the grow Iowa values board consisting of moneys appropriated to the grow Iowa values board. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund. The fund shall be administered by the grow Iowa values board, which shall make expenditures from the fund consistent with this chapter and pertinent Acts of the general assembly. Any financial assistance provided using moneys from the fund may be provided over a period of time of more than one year. Payments of interest, repayments of moneys loaned pursuant to this chapter, and recaptures of grants or loans shall be deposited in the fund.

2003 Acts, 1st Ex, ch 1, §84, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

**15G.109 Economic development marketing board — marketing strategies.**

1. *a.* An economic development marketing board is established consisting of seven members and is located for administrative purposes within the department. The director of the department shall provide office space, staff assistance, and necessary supplies and equipment for the board. The director shall budget moneys to pay the compensation and expenses of the board. In performing its functions, the board is performing a public function on behalf of the state and is a public instrumentality of the state.

*b.* The membership of the board shall consist of seven members appointed by the governor, subject to confirmation by the senate. Five of the members shall have significant demonstrated experience in marketing or advertising. Two members of the board shall also be members of the grow Iowa values board.

*c.* The appointments shall comply with sections 69.16 and 69.16A.

*d.* The chairperson and vice chairperson of the board shall be elected by and from the board members. In case of the absence or disability of the chairperson and vice chairperson, the members of the board shall elect a temporary chairperson by a majority vote of those members who are present and voting.

*e.* The members shall be appointed to three-year staggered terms and the terms shall commence and end as provided by section 69.19. If a vacancy occurs, a successor shall be appointed to serve the unexpired term. A successor shall be appointed in the same manner and subject to the

same qualifications as the original appointment to serve the unexpired term.

*f.* A majority of the board constitutes a quorum.

2. The board shall administer and implement the approval process for marketing strategies provided in subsection 3.

3. The economic development marketing board shall accept proposals for marketing strategies for purposes of selecting a strategy for the department to administer. The marketing strategies shall be designed to market Iowa as a lifestyle, increase the population of the state, increase the wealth of Iowans, and expand and stimulate the state economy. The economic development marketing board shall submit a recommendation regarding the proposal to the grow Iowa values board. In selecting a marketing strategy for recommendation, the economic development marketing board shall base the selection on the goals and performance measures provided in section 15G.107. The grow Iowa values board shall either approve or deny the recommendation.

4. The department shall implement and administer the marketing strategy approved by the grow Iowa values board as provided in subsection 3. The department shall provide the economic development marketing board with assistance in implementing administrative functions of the board and provide technical assistance to the board.

5. The members of the board are entitled to receive reimbursement for actual expenses incurred while engaged in the performance of official duties. A board member may also be eligible to receive compensation as provided in section 7E.6.

2003 Acts, 1st Ex, ch 1, §85, 133  
Confirmation; §2.32  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

**15G.110 Future consideration.**

Not later than February 1, 2007, the legislative services agency shall prepare and deliver to the secretary of the senate and the chief clerk of the house of representatives identical bills that repeal the provisions of this chapter. It is the intent of this section that the general assembly shall bring the bill to a vote in either the senate or the house of representatives expeditiously. It is further the intent of this chapter that if the bill is approved by the first house in which it is considered, it shall expeditiously be brought to a vote in the second house.

2003 Acts, 1st Ex, ch 1, §86, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

## CHAPTER 16

### IOWA FINANCE AUTHORITY

Employees of the department of elder affairs performing functions related to affordable assisted living as of June 30, 2003, shall become employees of the Iowa finance authority without loss of classification, pay, or benefits, effective July 1, 2003; 2003 Acts, ch 166, §29

#### 16.2 Establishment of authority — title guaranty division.

1. The Iowa finance authority is established, and constituted a public instrumentality and agency of the state exercising public and essential governmental functions, to undertake programs which assist in attainment of adequate housing for low or moderate income families, elderly families, and families which include one or more persons with disabilities, and to undertake the Iowa homesteading program, the small business loan program, the export business finance program, and other finance programs. The powers of the authority are vested in and shall be exercised by a board of nine members appointed by the governor subject to confirmation by the senate. No more than five members shall belong to the same political party. As far as possible the governor shall include within the membership persons who represent community and housing development industries, housing finance industries, the real estate sales industry, elderly families, minorities, lower income families, very low income families, families which include persons with disabilities, average taxpayers, local government, business and international trade interests, and any other person specially interested in community housing, finance, small business, or export business development.

A title guaranty division is created within the authority. The powers of the division relating to the issuance of title guaranties are vested in and shall be exercised by a division board of five members appointed by the governor subject to confirmation by the senate. The membership of the board shall include an attorney, an abstractor, a real estate broker, a representative of a mortgage-lender, and a representative of the housing development industry. The executive director of the authority shall appoint an attorney as director of the title guaranty division who shall serve as an ex officio member of the board. The appointment of and compensation for the division director are exempt from the merit system provisions of chapter 8A, subchapter IV.

*a.* Members of the board of the division shall be appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. A person shall not serve on the division board while serving on the authority board. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A mem-

ber is eligible for reappointment. A member of the division board may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or for other just cause, after notice and hearing, unless notice and hearing is expressly waived in writing.

*b.* Three members of the board shall constitute a quorum. An affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the division.

*c.* Members of the board are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

*d.* Members of the board and the director shall give bond as required for public officers in chapter 64.

*e.* Meetings of the board shall be held at the call of the chair of the board or on written request of two members.

*f.* Members shall elect a chair and vice chair annually and other officers as they determine. The director shall serve as secretary to the board.

*g.* The net earnings of the division, beyond that necessary for reserves, backing, guaranties issued or to otherwise implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state and are subject to subsection 8.

2. Members of the authority shall be appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the authority may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or for other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

3. Five members of the authority constitute a quorum and the affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. Members of the authority are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. Members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or whenever two members so request.

7. Members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director shall serve as secretary to the authority.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds or other obligations, or to implement the public purposes and programs herein authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority, including any such net earnings of the authority, shall vest in the state. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs or activities of the authority, including the power to terminate the authority, except that no law shall ever be passed impairing the obligation of any contract or contracts entered into by the authority to the extent that any such law would contravene Article I, section 21 of the Constitution of the state of Iowa or Article I, section 10 of the Constitution of the United States.

2003 Acts, ch 145, §139

Confirmation, see §2.32

Subsection 1, unnumbered paragraph 2 amended

#### **16.15 Housing assistance for very low income and lower income families.**

1. The authority shall participate in the housing assistance payments program under section 8 of the United States Housing Act of 1937, section 1401 et seq., title 42, United States Code, as amended by section 201 of the Housing and Community Development Act of 1974 (Public Law 93-383). The purpose of participation is to enable the authority to obtain, on behalf of the state of Iowa, set-asides of contract authorization reserved by the United States secretary of housing and urban development for public housing agencies, to enter into annual contributions contracts, to otherwise expedite use of the program through the use of state housing finance funds, and to encourage new construction and substantial rehabilitation of housing suitable for assistance under the program. Assistance may be provided for existing housing units made available by owners for the program, as well as for newly constructed housing units. Maximum rents shall be estab-

lished by the authority in conformity with federal law.

2. To establish maximum eligibility for set-asides the authority shall:

a. Develop and implement procedures which will to the fullest possible extent compliment the allocation system of the United States department of housing and urban development.

b. Evaluate statewide and local housing needs and develop a program to provide housing in areas of most critical need, within its allocation of set-aside contract authority.

c. Comply with all documentation and application requirements of the federal law.

3. The authority shall cooperate to the fullest extent possible with local housing agencies for implementation of the housing assistance payments program. The agency may enter into agreements with local housing agencies, housing cooperatives, or other public or private entities for commitment of housing assistance upon completion of an approved proposal, and may subsequently execute with such entities housing assistance payments contracts.

4. Permanent financing for units to be subsidized under the housing assistance payments program may be provided by the authority, directly or indirectly, by the proceeds from the sale of bonds and notes as provided in this chapter, or by other moneys available to the authority, by appropriations or otherwise.

5. The authority shall, when appropriate, take necessary steps to cooperate with the United States department of agriculture in implementation of sections 517 and 521 of the Housing Act of 1949, sections 1487 and 1490a, title 42, United States Code, as amended by section 514 of the Housing and Community Development Act of 1974 (Public Law 93-383). The purpose of such programs is to extend to rural areas the provisions of housing assistance payments programs.

6. The authority shall, when appropriate, take necessary steps to participate in the programs of federal assistance to state housing finance agencies for expanding the supply of housing available to low or moderate income families, as provided in section 802 of the Housing and Community Development Act of 1974 (Public Law 93-383).

7. The authority may participate in other programs under the Housing and Community Development Act of 1974 (Public Law 93-383), and in other federal programs designed to increase the supply of adequate housing for low or moderate income families and may recommend appropriate legislation to the general assembly where further legislation is needed to accomplish such participation. However, failure of the authority to participate in the federal programs set out in this section does not invalidate any bonds, notes or other obligations of the authority.

8. The authority shall ensure that moneys allocated to an eligible person administering a program to provide housing assistance under this section shall include moneys necessary to pay for all expenses relating to providing the housing assistance, including administrative expenses. However, not more than twenty percent of the total moneys allocated to a person shall be used for purposes of paying administrative expenses.

2003 Acts, ch 44, §14  
Subsection 4 amended

### 16.31 Moneys of the authority.

1. Moneys of the authority from whatever source derived, except as otherwise provided in this chapter, shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall, if required by the authority, be secured in the manner determined by the authority. The auditor of state and the auditor's legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and the authority shall not be required to pay a fee for the examination.

2. The authority may contract with holders of its bonds or notes as to the custody, collection, security, investment, and payment of moneys of the authority, of moneys held in trust or otherwise for the payment of bonds or notes, and to carry out the contract. Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of the moneys may be secured in the same manner as moneys of the authority, and banks and trust companies may give security for the deposits.

3. Subject to the provisions of any contract with bondholders or noteholders and to the approval of the director of the department of administrative services, the authority shall prescribe a system of accounts.

4. The authority shall submit to the governor, the auditor of state, the department of management, and the department of administrative services, within thirty days of its receipt by the authority, a copy of the report of every external examination of the books and accounts of the authority other than copies of the reports of examinations made by the auditor of state.

2003 Acts, ch 145, §286  
Terminology change applied

### 16.132 Security — reserve funds — pledges — nonliability — irrevocable contracts.

1. The authority may provide in the resolu-

tion, trust agreement, or other instrument authorizing the issuance of its bonds or notes pursuant to section 16.131 that the principal of, premium, and interest on the bonds or notes are payable from any of the following and may pledge the same to its bonds and notes:

a. The income and receipts or other money derived from the projects financed with the proceeds of the bonds or notes.

b. The income and receipts or other money derived from designated projects whether or not the projects are financed in whole or in part with the proceeds of the bonds or notes.

c. The amounts on deposit in the revolving loan funds.

d. The amounts payable to the department by eligible entities pursuant to loan agreements with eligible entities.

e. Any other funds or accounts established by the authority in connection with the program or the sale and issuance of its bonds or notes.

2. The authority may establish reserve funds, to secure one or more issues of its bonds or notes. The authority may deposit in a reserve fund established under this subsection the proceeds of the sale of its bonds or notes and other money which is made available from any other source.

3. It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the authority shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority whether or not the parties have notice of the lien. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code, chapter 554, to be valid, binding, or effective against the parties.

4. Neither the members of the authority nor persons executing the bonds or notes are liable personally on the bonds or notes or are subject to personal liability or accountability by reason of the issuance of the bonds or notes.

5. The bonds or notes issued by the authority are not an indebtedness or other liability of the state or of a political subdivision of the state within the meaning of any constitutional or statutory debt limitations but are special obligations of the authority, and are payable solely from the income and receipts or other funds or property of the department, and the amounts on deposit in the revolving loan funds, and the amounts payable to the department under its loan agreements with eligible entities as defined in section 455B.291 to the extent that the amounts are designated in the resolution, trust agreement, or other instrument of

the authority authorizing the issuance of the bonds or notes as being available as security for such bonds or notes. The authority shall not pledge the faith or credit of the state or of a political subdivision of the state to the payment of any bonds or notes. The issuance of any bonds or notes by the authority does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply money from, or levy or pledge any form of taxation whatever to the payment of the bonds or notes.

6. The state pledges to and agrees with the holders of bonds or notes issued under the Iowa water pollution control works and drinking water facilities financing program, that the state will not limit or alter the rights and powers vested in the authority to fulfill the terms of a contract made by the authority with respect to the bonds or notes, or in any way impair the rights and remedies of the holders until the bonds or notes, together with the interest on them including interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state, as it refers to holders of bonds or notes of the authority, in a contract with the holders.

2003 Acts, ch 44, §15, 114  
Code chapter reference added pursuant to Code editor directive  
Subsections 5 and 6 amended

#### HOUSING TRUST FUND

##### 16.181 Housing trust fund.

1. *a.* A housing trust fund is created within the authority. The moneys in the housing trust fund are annually appropriated to the authority to be used for the development and preservation of affordable housing for low-income people in the state. Payment of interest, recaptures of awards, or other repayments to the housing trust fund shall be deposited in the fund. Notwithstanding section 12C.7, interest or earnings on moneys in the housing trust fund or appropriated to the fund shall be credited to the fund. Notwithstanding section 8.33, unencumbered and unobligated moneys remaining in the fund at the close of each fiscal year shall not revert but shall remain available for expenditure for the same purposes in the succeeding fiscal year.

*b.* Assets in the housing trust fund shall consist of all of the following:

- (1) Any assets received by the authority from the Iowa housing corporation.
- (2) Any assets transferred by the authority for

deposit in the housing trust fund.

(3) Any other moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the authority for placement in the housing trust fund.

*c.* The authority shall create the following programs within the housing trust fund:

(1) Local housing trust fund program. Sixty percent of available moneys in the housing trust fund shall be allocated for the local housing trust fund program. Any moneys remaining in the local housing trust fund program on April 1 of each fiscal year which have not been awarded to a local housing trust fund may be transferred to the project-based housing program at any time prior to the end of the fiscal year.

(2) Project-based housing program. Forty percent of the available moneys in the housing trust fund shall be allocated to the project-based housing program.

2. *a.* In order to be eligible to apply for funding from the local housing trust fund program, a local housing trust fund must be approved by the authority and have all of the following:

(1) A local governing board recognized by the city, county, council of governments, or regional officials as the board responsible for coordinating local housing programs.

(2) A housing assistance plan approved by the authority.

(3) Sufficient administrative capacity in regard to housing programs.

(4) A local match requirement approved by the authority.

*b.* An award from the local housing trust fund program shall not exceed ten percent of the balance in the program at the beginning of the fiscal year plus ten percent of any deposits made during the fiscal year.

*c.* By December 31 of each year, a local housing trust fund receiving moneys from the local housing trust fund program shall submit a report to the authority itemizing expenditures of the awarded moneys.

3. In an area where no local housing trust fund exists, a person may apply for moneys from the project-based housing program.

4. The authority shall adopt rules pursuant to chapter 17A necessary to administer this section.

2003 Acts, ch 179, §101  
Coordination of federal funding received by department of economic development for the community development block grant program and for the HOME investment partnership program with projects under this section;  
2003 Acts, ch 179, §155  
NEW section

**16.182 through 16.186** Repealed by 94 Acts, ch 1155, § 7.

## CHAPTER 16A

### ECONOMIC PROTECTIVE AND INVESTMENT AUTHORITY

#### 16A.5 Executive director — staff.

1. The governor, subject to confirmation by the senate, shall appoint an executive director of the authority, who shall serve a four-year term at the pleasure of the governor. The term shall begin and end as provided in section 69.19. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation. The executive director shall not, directly or indirectly, exert influence to induce other officers or employees of the state to adopt a political view, or to favor a political candidate for office.

2. The executive director is a nonvoting ex officio member of the board, and shall advise the authority on matters relating to finance, carry out all directives from the authority, and hire and supervise the authority's staff pursuant to its directions and under the merit system provisions of chapter 8A, subchapter IV, except that principal administrative assistants with responsibilities in operating loan programs, accounting, and processing of applications for interest reduction are exempt from the merit system.

3. The executive director, as secretary of the authority, shall be custodian of all books, documents and papers filed with the authority and of its minute book and seal. The executive director may cause copies to be made of all minutes and other records and documents of the authority and give certificates under the seal of the authority to

the effect that the copies are true copies and all persons dealing with the authority may rely upon the certificates.

2003 Acts, ch 145, §140  
Confirmation, see §2.32  
Subsection 2 amended

#### 16A.13 Moneys of the authority.

1. Moneys of the authority shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall be secured in the manner determined by the authority. The auditor of state or the auditor's legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, investments and other records and papers relating to its financial standing, and the authority shall not be required to pay a fee for the examination.

2. The authority shall submit to the governor, the auditor of state, the department of management, and the department of administrative services, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority other than copies of the reports of examinations made by the auditor of state.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 17A

### IOWA ADMINISTRATIVE PROCEDURE ACT

#### 17A.4 Procedure for adoption of rules.

1. Prior to the adoption, amendment, or repeal of any rule an agency shall:

*a.* Give notice of its intended action by submitting three copies of the notice to the administrative rules coordinator, who shall assign an ARC number to each rulemaking document and forward two copies to the administrative code editor for publication in the Iowa administrative bulletin created pursuant to section 17A.6. Any notice of intended action shall be published at least thirty-five days in advance of the action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when,

the place where, and the manner in which interested persons may present their views.

*b.* Afford all interested persons not less than twenty days to submit data, views, or arguments in writing. If timely requested in writing by twenty-five interested persons, by a governmental subdivision, by the administrative rules review committee, by an agency, or by an association having not less than twenty-five members, the agency must give interested persons an opportunity to make oral presentation. The opportunity for oral presentation must be held at least twenty days after publication of the notice of its time and place in the Iowa administrative bulletin. The agency shall consider fully all written and oral submis-

sions respecting the proposed rule. Within one hundred eighty days following either the notice published according to the provisions of paragraph "a" or within one hundred eighty days after the last date of the oral presentations on the proposed rule, whichever is later, the agency shall adopt a rule pursuant to the rulemaking proceeding or shall terminate the proceeding by publishing notice of termination in the Iowa administrative bulletin.

An agency shall include in a preamble to each rule it adopts a brief explanation of the principal reasons for its action and, if applicable, a brief explanation of the principal reasons for its failure to provide in that rule for the waiver of the rule in specified situations if no such waiver provision is included in the rule. This explanatory requirement does not apply when the agency adopts a rule that only defines the meaning of a provision of law if the agency does not possess delegated authority to bind the courts to any extent with its definition. In addition, if requested to do so by an interested person, either prior to adoption or within thirty days thereafter, the agency shall issue a concise statement of the principal reasons for and against the rule adopted, incorporating therein the reasons for overruling considerations urged against the rule. This concise statement shall be issued either at the time of the adoption of the rule or within thirty-five days after the agency receives the request.

c. Mail the number of copies of the proposed rule as requested to the state office of a trade or occupational association which has registered its name and address with the agency. The trade or occupational association shall reimburse the agency for the actual cost incurred in providing the copies of the proposed rule under this paragraph. Failure to provide copies as provided in this paragraph shall not be grounds for the invalidation of a rule, unless that failure was deliberate on the part of that agency or the result of gross negligence.

2. When an agency for good cause finds that notice and public participation would be unnecessary, impracticable, or contrary to the public interest, the provisions of subsection 1 shall be inapplicable. The agency shall incorporate in each rule issued in reliance upon this provision either the finding and a brief statement of the reasons for the finding, or a statement that the rule is within a very narrowly tailored category of rules whose issuance has previously been exempted from subsection 1 by a special rule relying on this provision and including such a finding and statement of reasons for the entire category. If the administrative rules review committee by a two-thirds vote, the governor, or the attorney general files with the administrative code editor an objection to the adoption of any rule pursuant to this subsection, that

rule shall cease to be effective one hundred eighty days after the date the objection was filed. A copy of the objection, properly dated, shall be forwarded to the agency at the time of filing the objection. In any action contesting a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to show that the procedures of subsection 1 were impracticable, unnecessary, or contrary to the public interest and that, if a category of rules was involved, the category was very narrowly tailored.

3. Any notice of intended action or rule filed without notice pursuant to subsection 2, which necessitates additional annual expenditures of at least one hundred thousand dollars or combined expenditures of at least five hundred thousand dollars within five years by all affected persons, including the agency itself, shall be accompanied by a fiscal impact statement outlining the expenditures. The agency shall promptly deliver a copy of the statement to the legislative services agency. To the extent feasible, the legislative services agency shall analyze the statement and provide a summary of that analysis to the administrative rules review committee. If the agency has made a good faith effort to comply with the requirements of this subsection, the rule shall not be invalidated on the ground that the contents of the statement are insufficient or inaccurate.

4. No rule adopted after July 1, 1975, is valid unless adopted in substantial compliance with the above requirements of this section. However, a rule shall be conclusively presumed to have been made in compliance with all of the above procedural requirements of this section if it has not been invalidated on the grounds of noncompliance in a proceeding commenced within two years after its effective date.

5. a. If the administrative rules review committee created by section 17A.8, the governor, or the attorney general finds objection to all or some portion of a proposed or adopted rule because that rule is deemed to be unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency, the committee, governor, or attorney general may, in writing, notify the agency of the objection. In the case of a rule issued under subsection 2, or a rule made effective under section 17A.5, subsection 2, paragraph "b", the committee, governor, or attorney general may notify the agency of such an objection. The committee, governor, or attorney general shall also file a certified copy of such an objection in the office of the administrative code editor and a notice to the effect that an objection has been filed shall be published in the next issue of the Iowa administrative bulletin and in the Iowa administrative code when that rule is printed in it. The burden of proof shall then be on the agency in any proceeding for judicial review or for enforcement of the rule heard subse-

quent to the filing to establish that the rule or portion of the rule timely objected to according to the above procedure is not unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to it.

*b.* If the agency fails to meet the burden of proof prescribed for a rule objected to according to the provisions of paragraph “*a*” of this subsection, the court shall declare the rule or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs. Such court costs shall include a reasonable attorney fee and shall be payable by the director of the department of administrative services from the support appropriations of the agency which issued the rule in question.

6. Upon the vote of two-thirds of its members the administrative rules review committee may delay the effective date of a rule seventy days beyond that permitted in section 17A.5, unless the rule was promulgated under section 17A.5, subsection 2, paragraph “*b*”. This provision shall be utilized by the committee only if further time is necessary to study and examine the rule. Notice of an effective date that was delayed under this provision shall be published in the Iowa administrative code and bulletin.

7. The governor may rescind an adopted rule by executive order within seventy days of the rule becoming effective. The governor shall provide a copy of the executive order to the administrative code editor who shall include it in the next publication of the Iowa administrative bulletin.

2003 Acts, ch 35, §27, 49; 2003 Acts, ch 145, §286  
Subsection 6; see also §17A.8(9)  
Terminology change applied  
NEW subsection 3 and former subsections 3 – 6 renumbered as 4 – 7

### 17A.6 Publications.

1. The administrative code editor shall cause the Iowa administrative bulletin to be published in accordance with section 2.42 at least every other week, unless the administrative code editor and the administrative rules review committee determine that an alternative publication schedule is preferable. The Iowa administrative bulletin shall contain all of the following:

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

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

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

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

2. Subject to the direction of the administrative rules coordinator, the administrative code editor shall cause the Iowa administrative code to be compiled, indexed, and published in accordance with section 2.42 in a form containing all rules adopted and filed by each agency. The administrative code editor further shall cause supplements to the Iowa administrative code to be published as determined by the administrative rules coordinator and the administrative rules review committee, containing all rules filed for publication in the prior time period. The supplements shall be in such form that they may be inserted in the appropriate places in the permanent compilation. The administrative rules coordinator shall devise a uniform numbering system for rules and may renumber rules before publication to conform with the system.

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

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

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

5. The Iowa administrative code, its supplements, and the Iowa administrative bulletin shall be made available upon request to all persons who subscribe to any of them.

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

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

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

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

2003 Acts, ch 35, §28, 29, 49; 2003 Acts, ch 145, §141

See also §7.17

See Code editor's note to §2.9

Subsection 1, unnumbered paragraph 1 amended

Subsections 2, 3, and 5 amended

#### **17A.8 Administrative rules review committee.**

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

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

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

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

3. A committee member shall be paid the per diem specified in section 2.10, subsection 5, for each day in attendance and shall be reimbursed for actual and necessary expenses. There is appropriated from money in the general fund not otherwise appropriated an amount sufficient to pay costs incurred under this section.

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

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

6. The committee shall meet for the purpose of selectively reviewing rules, whether proposed or in effect. A regular or special committee meeting

shall be open to the public and an interested person may be heard and present evidence. The committee may require a representative of an agency whose rule or proposed rule is under consideration to attend a committee meeting.

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

8. If the committee finds objection to a rule, it may utilize the procedure provided in section 17A.4, subsection 5. In addition or in the alternative, the committee may include in the referral, under subsection 7, a recommendation that this rule be overcome by statute. If the committee of the general assembly to which a rule is referred finds objection to the referred rule, it may recommend to the general assembly that this rule be overcome by statute. This section shall not be construed to prevent a committee of the general assembly from reviewing a rule on its own motion.

9. Upon a vote of two-thirds of its members, the administrative rules review committee may delay the effective date of a rule until the adjournment of the next regular session of the general assembly. The committee shall refer a rule whose effective date has been delayed to the speaker of the house of representatives and the president of the senate who shall refer the rule to the appropriate standing committees of the general assembly. A standing committee shall review a rule within twenty-one days after the rule is referred to the committee by the speaker of the house of representatives or the president of the senate and shall take formal committee action by sponsoring a joint resolution to disapprove the rule, by proposing legislation relating to the rule, or by refusing to propose a joint resolution or legislation concerning the rule. The standing committee shall inform the administrative rules review committee of the committee action taken concerning the rule. If the general assembly has not disapproved of the rule by a joint resolution, the rule shall become effective. The speaker of the house of representatives and the president of the senate shall notify the administrative code editor of the final disposition of each rule delayed pursuant to this subsection. If a rule is disapproved, it shall not become effective and the agency shall rescind the rule. This section shall not apply to rules made effective under section 17A.5, subsection 2, paragraph "b".

2003 Acts, ch 35, §30, 49

Internal reference change applied

Subsection 10 stricken

## SUBTITLE 7 CAPITOL PLANNING

### CHAPTER 18 DEPARTMENT OF GENERAL SERVICES

Repealed by 2003 Acts, ch 145, §291; see chapter 8A,  
subchapter III

For transition provisions relating to the department  
of administrative services created in chapter 8A,  
including the status of administrative rules in effect  
on July 1, 2003, see 2003 Acts, ch 145, §287, 288

Former §18.86 – 18.90, 18.95 – 18.97A, and 18.101 – 18.103  
were repealed effective April 14, 2003;  
2003 Acts, ch 35, §47, 49

With respect to proposed amendments to former §18.80,  
18.81, 18.83, 18.84, 18.85, 18.86, 18.88, 18.92, 18.102,  
and 18.103 in 2003 Acts, ch 108, §10 – 19, and individual  
repeals of former §18.86 – 18.90, 18.95 – 18.97A, and  
18.101 – 18.103 by 2003 Acts, ch 35, §47, 49, see Code  
editor's note to §2.9

With respect to amendments to former §18.3, 18.16A,  
18.16B, 18.28, 18.28A, 18.30, 18.50, 18.59, and 18.75 in  
2003 Acts, ch 35, §31 – 37, 45, see Code editor's notes

### CHAPTER 18A CAPITOL PLANNING

#### **18A.1 Commission created.**

The capitol planning commission is created, composed of eleven members as follows:

1. Four members of the general assembly serving as ex officio nonvoting members, two to be appointed by the speaker of the house from the membership of the house, and two to be appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, from the membership of the senate.
2. Six residents of the state of Iowa to be appointed by the governor.
3. The director of the department of administrative services or the director's designee.

2003 Acts, ch 145, §286  
Terminology change applied

#### **18A.3 Duties — report to legislature.**

It shall be the duty of the commission to advise upon the location of statues, fountains and monuments and the placing of any additional buildings on the capitol grounds, the type of architecture and the type of construction of any new buildings to be erected on the state capitol grounds as now encompassed or as subsequently enlarged, and repairs and restoration thereof, and it shall be the duty of the officers, commissions, and councils charged by law with the duty of determining such questions to call upon the commission for such advice.

The commission shall, in cooperation with the director of the department of administrative services, develop and implement within the limits of its appropriation, a five-year modernization program for the capitol complex.

The commission shall annually report to the general assembly its recommendations relating to its duties under this section. The report shall be submitted to the chief clerk of the house and the secretary of the senate during the month of January.

2003 Acts, ch 145, §286  
Terminology change applied

#### **18A.4 Organization.**

The commission shall organize biennially by election of a chairperson from its membership. The director of the department of administrative services or the designee of the director shall serve as secretary to the commission.

2003 Acts, ch 145, §286  
Terminology change applied

#### **18A.5 Compensation and expenses.**

The members of the commission shall be reimbursed for their actual and necessary expenses while in attendance at any meeting of the commission held at the seat of government and shall be reimbursed for their expenses for going to and from the seat of government to attend a meeting. Members may also be eligible for compensation as provided in section 7E.6. All expense moneys paid to the nonlegislative commissioners shall be paid from funds appropriated to the commission. Service of the director of the department of administrative services upon this commission is an additional duty conferred by statute. Legislative members of the commission shall receive payment pursuant to section 2.10 and section 2.12.

2003 Acts, ch 145, §286  
Terminology change applied

**18A.7 State capitol view preservation.**

The department of administrative services shall develop a state capitol view preservation plan. The purpose of the plan shall be to ensure that the most scenic views of the state capitol remain unobstructed by the erection of structures, including but not limited to buildings, towers, and monuments.

The plan shall include proposals for height and setback limitations of structures erected within the state capitol view, and shall include appropriate drawings, schematics, and aerial photographs necessary to establish the plan with sufficient

clarity and definition.

The department shall negotiate implementation of the plan with the city of Des Moines with the goal of entering into a memorandum of understanding in relation to the plan. The department shall provide the governor and the capitol planning commission with quarterly reports regarding progress made on the capitol view preservation plan and execution of the memorandum of understanding.

2003 Acts, ch 145, §286  
Terminology change applied

**CHAPTER 19A****DEPARTMENT OF PERSONNEL**

Repealed by 2003 Acts, ch 145, §291; see chapter 8A, subchapter IV

For transition provisions relating to the department of administrative services created in chapter 8A, the transfer of personnel in the state merit system, and the status of administrative rules in effect on July 1, 2003, see 2003 Acts, ch 145, §287, 288

**CHAPTER 19B****EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION****19B.2 Equal opportunity in state employment — affirmative action.**

It is the policy of this state to provide equal opportunity in state employment to all persons. An individual shall not be denied equal access to state employment opportunities because of race, creed, color, religion, national origin, sex, age, or physical or mental disability. It also is the policy of this state to apply affirmative action measures to correct deficiencies in the state employment system where those remedies are appropriate. This policy shall be construed broadly to effectuate its purposes.

It is the policy of this state to permit special appointments by bypassing the usual testing procedures for any applicant for whom the division of vocational rehabilitation services of the department of education or the department for the blind has certified the applicant's disability and competence to perform the job. The department of administrative services, in cooperation with the department for the blind and the division of vocational rehabilitation services, shall develop appropriate certification procedures. This paragraph should not be interpreted to bar promotional opportunities for persons who are blind or persons with physical or mental disabilities. If this paragraph conflicts with any other provisions of this chapter, the provisions of this paragraph govern.

2003 Acts, ch 145, §286  
Terminology change applied

**19B.3 Administrative responsibilities of department of administrative services and board of regents.**

1. The department of administrative services is responsible for the administration and promotion of equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel by all state agencies except the state board of regents and the institutions under its jurisdiction. In carrying out this responsibility the department shall do all of the following with respect to state agencies other than the state board of regents and its institutions:

*a.* Designate a position as the state affirmative action administrator.

*b.* Propose affirmative action standards applicable to each state agency based on the population of the community in which the agency functions, the population served by the agency, or the persons that can be reasonably recruited.

*c.* Gather data necessary to maintain an ongoing assessment of affirmative action efforts in state agencies.

*d.* Monitor accomplishments with respect to affirmative action remedies identified in affirmative action plans of state agencies.

*e.* Conduct studies of preemployment and postemployment processes in order to evaluate employment practices and develop improved methods of dealing with all employment issues re-

lated to equal employment opportunity and affirmative action.

*f.* Establish a state recruitment coordinating committee to assist in addressing affirmative action recruitment needs, with members appointed by the director of the department of administrative services.

*g.* Address equal opportunity and affirmative action training needs of all state agencies by:

(1) Providing appropriate training for managers and supervisors.

(2) Insuring that all state agencies make training available for all staff members whose duties relate to personnel administration.

(3) Investigating means for training in the area of career development.

*h.* Coordinate and develop equal employment opportunity reports, including the initiation of the processes necessary for the completion of the annual EEO-4 report required by the federal equal employment opportunity commission.

*i.* Address equal opportunity and affirmative action policies with respect to employee benefits and leaves of absence.

*j.* Adopt equal employment opportunity and affirmative action rules in accordance with chapter 17A.

2. The state board of regents is responsible for the administration and promotion of equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel by the board and the institutions under its jurisdiction. In carrying out this responsibility the board shall do all of the following with respect to the board and its institutions:

*a.* Designate a position as the regents' affirmative action coordinator.

*b.* Propose affirmative action standards applicable to the board and each institution under its jurisdiction.

*c.* Gather data necessary to maintain an ongoing assessment of affirmative action efforts.

*d.* Monitor accomplishments with respect to affirmative action remedies identified in affirmative action plans.

*e.* Conduct studies of preemployment and postemployment processes in order to evaluate employment practices and develop improved methods of dealing with all employment issues related to equal employment opportunity and affirmative action.

*f.* Establish an equal employment committee to assist in addressing affirmative action needs, including recruitment.

*g.* Address equal opportunity and affirmative action training needs by:

(1) Providing appropriate training for managers and supervisors.

(2) Insuring that the board and its institutions make training available for all staff members whose duties relate to personnel administration.

(3) Investigating means for training in the area of career development.

*h.* Require development of equal employment opportunity reports, including the initiation of the processes necessary for the completion of reports required by the federal equal employment opportunity commission.

*i.* Address equal opportunity and affirmative action policies with respect to employee benefits and leaves of absence.

*j.* Adopt equal employment opportunity and affirmative action rules in accordance with chapter 17A.

2003 Acts, ch 145, §286  
Terminology change applied

#### **19B.4 State agency affirmative action plans — programs.**

1. Each state agency, including the state board of regents and its institutions, shall annually prepare an affirmative action plan. State agencies other than the state board of regents and its institutions shall submit their plans to the department of administrative services by July 31 each year. Institutions under the jurisdiction of the state board of regents shall submit their plans to that board between December 15 and December 31 each year. Each plan shall contain a clear and unambiguous written program containing goals and time specifications related to personnel administration.

2. Each state agency, including the state board of regents and its institutions, shall conduct programs of job orientation and provide organizational structure and training for upward mobility of employees. Emphasis shall be placed upon fair practices in employment.

2003 Acts, ch 145, §286  
Terminology change applied

#### **19B.5 Annual reports.**

1. The head of each state agency other than the state board of regents and its institutions is personally responsible for submitting by July 31 an annual report of the affirmative action accomplishments of that agency to the department of administrative services.

2. The department of administrative services shall submit a report on the condition of affirmative action, diversity, and multicultural programs in state agencies covered by subsection 1 by September 30 of each year to the governor and the general assembly.

3. The state board of regents shall submit an annual report of the affirmative action, diversity, and multicultural accomplishments of the board and its institutions by January 31 of each year to the general assembly. The report shall include information identifying funding sources and itemized costs, including administrative costs, for

these programs.

2003 Acts, ch 145, §142, 286  
Terminology change applied  
Subsection 2 amended

**19B.6 Responsibilities of department of administrative services and department of management — affirmative action.**

The department of administrative services shall oversee the implementation of sections 19B.1 through 19B.5 and shall work with the governor to ensure compliance with those sections, including the attainment of affirmative action goals and timetables, by all state agencies, excluding the state board of regents and its institutions. The department of management shall oversee the implementation of sections 19B.1 through 19B.5 and shall work with the governor to ensure compliance with those sections, including the attainment of affirmative action goals and timetables, by the state board of regents and its institutions.

2003 Acts, ch 145, §286  
Terminology change applied

**19B.11 School districts, area education agencies, and community colleges — duties of director of department of education.**

1. It is the policy of this state to provide equal opportunity in school district, area education agency, and community college employment to all persons. An individual shall not be denied equal access to school district, area education agency, or community college employment opportunities because of race, creed, color, religion, national origin, sex, age, or physical or mental disability. It also is the policy of this state to apply affirmative action measures to correct deficiencies in school district, area education agency, and community college employment systems where those remedies are appropriate. This policy shall be construed broadly to effectuate its purposes.

2. The director of the department of education shall actively promote fair employment practices for all school district, area education agency, and community college employees and the state board of education shall adopt rules requiring specific steps by school districts, area education agencies, and community colleges to accomplish the goals of equal employment opportunity and affirmative action in the recruitment, appointment, assignment, and advancement of personnel. Each school district, area education agency, and community college shall be required to develop affirmative action standards which are based on the population of the community in which it functions, the student population served, or the persons who can be reasonably recruited. The director of education shall consult with the department of administrative services in the performance of duties under this section.

3. Each school district, area education agency, and community college in the state shall submit to

the director of the department of education an annual report of the accomplishments and programs of the district, agency, or community college in carrying out its duties under this section. The report shall be submitted between December 15 and December 31 each year. The director shall prescribe the form and content of the report.

4. The director of the department of education shall prepare a compilation of the reports required by subsection 3 and shall submit this compilation, together with a report of the director's accomplishments and programs pursuant to this section, to the department of management by January 31 of each year.

2003 Acts, ch 145, §286  
Terminology change applied

**19B.12 Sexual harassment prohibited.**

A state employee shall not sexually harass another state employee, a person in the care or custody of the state employee or a state institution, or a person attending a state educational institution. This section applies to full-time, part-time, or temporary employees, to inpatients and outpatients, and to full-time or part-time students.

1. An employee in a supervisory position shall not threaten or insinuate, explicitly or implicitly, that another employee's refusal to submit to sexual advances will adversely affect the employee's employment, evaluation, salary advancement, job assignments, or other terms, conditions, or privileges of employment.

2. An employee shall not discriminate against another state employee, a person in the care or custody of the employee or a state institution, or a person attending a state educational institution based on sex or create an intimidating, hostile, or offensive working environment in a state work, educational, or correctional situation.

3. As used in this section, "*sexual harassment*" means persistent, repetitive, or highly egregious conduct directed at a specific individual or group of individuals that a reasonable person would interpret as intentional harassment of a sexual nature, taking into consideration the full context in which the conduct occurs, which conduct threatens to impair the ability of a person to perform the duties of employment, or otherwise function normally within an institution responsible for the person's care, rehabilitation, education, or training.

"*Sexual harassment*" may include, but is not limited to, the following:

*a.* Unsolicited sexual advances by a person toward another person who has clearly communicated the other person's desire not to be the subject of those advances.

*b.* Sexual advances or propositions made by a person having superior authority toward another person within the workplace or institution.

*c.* Instances of offensive sexual remarks or speech or graphic sexual displays directed at a

person in the workplace or institution, who has clearly communicated the person's objection to that conduct, and where the person is not free to avoid that conduct due to the requirements of the employment or the confines or operations of the institution.

*d.* Dress requirements that bear no relation to the person's employment responsibilities or institutional status.

4. The department of administrative services for all state agencies, and the state board of regents for its institutions, shall adopt rules and appropriate internal, confidential grievance procedures to implement this section, and shall adopt procedures for determining violations of this section and for ordering appropriate dispositions that may include, but are not limited to, discharge, suspension, or reduction in rank or grade as defined in section 8A.413, subsection 16.

5. The department of administrative services shall develop for all state agencies, and all state

agencies shall distribute at the time of hiring or orientation, a guide for employees that describes the applicable sexual harassment prohibitions and grievance, violation, and disposition procedures.

6. The state board of regents shall develop, and direct the institutions under its control to distribute at the time of hiring, registration, admission, or orientation, a guide for employees, students, and patients that describes the applicable sexual harassment prohibitions and grievance, violation, and disposition procedures.

7. This section does not supersede a provision of a collective bargaining agreement negotiated under chapter 20, or the grievance procedures provisions of chapter 20.

8. This section does not supersede the remedies provided under chapter 216.

2003 Acts, ch 145, §143, 286  
Terminology change applied  
Subsection 4 amended

## CHAPTER 20

### PUBLIC EMPLOYMENT RELATIONS (COLLECTIVE BARGAINING)

#### **20.5 Public employment relations board.**

1. There is established a board to be known as the "*Public Employment Relations Board*". The board shall consist of three members appointed by the governor, subject to confirmation by the senate. No more than two members shall be of the same political affiliation, no member shall engage in any political activity while holding office and the members shall devote full time to their duties.

The members shall be appointed for staggered terms of four years beginning and ending as provided in section 69.19.

The member first appointed for a term of four years shall serve as chairperson and each of the member's successors shall also serve as chairperson.

2. Any vacancy occurring shall be filled in the same manner as regular appointments are made.

3. In selecting the members of the board, consideration shall be given to their knowledge, ability, and experience in the field of labor-management relations. The chairperson and the remaining two members shall each receive an annual salary as set by the general assembly.

4. The board may employ such persons as are necessary for the performance of its functions. Personnel of the board shall be employed pursuant to the provisions of chapter 8A, subchapter IV.

5. Members of the board and other employees of the board shall be allowed their actual and necessary expenses incurred in the performance of

their duties. All expenses and salaries shall be paid from appropriations for such purposes and the board shall be subject to the budget requirements of chapter 8.

2003 Acts, ch 145, §144  
Confirmation, see §2.32  
Subsection 4 amended

#### **20.6 General powers and duties of the board.**

The board shall:

1. Administer the provisions of this chapter.  
2. Collect, for public employers other than the state and its boards, commissions, departments, and agencies, data and conduct studies relating to wages, hours, benefits and other terms and conditions of public employment and make the same available to any interested person or organization.

3. Establish minimum qualifications for arbitrators and mediators, establish procedures for appointing, maintaining, and removing from a list persons representative of the public to be available to serve as arbitrators and mediators, and establish compensation rates for arbitrators and mediators.

4. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, persons appointed or employed by the board, including administrative law judges, or administrative law judges employed by the division

of administrative hearings created by section 10A.801, for the performance of its functions. The board may petition the district court at the seat of government or of the county where a hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

5. Adopt rules in accordance with the provisions of chapter 17A as it may deem necessary to carry out the purposes of this chapter.

Personnel department appeals; see §8A.415  
Section not amended; footnote revised

### 20.9 Scope of negotiations.

The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. If an agreement provides for dues checkoff, a member's dues may be checked off only upon the member's written request and the member may terminate the dues checkoff at any time by giving thirty days' written notice. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession.

Nothing in this section shall diminish the authority and power of the department of administrative services, board of regents' merit system, Iowa public broadcasting board's merit system, or any civil service commission established by constitutional provision, statute, charter or special act to recruit employees, prepare, conduct and grade examinations, rate candidates in order of their relative scores for certification for appointment or promotion or for other matters of classification, reclassification or appeal rights in the classified service of the public employer served.

All retirement systems shall be excluded from the scope of negotiations.

2003 Acts, ch 145, §286  
Dues checkoff; see §70A.19  
Terminology change applied

### 20.18 Grievance procedures.

An agreement with an employee organization which is the exclusive representative of public employees in an appropriate unit may provide procedures for the consideration of public employee grievances and of disputes over the interpretation

and application of agreements. Negotiated procedures may provide for binding arbitration of public employee grievances and of disputes over the interpretation and application of existing agreements. An arbitrator's decision on a grievance may not change or amend the terms, conditions or applications of the collective bargaining agreement. Such procedures shall provide for the invoking of arbitration only with the approval of the employee organization, and in the case of an employee grievance, only with the approval of the public employee. The costs of arbitration shall be shared equally by the parties.

Public employees of the state or public employees covered by civil service shall follow either the grievance procedures provided in a collective bargaining agreement, or in the event that grievance procedures are not provided, shall follow grievance procedures established pursuant to chapter 8A, subchapter IV, or chapter 400, as applicable.

2003 Acts, ch 145, §145  
Unnumbered paragraph 2 amended

### 20.21 Fact-finding.

If the impasse persists ten days after the mediator has been appointed, the board shall appoint a fact-finder representative of the public, from a list of qualified persons maintained by the board. The fact-finder shall conduct a hearing, may administer oaths, and may request the board to issue subpoenas. The fact-finder shall make written findings of facts and recommendations for resolution of the dispute and, not later than fifteen days from the day of appointment, shall serve such findings on the public employer and the certified employee organization.

The public employer and the certified employee organization shall immediately accept the fact-finder's recommendation or shall within five days submit the fact-finder's recommendations to the governing body and members of the certified employee organization for acceptance or rejection. If the dispute continues ten days after the report is submitted, the report shall be made public by the board.

However, the board shall not appoint a fact-finder representative of the public if the public employees represented by a certified employee organization are teachers licensed under chapter 272 and the public employer is a school district or area education agency, or are professional employees and the public employer is a community college. The board shall adopt rules regarding the time period after mediation when binding arbitration procedures must begin for teachers or professional employees exempt from this section.

2002 Acts, ch 1047, §1, 20  
2002 amendment to unnumbered paragraph 3 takes effect July 1, 2003;  
2002 Acts, ch 1047, §20  
Unnumbered paragraph 3 amended

## CHAPTER 22

### EXAMINATION OF PUBLIC RECORDS (OPEN RECORDS)

#### 22.3A Access to data processing software.

1. As used in this section:

a. "Access" means the instruction of, communication with, storage of data in, or retrieval of data from a computer.

b. "Computer" means an electronic device which performs logical, arithmetical, and memory functions by manipulations of electronic or magnetic impulses, and includes all input, output, processing, storage, and communication facilities which are connected or related to the computer including a computer network. As used in this paragraph, "computer" includes any central processing unit, front-end processing unit, miniprocessor, or microprocessor, and related peripheral equipment such as data storage devices, document scanners, data entry terminal controllers, and data terminal equipment and systems for computer networks.

c. "Computer network" means a set of related, remotely connected devices and communication facilities including two or more computers with capability to transmit data among them through communication facilities.

d. "Data" means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, or is intended to be processed, in a computer. Data may be stored in any form, including but not limited to a printout, magnetic storage media, disk, compact disc, punched card, or as memory of a computer.

e. "Data processing software" means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data, and includes any program or set of programs, procedures, or routines used to employ and control capabilities of computer hardware. As used in this paragraph "data processing software" includes but is not limited to an operating system, compiler, assembler, utility, library resource, maintenance routine, application, or computer networking program.

2. A government body may provide, restrict, or prohibit access to data processing software developed by the government body, regardless of whether the data processing software is separated or combined with a public record. A government body shall establish policies and procedures to provide access to public records which are combined with its data processing software. A public record shall not be withheld from the public because it is combined with data processing software. A government body shall not acquire any electronic data processing system for the storage, manipulation, or retrieval of public records that would impair the government body's ability to per-

mit the examination of a public record and the copying of a public record in either written or electronic form. If it is necessary to separate a public record from data processing software in order to permit the examination or copying of the public record, the government body shall bear the cost of separation of the public record from the data processing software. The electronic public record shall be made available in a format useable with commonly available data processing or database management software. The cost chargeable to a person receiving a public record separated from data processing software under this subsection shall not be in excess of the charge under this chapter unless the person receiving the public record requests that the public record be specially processed. A government body may establish payment rates and procedures required to provide access to data processing software, regardless of whether the data processing software is separated from or combined with a public record. Proceeds from payments may be considered repayment receipts, as defined in section 8.2. The payment amount shall be calculated as follows:

a. The amount charged for access to a public record shall be not more than that required to recover direct publication costs, including but not limited to editing, compilation, and media production costs, incurred by the government body in developing the data processing software and preparing the data processing software for transfer to the person. The amount shall be in addition to any other fee required to be paid under this chapter for the examination and copying of a public record. If a person accesses a public record stored in an electronic format that does not require formatting, editing, or compiling to access the public record, the charge for providing the accessed public record shall not exceed the reasonable cost of accessing that public record. The government body shall, if requested, provide documentation which explains and justifies the amount charged. This paragraph shall not apply to any publication for which a price has been established pursuant to another section, including section 2A.5.

b. If access to the data processing software is provided to a person for a purpose other than provided in paragraph "a", the amount may be established according to the discretion of the government body, and may be based upon competitive market considerations as determined by the government body.

3. A government body is granted and may apply for and receive any legal protection necessary to secure a right to or an interest in data processing software developed by the government body,

including but not limited to federal copyright, patent, and trademark protections, and any trade secret protection available under chapter 550. The government body may enter into agreements for the sale or distribution of its data processing software, including marketing and licensing agreements. The government body may impose conditions upon the use of the data processing software that is otherwise consistent with state and federal law.

2003 Acts, ch 35, §38, 49  
Subsection 2, paragraph a amended

### 22.7 Confidential records.

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

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records. This subsection shall not be construed to prohibit a postsecondary education institution from disclosing to a parent or guardian information regarding a violation of a federal, state, or local law, or institutional rule or policy governing the use or possession of alcohol or a controlled substance if the child is under the age of twenty-one years and the institution determines that the student committed a disciplinary violation with respect to the use or possession of alcohol or a controlled substance regardless of whether that information is contained in the student's education records.

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a crime victim and the victim's counselor are not subject to disclosure except as provided in section 915.20A. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, while maintaining an individual's confidentiality.

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

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

5. Peace officers' investigative reports, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confiden-

tial under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

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

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

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

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

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

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

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

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

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

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

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

17. Records of identity of owners of public bonds or obligations maintained as provided in

section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records.

18. Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, “*persons outside of government*” does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. Notwithstanding this provision:

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

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

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

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

20. Information concerning the nature and location of any archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the state historic pres-

ervation officer pertaining to access, disclosure, and use of archaeological site records.

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

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

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

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

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

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

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

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

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

vided by law.

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

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

32. Social security numbers of the owners of unclaimed property reported to the treasurer of state pursuant to section 556.11, subsection 2, included on claim forms filed with the treasurer of state pursuant to section 556.19, included in outdated warrant reports received by the treasurer of state pursuant to section 25.2, or stored in record systems maintained by the treasurer of state for purposes of administering chapter 556, or social security numbers of payees included on state warrants included in records systems maintained by the department of administrative services for the purpose of documenting and tracking outdated warrants pursuant to section 25.2.

33. Data processing software, as defined in section 22.3A, which is developed by a government body.

34. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 9.

35. Records of the Iowa department of public health pertaining to participants in the gambling treatment program except as otherwise provided in this chapter.

36. Records of a law enforcement agency or the state department of transportation regarding the issuance of a driver's license under section 321.189A.

37. Mediation documents as defined in section 679C.1, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing body. However, confidentiality of mediation documents resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

38. *a.* Records containing information that would disclose, or might lead to the disclosure of, private keys used in a digital signature or other similar technologies as provided in chapter 554D.

*b.* Records which if disclosed might jeopardize the security of an electronic transaction pursuant to chapter 554D.

39. Information revealing the identity of a packer or a person who sells livestock to a packer as reported to the department of agriculture and land stewardship pursuant to section 202A.2.

40. The portion of a record request that con-

tains an internet protocol number which identifies the computer from which a person requests a record, whether the person using such computer makes the request through the IowaAccess network or directly to a lawful custodian. However, such record may be released with the express written consent of the person requesting the record.

41. Medical examiner records and reports, including preliminary reports, investigative reports, and autopsy reports. However, medical examiner records and reports shall be released to a law enforcement agency that is investigating the death, upon the request of the law enforcement agency, and autopsy reports shall be released to the decedent's immediate next of kin upon the request of the decedent's immediate next of kin unless disclosure to the decedent's immediate next of kin would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual. Information regarding the cause and manner of death shall not be kept confidential under this subsection unless disclosure would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

42. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 502.603, 523B.8, or 523C.23.

43. Information concerning security procedures or emergency preparedness information regarding a school corporation if disclosure could reasonably be expected to jeopardize student, staff, or visitor safety. This subsection is repealed effective June 30, 2007.

44. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 6; or section 815.10, subsection 5.

45. Records of a public airport, municipal corporation, municipal utility, jointly owned municipal utility, or rural water district organized under chapter 357A, where disclosure could reasonably be expected to jeopardize the security or the public health and safety of the citizens served by a public airport, municipal corporation, municipal utility, jointly owned municipal utility, or rural water district organized under chapter 357A. Such records include but are not limited to vulnerability assessments and information included within such vulnerability assessments; architectural, engineering, or construction diagrams; drawings, plans, or records pertaining to security measures such as security and response plans, security codes and combinations, passwords, passes, keys, or security or response procedures; emergency response protocols; and records disclosing the configuration of critical systems or infrastructures of a public airport, municipal corporation, municipal utility, jointly owned municipal utility, or rural water district organized under chapter 357A. This subsection is repealed effective June 30, 2007.

46. The critical asset protection plan or any

part of the plan prepared pursuant to section 29C.8 and any information held by the homeland security and emergency management division that was supplied to the division by a public or private agency or organization and used in the development of the critical asset protection plan to include, but not be limited to, surveys, lists, maps, or photographs. However, the administrator shall make the list of assets available for examination by any person. A person wishing to examine the list of assets shall make a written request to the administrator on a form approved by the administrator. The list of assets may be viewed at the division's offices during normal working hours. The list of assets shall not be copied in any manner. Communications and asset information not required by law, rule, or procedure that are provided to the administrator by persons outside of govern-

ment and for which the administrator has signed a nondisclosure agreement are exempt from public disclosures. The homeland security and emergency management division may provide all or part of the critical asset plan to federal, state, or local governmental agencies which have emergency planning or response functions if the administrator is satisfied that the need to know and intended use are reasonable. An agency receiving critical asset protection plan information from the division shall not disseminate the information without prior approval of the administrator.

47. Military personnel records recorded by the county recorder pursuant to section 331.608.

2003 Acts, ch 114, §1; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §157  
Terminology changes applied  
NEW subsection 47

## CHAPTER 23A

### NONCOMPETITION BY GOVERNMENT

#### **23A.2 State agencies and political subdivisions not to compete with private enterprise.**

1. A state agency or political subdivision shall not, unless specifically authorized by statute, rule, ordinance, or regulation:

*a.* Engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services to the public which are also offered by private enterprise unless such goods or services are for use or consumption exclusively by the state agency or political subdivision.

*b.* Offer or provide goods or services to the public for or through another state agency or political subdivision, by intergovernmental agreement or otherwise, in violation of this chapter.

2. The state board of regents or a school corporation may, by rule, provide for exemption from the application of this chapter for any of the following:

*a.* Goods and services that are directly and reasonably related to the educational mission of an institution or school.

*b.* Goods and services offered only to students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost.

*c.* Use of vehicles owned by the institution or school for charter trips offered to the public, or to full, part-time, or temporary students.

*d.* Durable medical equipment or devices sold or leased for use off premises of an institution, school, or university of Iowa hospitals or clinics.

*e.* Goods or services which are not otherwise available in the quantity or quality required by the

institution or school.

*f.* Telecommunications other than radio or television stations.

*g.* Sponsoring or providing facilities for fitness and recreation.

*h.* Food service and sales.

*i.* Sale of books, records, tapes, software, educational equipment, and supplies.

3. After July 1, 1988, before a state agency is permitted to continue to engage in an existing practice specified in subsection 1, that state agency must prepare for public examination documentation showing that the state agency can provide the goods or services at a competitive price. The documentation required by this subsection shall be in accordance with that required by generally accepted accounting principles.

4. If a state agency is authorized by statute to compete with private enterprise, or seeks to gain authorization to compete, the state agency shall prepare for public inspection documentation of all actual costs of the project as required by generally accepted accounting principles.

5. Subsections 1 and 3 do not apply to activities of community action agencies under community action programs, as both are defined in section 216A.91.

6. The director of the department of corrections, with the advice of the state prison industries advisory board, may, by rule, provide for exemptions from this chapter.

7. However, this chapter shall not be construed to impair cooperative agreements between Iowa state industries and private enterprise.

8. The director of the department of corrections, with the advice of the board of corrections,

may by rule, provide for exemption from this chapter for vocational-educational programs and farm operations of the department.

9. The state department of transportation may, in accordance with chapter 17A, provide for exemption from the application of subsection 1 for the activities related to highway maintenance, highway design and construction, publication and distribution of transportation maps, state aircraft pool operations, inventory sales to other state agencies and political subdivisions, equipment management and disposal, vehicle maintenance and repair services for other state agencies, and other similar essential operations.

10. This chapter does not apply to any of the following:

a. The operation of a city enterprise, as defined in section 384.24, subsection 2.

b. The performance of an activity that is an essential corporate purpose of a city, as defined in section 384.24, subsection 3, or which carries out the essential corporate purpose, or which is a general corporate purpose of a city as defined in section 384.24, subsection 4, or which carries out the general corporate purposes.

c. The operation of a city utility, as defined by section 390.1, subsection 3.

d. The performance of an activity by a city that is intended to assist in economic development or tourism.

e. The operation of a county enterprise, as defined in section 331.461, subsection 1, or 331.461, subsection 2.

f. The performance of an activity that is an essential county purpose, as defined in section 331.441, subsection 2, or which carries out the essential county purpose, or which is a general county purpose as defined in section 331.441, subsection 2, or which carries out the general county purpose.

g. The performance of an activity listed as a duty relating to a county service in section 331.381.

h. The performance of an activity listed in section 331.424, as a service for which a supplemental levy may be certified.

i. The performance of an activity by a county that is intended to assist in economic development or tourism.

j. The operation of a public transit system, as defined in chapter 324A, except that charter services, outside of a public transit system's normal service area, shall be conducted in Iowa intrastate commerce under the same conditions, restrictions, and obligations as those contained in 49 C.F.R., Part 604. For purposes of this chapter, the definition and conduct of charter services shall be the same as those contained in 49 C.F.R., Part 604.

k. The following on-campus activities of an institution or school under the control of the state board of regents or a school corporation:

(1) Residence halls.

(2) Student transportation, except as specifically listed in subsection 2, paragraph "c".

(3) Overnight accommodations for participants in programs of the institution or school, visitors to the institution or school, parents, and alumni.

(4) Sponsoring or providing facilities for cultural and athletic events.

(5) Items displaying the emblem, mascot, or logo of the institution or school, or that otherwise promote the identity of the institution or school and its programs.

(6) Souvenirs and programs relating to events sponsored by or at the institution or school.

(7) Radio and television stations.

(8) Services to patients and visitors at the university of Iowa hospitals and clinics, except as specifically listed in subsection 2, paragraph "d".

(9) Goods, products, or professional services which are produced, created, or sold incidental to the schools' teaching, research, and extension missions.

(10) Services to the public at the Iowa state university college of veterinary medicine.

l. The offering of goods and services to the public as part of a client training program operated by a state resource center under the control of the department of human services provided that all of the following conditions are met:

(1) Any off-campus vocational or employment training program developed or operated by the department of human services for clients of a state resource center is a supported vocational training program or a supported employment program offered by a community-based provider of services or other employer in the community.

(2) (a) If a resident of a state resource center is to participate in an employment or training program which pays a wage in compliance with the federal Fair Labor Standards Act, the state resource center shall develop a community placement plan for the resident. The community placement plan shall identify the services and supports the resident would need in order to be discharged from the state resource center and to live and work in the community. The state resource center shall make reasonable efforts to implement the community placement plan including referring the resident to community-based providers of services.

(b) If a community-based provider of services is unable to accept a resident who is referred by the state resource center, the state resource center shall request and the provider shall indicate in writing to the state resource center the provider's reasons for its inability to accept the resident and describe what is needed to accept the resident.

(c) A resident who cannot be placed in a community placement plan with a community-based provider of services may be placed by the state resource center in an on-campus or off-campus vocational or employment training program. However, prior to placing a resident in an on-campus voca-

tional or employment training program, the state resource center shall seek an off-campus vocational or employment training program offered by a community-based provider who serves the county in which the state resource center is based or the counties contiguous to the county, provided that the resident will not be required to travel for more than thirty minutes one way to obtain services.

If off-campus services cannot be provided by a community-based provider, the state resource center shall offer the resident an on-campus vocational or employment training program. The on-campus program shall be operated in compliance with the federal Fair Labor Standards Act. At least semiannually, the state resource center shall seek an off-campus community-based vocational or employment training option for each resident placed in an on-campus program. The state resource center shall not place a resident in an off-campus program in which the cost to the state resource center would be in excess of the provider's actual cost as determined by purchase of service rules or if the service would not be reimbursed under the medical assistance program.

(3) The price of any goods and services offered to anyone other than a state agency or a political subdivision shall be at a minimum sufficient to cover the cost of any materials and supplies used in the program and to cover client wages as established in accordance with the federal Fair Labor Standards Act.

(4) Nothing in this paragraph shall be construed to prohibit a state resource center from providing a service a resident needs for compliance

with accreditation standards for intermediate care facilities for persons with mental retardation.

*m.* The repair, calibration, or maintenance of radiological detection equipment by the homeland security and emergency management division of the department of public defense.

*n.* The performance of an activity authorized pursuant to section 8D.11A.

*o.* The performance of an activity authorized pursuant to section 8A.202, subsection 2, paragraph "k".

*p.* The provision of goods or services by the Iowa technology center as a part of an intergovernmental solution involving the federal government or a state agency. The Iowa technology center is an entity created by a chapter 28E agreement entered into by the department of public defense.

2003 Acts, ch 44, §16, 17; 2003 Acts, ch 145, §146; 2003 Acts, ch 179, §157  
Terminology change applied  
Subsection 2, unnumbered paragraph 1 amended  
Subsection 2, paragraph c amended  
Subsection 10, paragraph o amended

**23A.2A Competition with private industry — notation in legislation.**

When a bill or joint resolution is requested, the legislative services agency shall make an initial determination of whether the bill or joint resolution may cause a service or product to be offered for sale to the public by a state agency or political subdivision that competes with private enterprise. If such a service or product may be offered as a result of the bill or resolution, that fact shall be included in the explanation of the bill or joint resolution.

2003 Acts, ch 35, §44, 49  
Terminology change applied

**CHAPTER 24**

**LOCAL BUDGETS**

**24.14 Tax limited.**

A greater tax than that so entered upon the record shall not be levied or collected for the municipality proposing the tax for the purposes indicated and a greater expenditure of public money shall not be made for any specific purpose than the amount estimated and appropriated for that purpose, except as provided in sections 24.6 and 24.15.

All budgets set up in accordance with the statutes shall take such funds, and allocations made by sections 123.53 and 452A.79, into account, and all such funds, regardless of their source, shall be considered in preparing the budget.

2003 Acts, ch 178, §1  
Section amended

**CHAPTER 25**

**CLAIMS AGAINST THE STATE AND BY THE STATE**

**25.1 Receipt, investigation, and report.**

1. When a claim is filed or made against the state, on which in the judgment of the director of the department of management the state would be liable except for the fact of its sovereignty or that

it has no appropriation available for its payment, the director of the department of management shall deliver that claim to the state appeal board.

2. The state appeal board shall make a record of the receipt of claims received from the director

of the department of management, notify the special assistant attorney general for claims, and deliver a copy to the state official or agency against whom the claim is made, if any.

*a.* The official or agency shall report its recommendations concerning the claim to the special assistant attorney general for claims who, with a view to determining the merits and legality of the claim, shall investigate the claim and report the findings and conclusions of the investigation to the state appeal board.

*b.* To help defray the initial costs of processing a claim and the costs of investigating a claim, the department of management may assess a processing fee and a fee to reimburse the office of the attorney general for the costs of the claim investigation against the state agency which incurred the liability of the claim.

3. Notwithstanding subsections 1 and 2 and section 25.2, the following claims shall be submitted by the person filing the claim directly to the agency against whom the claim is made for resolution according to section 25.2, subsection 2:

*a.* Outdated invoices, outdated bills for merchandise, or claims for services furnished to the state, for goods or services provided in the same fiscal year that the claim is filed.

*b.* Outdated invoices, outdated bills for merchandise, or claims for services furnished to the state, for goods or services provided in any prior fiscal year, for which funding would have been available to pay the claim if it had been filed before the close of the fiscal year.

4. Notwithstanding subsections 1 and 2, and section 25.2, the state appeal board shall not consider claims for refund of the unused portion of vehicle registration fees collected under section 321.105.

Claims submitted under this section may be approved by the agency in accordance with section 25.2, subsection 2, except that payment for claims for which the appropriation has reverted to the general fund of the state must be paid in accordance with section 25.2, subsection 3.

2003 Acts, ch 179, §102  
NEW subsection 4

### **25.2 Examination of report — approval or rejection — payment.**

1. The state appeal board with the recommendation of the special assistant attorney general for claims may approve or reject claims against the state of less than ten years involving the following:

- a.* Outdated warrants.
- b.* Outdated sales and use tax refunds.
- c.* License refunds.
- d.* Additional agricultural land tax credits.
- e.* Outdated invoices.
- f.* Fuel and gas tax refunds.
- g.* Outdated homestead and veterans' exemptions.
- h.* Outdated funeral service claims.

*i.* Tractor fees.

*j.* Registration permits.

*k.* Outdated bills for merchandise.

*l.* Services furnished to the state.

*m.* Claims by any county or county official relating to the personal property tax credit.

*n.* Refunds of fees collected by the state.

2. Notwithstanding subsection 1, an agency that receives a claim based on an outdated invoice, outdated bill for merchandise, or for services furnished to the state pursuant to section 25.1, subsection 3, may on its own approve or deny the claim. The agency shall provide the state appeal board with notification of receipt of the claim and action taken on the claim by the agency. The state appeal board shall adopt rules setting forth the procedures and standards for resolution of claims by state agencies. Claims denied by an agency shall be forwarded to the state appeal board by the agency for further consideration, in accordance with this chapter.

3. Payments authorized by the state appeal board shall be paid from the appropriation or fund of original certification of the claim. However, if that appropriation or fund has since reverted under section 8.33, then such payment authorized by the state appeal board shall be out of any money in the state treasury not otherwise appropriated.

4. Notwithstanding the provisions of this section, the director of the department of administrative services may reissue outdated warrants.

5. On or before November 1 of each year, the director of the department of administrative services shall provide the treasurer of state with a report of all unpaid warrants which have been outdated for two years or more. The treasurer shall include information regarding outdated warrants in the notice published pursuant to section 556.12. An agreement to pay compensation to recover or assist in the recovery of an outdated warrant made within twenty-four months after the date the warrant becomes outdated is unenforceable. However, an agreement made after twenty-four months from the date the warrant becomes outdated is valid if the fee or compensation agreed upon is not more than fifteen percent of the recoverable property, the agreement is in writing and signed by the payee, and the writing discloses the nature and value of the property and the name and address of the person in possession. This section does not apply to a payee who has a bona fide fee contract with a practicing attorney regulated under chapter 602, article 10.

2003 Acts, ch 145, §286  
Terminology change applied

### **25.6 Claims by state against municipalities.**

The state appeal board may investigate and collect claims which the state has against municipal or political corporations in the state including counties, cities, townships, and school corpora-

tions. The board shall refer any such claim to the special assistant attorney general for claims, when the claim has not been promptly paid, and if the special assistant attorney general for claims is not able to collect the full amount of the claim, the special assistant attorney general shall fully investigate and report to the state appeal board findings of fact and conclusions of law, together with any recommendation as to the claim. Thereafter the state appeal board may effect a compromise settlement with the debtor in an amount and under terms as the board deems just and equitable in view of the findings and conclusions reported to it. If the state appeal board is unable to collect a claim in full or effect what it has determined to be a fair compromise, it shall deliver the claim to the attorney general for action as the attorney general shall determine and the special assistant attorney gen-

eral for claims is specifically charged with carrying out the directions of the attorney general with reference to the claim. When a claim is compromised by the state appeal board, the board shall file with the department of management and the department of administrative services a statement as to the settlement, together with a true copy of the agreement of settlement, and if in settlement an amount less than the face amount is accepted in full, the proper entries shall be made in the books of the department of management, the department of administrative services, and the auditor of state showing the amount of the claim, the amount of the settlement, and the amount charged off.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 25B

### STATE MANDATES — FUNDING REQUIREMENTS

#### **25B.5 Cost estimates — notation in Acts.**

1. When a bill or joint resolution is requested, the legislative services agency shall make an initial determination of whether the bill or joint resolution may impose a state mandate. If a state mandate may be included, that fact shall be included in the explanation of the bill or joint resolution.

2. If a bill or joint resolution may include a state mandate, the legislative services agency shall determine if the bill or joint resolution contains a state mandate. If the bill or joint resolution contains a state mandate and is still eligible for consideration during the legislative session for which the bill or joint resolution was drafted, the legislative services agency shall prepare an estimate of the amount of costs imposed.

3. If a bill or joint resolution containing a state mandate is enacted, unless the estimate already on file with the house of origin is sufficient, the legislative services agency shall prepare a final estimate of additional local revenue expenditures required by the state mandate and file the estimate with the secretary of state for inclusion with the official copy of the bill or resolution to which it applies. A notation of the filing of the estimate shall be made in the Iowa Acts published pursuant to chapter 2B.

2003 Acts, ch 35, §39, 49  
Section amended

#### **25B.7 Funding property tax credits and exemptions.**

1. Beginning with property taxes due and pay-

able in the fiscal year beginning July 1, 1998, the cost of providing a property tax credit or property tax exemption which is enacted by the general assembly on or after January 1, 1997, shall be fully funded by the state. If a state appropriation made to fund a credit or exemption which is enacted on or after January 1, 1997, is not sufficient to fully fund the credit or exemption, the political subdivision shall be required to extend to the taxpayer only that portion of the credit or exemption estimated by the department of revenue to be funded by the state appropriation. The department of revenue shall determine by June 15 the estimated portion of the credit or exemption which will be funded by the state appropriation.

2. The requirement for fully funding and the consequences of not fully funding credits and exemptions under subsection 1 also apply to all of the following:

a. Homestead tax credit pursuant to sections 425.1 through 425.15.

b. Low-income property tax credit and elderly and disabled property tax credit pursuant to sections 425.16 through 425.40.

c. Military service property tax credit and exemption pursuant to chapter 426A, to the extent of six dollars and ninety-two cents per thousand dollars of assessed value of the exempt property.

2003 Acts, ch 44, §18; 2003 Acts, ch 145, §286  
1999 amendment to subsection 2, paragraph c, applies to the military service property tax exemption claims allowed on or after January 1, 2000; 99 Acts, ch 180, §24  
Terminology change applied  
Subsection 3 stricken

## CHAPTER 28

### COMMUNITY EMPOWERMENT ACT

#### 28.4 Iowa empowerment board duties.

The Iowa board shall perform the following duties:

1. Perform duties relating to community empowerment areas.

2. Manage and coordinate the provision of grant funding and other moneys made available to community empowerment areas by combining all or portions of appropriations or other revenues as authorized by law.

3. Develop advanced community empowerment area arrangements for those community empowerment areas which were formed in transition from an innovation zone or from a decategorization governance board or which otherwise provide evidence of extensive successful experience in managing services and funding with high levels of community support and input.

4. Identify boards, commissions, committees, and other bodies in state government with overlapping and similar purposes which contribute to redundancy and fragmentation in education, health, and human services programs provided to the public. The board shall also make recommendations to the governor and general assembly as appropriate for increasing coordination between these bodies, for eliminating bureaucratic duplication, for consolidation where appropriate, and for integration of functions to achieve improved results.

5. Assist with the linkage of child welfare and juvenile justice decategorization projects with community empowerment areas.

6. Integrate the duties relating to innovation zones in the place of the innovation zone board created in section 8A.2, Code 1997, until the Iowa board determines the innovation zones have been replaced with community empowerment areas.

7. Coordinate and respond to any requests from a community board relating to any of the following:

*a.* Waiver of existing rules, federal regulation, or amendment of state law, or removal of other barriers.

*b.* Pooling and redirecting of existing federal, state, or other public or private funds.

*c.* Seeking of federal waivers.

*d.* Consolidating community-level committees, planning groups, and other bodies with common memberships formed in response to state requirements.

In coordinating and responding to the requests, the Iowa board shall work with state agencies and submit proposals to the governor and general assembly as necessary to fulfill requests deemed appropriate by the Iowa board.

8. Provide for maximum flexibility and cre-

ativity in the designation and administration of the responsibilities and authority of community empowerment areas.

9. Adopt rules pursuant to chapter 17A as necessary for the designation, governance, and oversight of community empowerment areas and the administration of this chapter. The Iowa board shall provide for community board input in the rules adoption process. The rules shall include but are not limited to the following:

*a.* Performance indicators for community empowerment areas, community boards, and the services provided under the auspices of the community boards. The performance indicators shall be developed with input from community boards and shall build upon the core indicators of performance for the school ready grant program, as described in section 28.8.

*b.* Minimum standards to further the provision of equal access to services subject to the authority of community boards.

*c.* Core functions for home visitation, parent support, and preschool services provided under a school ready children grant.

10. Implement a process for community empowerment areas to identify desired results for improving the quality of life in this state. The process shall allow for consideration of updates, additions, and deletions on a regular basis. The identified desired results shall be submitted to the governor and general assembly.

11. Develop guidelines for recommended coverage and take other actions to assist community empowerment area boards in acquiring necessary insurance or other liability coverage at a reasonable cost. Moneys expended by a community empowerment area board to acquire necessary insurance or other liability coverage shall be considered an administrative cost and implementation expense.

12. *a.* With extensive community involvement, develop and annually update a five-year plan for consolidating, blending, and redistributing state-administered funding streams for children from birth through age five made available to community empowerment area boards.

*b.* With extensive community involvement, develop and annually update a ten-year plan for consolidating, blending, and redistributing state-administered funding streams for other age groups made available to community empowerment area boards. The focus for the early years of the initial ten-year plan shall be on the efforts of the Iowa board and affected state agencies to facilitate implementation of individual community empowerment area board requests for pooling, consolidating, blending, and redistributing state-

administered funding streams for other age groups.

c. Submit plans and plan updates developed under paragraphs “a” and “b” to the community empowerment areas, the governor, and the general assembly annually in December.

d. The Iowa empowerment board shall regularly make information available identifying community empowerment funding and funding distributed through the funding streams listed under this paragraph “d” to communities. It is the intent of the general assembly that the community empowerment area boards and the administrators of the programs located within the community empowerment areas that are supported by the listed funding streams shall fully cooperate with one another on or before the indicated fiscal years, in order to avoid duplication, enhance efforts, combine planning, and take other steps to best utilize the funding to meet the needs of the families in the areas. The community empowerment area boards and the administrators shall annually submit a report concerning such efforts to the community empowerment office. If a community empowerment area is receiving a school ready children grant, this report shall be an addendum to the annual report required under section 28.8. The

state community empowerment facilitator shall compile and summarize the reports which shall be submitted to the governor, general assembly, and Iowa board. The funding streams shall include all of the following:

(1) Moneys for the healthy families Iowa program under section 135.106 by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

(2) Moneys for parent education appropriated in section 279.51 and distributed through the child development coordinating council, by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

(3) Moneys for the preschool children at-risk program appropriated in section 279.51 and distributed through the child development coordinating council, by the fiscal year beginning July 1, 2001, and ending June 30, 2002.

(4) Moneys for home visitation and parent support annually appropriated to the department of human services and distributed or expended through child abuse prevention grants and the family preservation program, by the fiscal year beginning July 1, 2000, and ending June 30, 2001.

2003 Acts, ch 44, §19  
Subsection 12, paragraph e stricken

## CHAPTER 28A

### QUAD CITIES INTERSTATE METROPOLITAN AUTHORITY COMPACT

#### 28A.17 Local sales and services tax.

If an authority is established as provided in section 28A.6 and after approval of a referendum by a simple majority of votes cast in each metropolitan area in favor of the sales and services tax, the governing board of a county in this state within a metropolitan area which is part of the authority shall impose, at the request of the authority, a local sales and services tax at the rate of one-fourth of one percent on gross receipts taxed by this state under chapter 422, division IV, within the metropolitan area located in this state. The referendum shall be called by resolution of the board and shall be held as provided in section 28A.6 to the extent applicable. The ballot proposition shall contain a statement as to the specific purpose or purposes for which the revenues shall be expended and the date of expiration of the tax. The local sales and services tax shall be imposed on the same basis, with the same exceptions, and following the same administrative procedures as provided for a county under sections 422B.8 and 422B.9. The amount of the sale, for the purposes of determining the amount of the local sales and services tax under this section, does not include the amount of any local sales and services tax imposed under sec-

tions 422B.8 and 422B.9.

The treasurer of state shall credit the local sales and services tax receipts and interest and penalties to the authority's account. Moneys in this account shall be remitted quarterly to the authority. The proceeds of the tax imposed under this section shall be used only for the construction, reconstruction, or repair of metropolitan facilities as specified in the referendum. The local sales and services tax imposed under this section may be suspended for not less than a fiscal quarter or more than one year by action of the board. The suspension may be renewed or continued by the board, but the board shall act on the suspension at least annually. The local sales and services tax may also be repealed by a petition and favorable referendum following the procedures and requirements of sections 28A.5 and 28A.6 as applicable. The board shall give the department of revenue at least forty days' notice of the repeal, suspension, or reinstatement of the tax and the effective dates for imposition, suspension, or repeal of the tax shall be as provided in section 422B.9.

2003 Acts, ch 145, §286  
For future amendment to unnumbered paragraph 1 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §155, 205  
Terminology change applied

## CHAPTER 28B

### INTERSTATE COOPERATION COMMISSION

#### **28B.1 Membership of commission.**

The Iowa commission on interstate cooperation is hereby established. It shall consist of thirteen members to be appointed as follows:

1. Five members of the senate to be appointed by the majority leader of the senate.
2. Five members of the house of representatives to be appointed by the speaker of the house.
3. Three administrative officers to be appointed by the governor.

Appointments shall be made prior to the fourth Monday in January of the first regular session of the general assembly. Members shall take office on February 1 following their appointment and serve for two-year terms or until their successors are appointed and take office.

The governor, the majority leader of the senate, and the speaker of the house of representatives are ex officio honorary nonvoting members of the commission.

The director of the legislative services agency shall serve as secretary of the commission.

2003 Acts, ch 35, §44, 49  
Terminology change applied

#### **28B.4 Report.**

The commission shall report to the governor and to the legislature within fifteen days after the convening of each general assembly, and at other

times as it deems appropriate. Its members and the members of all committees which it establishes shall be reimbursed for their travel and other necessary expenses in carrying out their obligations under this chapter and legislative members shall be paid a per diem as specified in section 7E.6 for each day in which engaged in the performance of their duties, the per diem and legislators' expenses to be paid from funds appropriated by sections 2.10 and 2.12. Expenses of administrative officers, state officials, or state employees who are members of the Iowa commission on interstate cooperation or a committee appointed by the commission shall be paid from funds appropriated to the agencies or departments which persons represent except as may otherwise be provided by the general assembly. Expenses of citizen members who may be appointed to committees of the commission may be paid from funds as authorized by the general assembly. Expenses of the secretary or employees of the secretary and support services in connection with the administration of the commission shall be paid from funds appropriated to the legislative services agency unless otherwise provided by the general assembly. Expenses of commission members shall be paid upon approval of the chairperson or the secretary of the commission.

2003 Acts, ch 35, §44, 49  
Terminology change applied

## CHAPTER 28D

### INTERCHANGE OF FEDERAL, STATE AND LOCAL GOVERNMENT EMPLOYEES

#### **28D.8 Administration.**

The department of administrative services is hereby directed to explore means of implementing this chapter and to assist departments, agencies, and instrumentalities of the state and its political

subdivisions in participating in employee interchange programs.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 29

### DEPARTMENT OF PUBLIC DEFENSE

#### **29.1 Department of public defense.**

The department of public defense is composed of the military division and the homeland security and emergency management division. The adjutant general is the director of the department of public defense and the budget and personnel of all of the divisions are subject to the approval of the

adjutant general. The Iowa emergency response commission established by section 30.2 is attached to the department of public defense for organizational purposes.

2003 Acts, ch 179, §157  
Appointment, §29A.11  
Terminology change applied

### 29.3 Homeland security and emergency management division.

There shall be within the department of public defense of the state government, as a division of the department, an office of emergency management which shall be known as the “*homeland security and emergency management division, department of public defense*”, with an administrator of

the division who shall be the head of the division. The adjutant general, as the director of the department of public defense, shall exercise supervisory authority over the division.

2003 Acts, ch 179, §157  
See chapter 29C  
Terminology change applied

## CHAPTER 29A

### MILITARY CODE

#### 29A.13 Appropriated funds.

Operating expenses for the national guard including the purchase of land, maintenance of facilities, improvement of state military reservations, installations, and weapons firing ranges owned or leased by the state of Iowa or the United States shall be paid from funds appropriated for the support and maintenance of the national guard. Claims for payment of such expenses shall be subject to the approval of the adjutant general. Upon approval of the adjutant general the claim shall be submitted to the director of the department of administrative services.

Payment for personnel compensation and authorized benefits shall be approved by the adjutant general prior to submission to the director of the department of administrative services for payment.

2003 Acts, ch 145, §147  
Section amended

#### 29A.28 Leave of absence of civil employees.

1. All officers and employees of the state, or a subdivision thereof, or a municipality other than employees employed temporarily for six months or less, who are members of the national guard, organized reserves or any component part of the military, naval, or air forces or nurse corps of this state or nation, or who are or may be otherwise inducted into the military service of this state or of the United States, shall, when ordered by proper authority to state active duty, active state service, or federal service, be entitled to a leave of absence from such civil employment for the period of state active duty, active state service, or federal service, without loss of status or efficiency rating, and without loss of pay during the first thirty days of such leave of absence. Where state active duty, active state service, or federal service is for a period less than thirty days, a leave of absence under this section shall only be required for those days that the civil employee would normally perform services for the state, subdivision of the state, or a municipality.

2. A state agency, subdivision of the state, or municipality may hire a temporary employee to fill any vacancy created by such leave of absence. Temporary employees hired to fill a vacancy created by a leave of absence under this section shall not count against the number of full-time equivalent positions authorized for the state agency, subdivision of the state, or municipality.

3. Upon returning from a leave of absence under this section, an employee shall be entitled to return to the same position and classification held by the employee at the time of entry into state active duty, active state service, or federal service or to the position and classification that the employee would have been entitled to if the continuous civil service of the employee had not been interrupted by state active duty, active state service, or federal service. Under this subsection, “*position*” includes the geographical location of the position.

2003 Acts, ch 142, §3, 11; 2003 Acts, 1st Ex, ch 2, §36, 47  
See also §29A.43  
2003 amendments by 2003 Acts, ch 142, §3, take effect May 21, 2003, and apply retroactively to January 1, 2003; 2003 Acts, ch 142, §11  
2003 amendment to subsection 3 by 2003 Acts, 1st Ex, ch 2, §36, takes effect June 19, 2003, and applies retroactively to January 1, 2003; 2003 Acts, 1st Ex, ch 2, §47  
Section amended

#### 29A.43 Discrimination prohibited — leave of absence — continuation of health coverage.

1. A person shall not discriminate against any officer or enlisted person of the national guard or organized reserves of the armed forces of the United States because of that membership. An employer, or agent of an employer, shall not discharge a person from employment because of being an officer or enlisted person of the military forces of the state, or hinder or prevent the officer or enlisted person from performing any military service the person is called upon to perform by proper authority. A member of the national guard or organized reserves of the armed forces of the United States ordered to temporary duty, as defined in section 29A.1, subsection 1, 3, or 11, for any purpose is entitled to a leave of absence during the period of the duty or service, from the member’s private employment, other than employment

of a temporary nature, and upon completion of the duty or service the employer shall restore the person to the position held prior to the leave of absence, or employ the person in a similar position. However, the person shall give evidence to the employer of satisfactory completion of the training or duty, and that the person is still qualified to perform the duties of the position. The period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits relating to the employee's particular employment. A person violating a provision of this section is guilty of a simple misdemeanor.

2. An officer or enlisted person of the national guard or organized reserves of the armed forces of the United States who is insured as a dependent under a group policy for accident or health insurance as a full-time student less than twenty-five years of age, whose coverage under the group policy would otherwise terminate while the officer or enlisted person was on a leave of absence during a period of temporary duty or service, as defined for members of the national guard in section 29A.1, subsection 1, 3, or 11, or as a member of the organized reserves called to active duty from a reserve component status, shall be considered to have been continuously insured under the group policy for the purpose of returning to the insured dependent status as a full-time student who is less than twenty-five years of age. This subsection does not apply to coverage of an injury suffered or a disease contracted by a member of the national guard or organized reserves of the armed forces of the United States in the line of duty.

2003 Acts, ch 91, §1  
Leave for civil employees; §29A.28  
Section amended

### 29A.90 Definitions.

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

1. *"Dependent"* means the spouse and children of a service member or any other person dependent upon the service member for support.

2. *"Interest"* includes service charges, renewal charges, fees, or any other charges in respect to any obligation or liability.

3. *"Military service"* means full-time active state service or state active duty, as defined in section 29A.1, for a period of at least ninety consecutive days, commencing on or after April 22, 2002.

4. *"Service member"* means a member of the military forces of the state performing military service.

2003 Acts, ch 108, §20, 132  
2003 amendment to subsection 3 applies retroactively to April 22, 2002;  
2003 Acts, ch 108, §132  
Subsection 3 amended

### 29A.101A Termination of lease or rental agreement by service member.

1. As used in this section, *"lease"* or *"rental agreement"* means any lease or rental agreement covering premises occupied for dwelling, professional, business, agricultural, or similar purposes if both of the following conditions are met:

a. The lease or rental agreement was executed by or on behalf of a service member who, after the execution of the lease or rental agreement, entered military service.

b. The service member or the service member's dependents occupy the premises for the purposes set forth in this subsection.

2. a. A service member may terminate a lease or rental agreement by providing written notice to the lessor or the lessor's agent at any time following the date of the beginning of the service member's period of military service. The notice may be delivered by placing it in an envelope properly stamped and addressed to the lessor or the lessor's agent and depositing the notice in the United States mail.

b. Termination of a month-to-month lease or rental agreement shall not be effective until thirty days after the first day on which the next rental payment is due and payable after the date when notice is delivered or mailed. As to all other leases or rental agreements, termination shall be effective on the last day of the month following the month in which notice is delivered or mailed. Any unpaid rent for the period preceding the termination in such cases shall be computed on a pro rata basis and any rent paid in advance after termination shall be refunded by the lessor or the lessor's agent.

c. Upon application by the lessor and prior to the termination period provided in the notice, a court may modify or restrict any relief granted in this subsection as the interests of justice and equity require.

3. A person who knowingly seizes, holds, or detains the personal effects, clothing, furniture, or other property of any person who has lawfully terminated a lease or rental agreement covered under this section or who interferes in any manner with the removal of property from the premises for the purposes of subjecting the property to a claim for rent accruing subsequent to the date of termination of the lease or rental agreement commits a simple misdemeanor.

2003 Acts, ch 154, §1  
NEW section

## CHAPTER 29B

### MILITARY JUSTICE

#### **29B.22 Judge advocates and legal officers.**

A judge advocate in the state military forces shall be a commissioned officer who is a member of the bar of the state. However, a judge advocate serving in the military forces of the state on April 22, 2002, who is not a member of the bar of the state shall not be required to become a member of the bar of the state to maintain military membership as a judge advocate. A judge advocate shall be either a federally recognized judge advocate or appointed as a judge advocate in the state military forces by the adjutant general.

The adjutant general shall designate a staff judge advocate for the army national guard and the air national guard. The adjutant general may appoint the number of judge advocates of the state military forces as the adjutant general considers necessary to perform state active duty to supple-

ment or replace national guard judge advocates in emergencies or when the national guard judge advocates are in federal service.

Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice; and the staff judge advocate of any command may communicate directly with the staff judge advocate of any command.

No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case.

2003 Acts, ch 44, §20  
Unnumbered paragraph 3 amended

## CHAPTER 29C

### EMERGENCY MANAGEMENT AND SECURITY

#### **29C.1 Statement of policy.**

Because of existing and increasing possibility of the occurrence of disasters, and in order to insure that preparations of this state will be adequate to deal with such disasters, and to provide for the common defense and to protect the public peace, health and safety, and to preserve the lives and property of the people of the state, it is the policy of this state:

1. To establish a homeland security and emergency management division of the department of public defense and to authorize the establishment of local organizations for emergency management in the political subdivisions of the state.

2. To confer upon the governor and upon the executive heads or governing bodies of the political subdivisions of the state the emergency powers provided in this chapter.

3. To provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to co-operate with the federal government with respect to the carrying out of emergency management functions.

2003 Acts, ch 179, §157  
Terminology change applied

#### **29C.5 Homeland security and emergency management division.**

A homeland security and emergency management division is created within the department of public defense. The homeland security and emer-

gency management division shall be responsible for the administration of emergency planning matters, including emergency resource planning in this state, cooperation with and support of the civil air patrol, homeland security activities, and coordination of available services in the event of a disaster.

2003 Acts, ch 179, §157  
See §29.3  
Terminology change applied

#### **29C.6 Proclamation of disaster emergency by governor.**

In exercising the governor's powers and duties under this chapter and to effect the policy and purpose, the governor may:

1. After finding a disaster exists or is threatened, proclaim a state of disaster emergency. This proclamation shall be in writing, indicate the area affected and the facts upon which it is based, be signed by the governor, and be filed with the secretary of state. If the state of disaster emergency specifically constitutes a public health disaster as defined in section 135.140, the written proclamation shall include a statement to that effect. A state of disaster emergency shall continue for thirty days, unless sooner terminated or extended in writing by the governor. The general assembly may, by concurrent resolution, rescind this proclamation. If the general assembly is not in session, the legislative council may, by majority vote, rescind this proclamation. Recision shall be effec-

tive upon filing of the concurrent resolution or resolution of the legislative council with the secretary of state. A proclamation of disaster emergency shall activate the disaster response and recovery aspect of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan applies, and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available.

2. When, at the request of the governor, the president of the United States has declared a major disaster to exist in this state, enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims and to make such units available to any political subdivision of the state, to assist any political subdivision of this state which is the locus of temporary housing for disaster victims, to acquire sites necessary for such temporary housing and to do all things required to prepare such sites to receive and utilize temporary housing units, by advancing or lending funds available to the governor from any appropriation made by the legislature or from any other source, allocating funds made available by any agency, public or private, or becoming a copartner with the political subdivision for the execution and performance of any temporary housing for disaster victims project. Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims, and to enter into whatever arrangements are necessary to prepare or equip such sites to utilize the housing units. The governor may temporarily suspend or modify, for not to exceed sixty days, any public health, safety, zoning, transportation, or other requirement of law or regulation within this state when by proclamation, the governor deems such suspension or modification essential to provide temporary housing for disaster victims.

3. When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that a local government of the state will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the local government for a loan, receive and disburse the proceeds of any approved loan to any applicant local government, determine the amount needed by any applicant local government to restore or resume its governmental functions, and certify the same to the federal government; however, no application amount shall exceed twenty-five percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs.

The governor may recommend to the federal government, based upon the governor's review, the cancellation of all or any part or repayment when, in the first three full fiscal year period following the major disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character.

4. When a disaster emergency is proclaimed, notwithstanding any other provision of law, through the use of state agencies or the use of any of the political subdivisions of the state, clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety or public or private property. The governor may accept funds from the federal government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water. Authority shall not be exercised by the governor unless the affected local government, corporation, organization or individual shall first present an additional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, such corporation, organization or individual shall first agree to hold harmless the state or local government against any claim arising from such removal. When the governor provides for clearance of debris or wreckage, employees of the designated state agencies or individuals appointed by the state may enter upon private land or waters and perform any tasks necessary to the removal or clearance operation. Any state employee or agent complying with orders of the governor and performing duties pursuant to such orders under this chapter shall be considered to be acting within the scope of employment within the meaning specified in chapter 669.

5. When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund such financial assistance, subject to such terms and conditions as may be imposed upon the grant and enter into an agreement with the federal government pledging the state to participate in the funding of the financial assistance authorized in an amount not to exceed twenty-five percent thereof, and, if state funds are not otherwise available to the governor, accept an advance of the state share from the federal government to be repaid when the state is able to do so.

6. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders or rules, of any state agency, if strict compliance with the provisions of

any statute, order or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency by stating in a proclamation such reasons. Upon the request of a local governing body, the governor may also suspend statutes limiting local governments in their ability to provide services to aid disaster victims.

7. On behalf of this state, enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of this state.

8. Delegate any administrative authority vested in the governor under this chapter and provide for the subdelegation of any such authority.

9. Cooperate with the president of the United States and the heads of the armed forces, the emergency management agencies of the United States and other appropriate federal officers and agencies and with the officers and agencies of other states in matters pertaining to emergency management of the state and nation.

10. Utilize all available resources of the state government as reasonably necessary to cope with the disaster emergency and of each political subdivision of the state.

11. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management.

12. Subject to any applicable requirements for compensation, commandeer or utilize any private property if the governor finds this necessary to cope with the disaster emergency.

13. Direct the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery.

14. Prescribe routes, modes of transportation, and destinations in connection with evacuation.

15. Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises in such area.

16. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

17. *a.* When the president of the United States has declared a major disaster to exist in the state and upon the governor's determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of local and state government adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund the financial assistance, subject to terms and conditions imposed upon the grant, and enter into an agreement with the federal government pledging the state to participate in the funding of the financial assistance authorized to local government and eligible private nonprofit agencies in an amount not to ex-

ceed ten percent of the total eligible expenses, with the applicant providing the balance of any participation amount. If financial assistance is granted by the federal government for state disaster-related expenses or serious needs, the state shall participate in the funding of the financial assistance authorized in an amount not to exceed twenty-five percent of the total eligible expenses. If financial assistance is granted by the federal government for hazard mitigation, the state may participate in the funding of the financial assistance authorized to a local government in an amount not to exceed ten percent of the eligible expenses, with the applicant providing the balance of any participation amount. If financial assistance is granted by the federal government for state-related hazard mitigation, the state may participate in the funding of the financial assistance authorized, not to exceed fifty percent of the total eligible expenses. If state funds are not otherwise available to the governor, an advance of the state share may be accepted from the federal government to be repaid when the state is able to do so.

*b.* State participation in funding financial assistance under paragraph "a" is contingent upon the local government having on file a state-approved, comprehensive, countywide emergency operations plan which meets the standards adopted pursuant to section 29C.9, subsection 8.

2003 Acts, ch 33, §7, 11  
Subsection 1 amended

### **29C.7 Powers and duties of adjutant general.**

The adjutant general, as the director of the department of public defense and under the direction and control of the governor, shall have supervisory direction and control of the homeland security and emergency management division and shall be responsible to the governor for the carrying out of the provisions of this chapter. In the event of disaster beyond local control, the adjutant general may assume direct operational control over all or any part of the emergency management functions within this state.

2003 Acts, ch 179, §157  
Terminology change applied

### **29C.8 Powers and duties of administrator.**

1. The homeland security and emergency management division shall be under the management of an administrator appointed by the governor.

2. The administrator shall be vested with the authority to administer emergency management and homeland security affairs in this state and shall be responsible for preparing and executing the emergency management and homeland security programs of this state subject to the direction of the adjutant general.

3. The administrator, upon the direction of the governor and supervisory control of the director of the department of public defense, shall:

a. Prepare a comprehensive plan and emergency management program for homeland security, disaster preparedness, response, recovery, mitigation, emergency operation, and emergency resource management of this state. The plan and program shall be integrated into and coordinated with the homeland security and emergency plans of the federal government and of other states to the fullest possible extent and coordinate the preparation of plans and programs for emergency management of the political subdivisions and various state departments of this state. The plans shall be integrated into and coordinated with a comprehensive state homeland security and emergency program for this state as coordinated by the administrator of the homeland security and emergency management division to the fullest possible extent.

b. Make such studies and surveys of the industries, resources, and facilities in this state as may be necessary to ascertain the vulnerabilities of critical state infrastructure and assets to attack and the capabilities of the state for disaster recovery, disaster planning and operations, and emergency resource management, and to plan for the most efficient emergency use thereof.

c. Provide technical assistance to any local emergency commission or joint commission requiring the assistance in the development of an emergency management or homeland security program.

d. Implement planning and training for emergency response teams as mandated by the federal government under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

e. Prepare a critical asset protection plan that contains an inventory of infrastructure, facilities, systems, other critical assets, and symbolic landmarks; an assessment of the criticality, vulnerability, and level of threat to the assets; and information pertaining to the mobilization, deployment, and tactical operations involved in responding to or protecting the assets.

f. (1) Approve and support the development and ongoing operations of an urban search and rescue team to be deployed as a resource to supplement and enhance emergency and disaster operations.

(2) A member of an urban search and rescue team acting under the authority of the administrator or pursuant to a governor's disaster proclamation as provided in section 29C.6 shall be considered an employee of the state under chapter 669 and shall be afforded protection as an employee of the state under section 669.21. Disability,

workers' compensation, and death benefits for team members working under the authority of the administrator or pursuant to the provisions of section 29C.6 shall be paid by the state in a manner consistent with the provisions of chapter 85, 410, or 411 as appropriate, depending on the status of the member.

g. Develop, implement, and support a uniform incident command system to be used by state agencies to facilitate efficient and effective assistance to those affected by emergencies and disasters. This system shall be consistent with the requirements of the United States occupational safety and health administration and a national incident management system.

4. The administrator, with the approval of the governor and upon recommendation of the adjutant general, may employ a deputy administrator and such technical, clerical, stenographic, and other personnel and make such expenditures within the appropriation or from other funds made available to the department of public defense for purposes of emergency management, as may be necessary to administer this chapter.

5. The homeland security and emergency management division may charge fees for the repair, calibration, or maintenance of radiological detection equipment and may expend funds in addition to funds budgeted for the servicing of the radiological detection equipment. The division shall adopt rules pursuant to chapter 17A providing for the establishment and collection of fees for radiological detection equipment repair, calibration, or maintenance services and for entering into agreements with other public and private entities to provide the services. Fees collected for repair, calibration, or maintenance services shall be treated as repayment receipts as defined in section 8.2 and shall be used for the operation of the division's radiological maintenance facility or radiation incident response training.

2003 Acts, ch 179, §104, 157  
Terminology change applied  
Subsection 3, NEW paragraphs f and g

### **29C.8A Emergency response fund created.**

1. An emergency response fund is created in the state treasury. The first one hundred thousand dollars received annually by the treasurer of state for the civil penalties and fines imposed by the court pursuant to sections 455B.146, 455B.191, 455B.386, 455B.417, 455B.454, 455B.466, and 455B.477 shall be deposited in the waste volume reduction and recycling fund created in section 455D.15. The next hundred thousand dollars shall be deposited in the emergency response fund and any additional moneys shall be deposited in the household hazardous waste account. All moneys received annually by the treasurer of the state for the fines imposed by sections 716B.2, 716B.3, and 716B.4 shall also be deposited

in the emergency response fund.

2. The emergency response fund shall be administered by the homeland security and emergency management division to carry out planning and training for the emergency response teams.

2003 Acts, ch 179, §157  
Terminology change applied

### **29C.9 Local emergency management commissions.**

1. The county boards of supervisors, city councils, and school district boards of directors in each county shall cooperate with the homeland security and emergency management division of the department of public defense to establish a local emergency management commission to carry out the provisions of this chapter.

2. The commission shall be composed of a member of the board of supervisors or its appointed representative, the sheriff or the sheriff's representative, and the mayor or the mayor's representative from each city within the county. The commission members shall be the operations liaison officers between their jurisdiction and the commission.

3. The name used by the commission shall be (county name) county emergency management commission. The name used by the office of the commission shall be (county name) county emergency management agency.

4. For the purposes of this chapter, the commission or joint commission is a municipality as defined in section 670.1.

5. The commission shall model its bylaws and conduct its business according to the guidelines provided in the state division's administrative rules.

6. The commission shall determine the mission of its agency and program and provide direction for the delivery of the emergency management services of planning, administration, coordination, training, and support for local governments and their departments. The commission shall coordinate its services in the event of a disaster.

7. The commission shall delegate to the emergency management coordinator the authority to fulfill the commission duties as described in the division's administrative rules. Each commission shall appoint a county emergency management coordinator who shall meet the qualifications specified in the administrative rules by the administrator of the homeland security and emergency management division. Additional emergency management personnel may be appointed at the discretion of the commission.

8. The commission shall develop, adopt, and submit for approval by local governments within the county, a comprehensive countywide emergency operations plan which meets standards adopted by the division in accordance with chapter 17A. If an approved comprehensive countywide emergen-

cy operations plan has not been prepared according to established standards and the administrator of the homeland security and emergency management division finds that satisfactory progress is not being made toward the completion of the plan, or if the administrator finds that a local emergency management commission has failed to appoint a qualified emergency management coordinator as provided in this chapter, the administrator shall notify the governing bodies of the counties and cities affected by the failure and the governing bodies shall not appropriate any moneys to the local emergency management fund until the disaster plan is prepared and approved or a qualified emergency management coordinator is appointed. If the administrator finds that a city or a county has appointed an unqualified emergency management coordinator, the administrator shall notify the governing body of the city or county citing the qualifications which are not met and the governing body shall not approve the payment of the salary or expenses of the unqualified emergency management coordinator.

9. The commission shall encourage local officials to support and participate in exercise programs which test proposed or established jurisdictional emergency plans and capabilities. During emergencies when lives are threatened and extensive damage has occurred to property, the county and all cities involved shall fully cooperate with the emergency management agency to provide assistance in order to coordinate emergency management activities including gathering of damage assessment data required by state and federal authorities for the purposes of emergency declarations and disaster assistance.

10. Two or more commissions may, upon review by the state administrator and with the approval of their respective boards of supervisors and cities, enter into agreements pursuant to chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

2003 Acts, ch 179, §157  
Terminology change applied

### **29C.11 Local mutual aid arrangements.**

1. The emergency management coordinator for each emergency management agency shall, in collaboration with other public and private agencies within this state, develop mutual aid arrangements for reciprocal disaster services and recovery aid and assistance in case of disaster too great to be dealt with unassisted. The arrangements shall be consistent with the homeland security and emergency management division plan and program, and in time of emergency each local emergency management agency shall render assistance in accordance with the provisions of the mutual aid arrangements.

2. The emergency management coordinator of each local emergency management agency may,

subject to the approval of the governor, enter into mutual aid arrangements with emergency management agencies or organizations in other states for reciprocal emergency services and recovery aid and assistance in case of disaster too great to be dealt with unassisted.

2003 Acts, ch 179, §157  
Terminology change applied

**29C.14 Director of the department of administrative services to issue warrants.**

The director of the department of administrative services shall draw warrants on the treasurer of state for the purposes specified in this chapter, upon duly itemized and verified vouchers that have been approved by the administrator of the homeland security and emergency management division.

2003 Acts, ch 145, §286; 2003 Acts, ch 179, §157  
Terminology changes applied

**29C.15 Tax-exempt purchases.**

All purchases under the provisions of this chapter shall be exempt from the taxes imposed by sections 422.43 and 423.2.

For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §156, 205  
Section not amended; footnote added

**29C.20 Contingent fund — disaster aid.**

1. *a.* A contingent fund is created in the state treasury for the use of the executive council which may be expended for the following purposes:

(1) Paying the expenses of suppressing an insurrection or riot, actual or threatened, when state aid has been rendered by order of the governor.

(2) Repairing, rebuilding, or restoring state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause.

(3) Repairing, rebuilding, or restoring state property that is fiberoptic cable and that is injured or destroyed by a wild animal.

(4) Purchasing a police service dog for the department of corrections when such a dog is injured or destroyed.

(5) Paying the expenses incurred by and claims of an urban search and rescue team when acting under the authority of the administrator and the provisions of section 29C.6 and disaster medical assistance teams when acting under the provisions of section 135.143.

(6) (a) Aiding any governmental subdivision in an area declared by the governor to be a disaster area due to natural disasters or to expenditures necessitated by the governmental subdivision toward averting or lessening the impact of the potential disaster, where the effect of the disaster or action on the governmental subdivision is the immediate financial inability to meet the continuing requirements of local government.

(b) Upon application by a governmental subdivision in such an area, accompanied by a showing

of obligations and expenditures necessitated by an actual or potential disaster in a form and with further information the executive council requires, the aid may be made in the discretion of the executive council and, if made, shall be in the nature of a loan up to a limit of seventy-five percent of the showing of obligations and expenditures. The loan, without interest, shall be repaid by the maximum annual emergency levy authorized by section 24.6, or by the appropriate levy authorized for a governmental subdivision not covered by section 24.6. The aggregate total of loans shall not exceed one million dollars during a fiscal year. A loan shall not be for an obligation or expenditure occurring more than two years previous to the application.

*b.* When a state department or agency requests that moneys from the contingent fund be expended to repair, rebuild, or restore state property injured, destroyed, or lost by fire, storm, theft, or unavoidable cause, or to repair, rebuild, or restore state property that is fiberoptic cable and that is injured or destroyed by a wild animal, or to purchase a police service dog for the department of corrections when such a dog is injured or destroyed, or for payment of the expenses incurred by and claims of an urban search and rescue team when acting under the authority of the administrator and the provisions of section 29C.6, the executive council shall consider the original source of the funds for acquisition of the property before authorizing the expenditure. If the original source was other than the general fund of the state, the department or agency shall be directed to utilize moneys from the original source if possible. The executive council shall not authorize the repairing, rebuilding, or restoring of the property from the disaster aid contingent fund if it determines that moneys from the original source are available to finance the project.

2. The proceeds of such loan shall be applied toward the payment of costs and obligations necessitated by such actual or potential disaster and the reimbursement of local funds from which such expenditures have been made. Any such project for repair, rebuilding or restoration of state property for which no specific appropriation has been made, shall, before work is begun, be subject to approval or rejection by the executive council.

3. If the president of the United States, at the request of the governor, has declared a major disaster to exist in this state, the executive council may make financial grants to meet disaster-related necessary expenses, serious needs, or hazard mitigation projects of local governments and eligible private nonprofit agencies adversely affected by the major disaster if those expenses or needs cannot otherwise be met from other means of assistance. The amount of the grant shall not exceed ten percent of the total eligible expenses and is conditional upon the federal government providing at least seventy-five percent for public

assistance grants and at least fifty percent for hazard mitigation grants of the eligible expenses.

4. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance. The amount of a financial grant shall not exceed the maximum federal authorization in the aggregate to an individual or family in any single major disaster declared by the president. All grants authorized to individuals and families will be subject to the federal government providing no less than seventy-five percent of each grant and the declaration of a major disaster in the state by the president of the United States.

5. If the president, at the request of the governor, has declared a major disaster to exist in this state, the executive council may lease or purchase sites and develop such sites to accommodate temporary housing units for disaster victims.

6. For the purposes of this section, “*governmental subdivision*” means any political subdivision of this state.

2003 Acts, ch 155, §1; 2003 Acts, ch 179, §105  
See Code editor’s note  
Subsection 1 amended

**29C.22 Statewide mutual aid compact.**

This statewide mutual aid compact is entered into with all other counties, cities, and other political subdivisions that enter into this compact in substantially the following form:

ARTICLE I  
PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating counties, cities, and political subdivisions which enact this compact. For the purposes of this agreement, the term “*participating governments*” means counties, cities, townships, and other political subdivisions of the state which have, through ordinance or resolution of the governing body, acted to adopt this compact.

The purpose of this compact is to provide for mutual assistance between the participating governments entering into this compact in managing any emergency or disaster that is declared in accordance with a countywide comprehensive emergency operations plan or by the governor, whether arising from natural disaster, technological hazard, man-made disaster, community disorder, insurgency, terrorism, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of

the giving and receiving of aid by participating governments during emergencies, such actions occurring outside actual declared emergency periods.

ARTICLE II  
GENERAL IMPLEMENTATION

Each participating government entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each participating government further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to the emergency. This is because few, if any, individual governments have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective use of resources of the participating governments, including any resources on hand or available from any source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by the governor or any participating government, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the participating government in the compact, the legally designated official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate intrastate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III  
PARTICIPATING GOVERNMENT RESPONSIBILITIES

1. It shall be the responsibility of each participating government to formulate procedural plans and programs for intrastate cooperation in the performance of the responsibilities listed in this article. In formulating the plans, and in carrying them out, the participating governments, insofar as practical, shall:

a. Review individual hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the participating governments might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, civil disorders, insurgency, terrorism, or enemy attack.

b. Review the participating governments’ individual emergency plans and develop a plan that will determine the mechanism for the intrastate management and provision of assistance concerning any potential emergency.

c. Develop intrastate procedures to fill any identified gaps and to resolve any identified incon-

sistencies or overlaps in existing or developed plans.

*d.* Assist in warning communities adjacent to or crossing the participating governments' boundaries.

*e.* Protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

*f.* Inventory and set procedures for the intra-state loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

*g.* Provide, to the extent authorized by law, for temporary suspension of any ordinances that restrict the implementation of the above responsibilities.

2. The authorized representative of a participating government may request assistance of another participating government by contacting the authorized representative of that participating government. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide all of the following:

*a.* A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

*b.* The amount and type of personnel, equipment, materials, and supplies needed, and a reasonable estimate of the length of time that the personnel, equipment, materials, and supplies will be needed.

*c.* The specific place and time for staging of the assisting participating government's response and a point of contact at that location.

3. The authorized representative of a participating government may initiate a request by contacting the homeland security and emergency management division of the state department of public defense. When a request is received by the division, the division shall directly contact other participating governments to coordinate the provision of mutual aid.

4. Frequent consultation shall occur between officials who have been assigned emergency management responsibilities and other appropriate representatives of the participating governments with affected jurisdictions and state government, with free exchange of information, plans, and resource records relating to emergency capabilities.

#### ARTICLE IV LIMITATIONS

Any participating government requested to render mutual aid or conduct exercises and training for mutual aid shall take the necessary action to provide and make available the resources covered by this compact in accordance with the terms of the compact. However, it is understood that the participating government rendering aid may withhold resources to the extent necessary to provide reasonable protection for the participating government. Each participating government shall afford to the emergency forces of any other participating government, while operating within its jurisdictional limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving participating government, duties, rights, and privileges as are afforded forces of the participating government in which the emergency forces are performing emergency services. Emergency forces shall continue under the command and control of their regular leaders, but the organizational units shall come under the operational control of the emergency services authorities of the participating government receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor or by competent authority of the participating government that is to receive assistance, or commencement of exercises or training for mutual aid, and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving jurisdiction, whichever is longer.

#### ARTICLE V LICENSES AND PERMITS

If a person holds a license, certificate, or other permit issued by any participating government to this compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when the assistance is requested by another participating government, the person shall be deemed licensed, certified, or permitted by the participating government requesting assistance to render aid involving the skill to meet a declared emergency or disaster, subject to the limitations and conditions as the governor may prescribe by executive order or otherwise.

#### ARTICLE VI LIABILITY

Officers or employees of a participating government rendering aid in another participating government jurisdiction pursuant to this compact

shall be considered agents of the requesting participating government for tort liability and immunity purposes and a participating government or its officers or employees rendering aid in another jurisdiction pursuant to this compact shall not be liable on account of any act or omission in good faith on the part of the forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection with the aid. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII  
SUPPLEMENTARY AGREEMENTS

Because it is probable that the pattern and detail of the machinery for mutual aid among two or more participating governments may differ from that among other participating governments, this compact contains elements of a broad base common to all political subdivisions, and this compact shall not preclude any political subdivision from entering into supplementary agreements with another political subdivision or affect any other agreements already in force between political subdivisions. Supplementary agreements may include, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII  
WORKERS' COMPENSATION

Each participating government shall provide for the payment of workers' compensation and death benefits to injured members of the emergency forces of that participating government and representatives of deceased members of the emergency forces in case the members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own jurisdiction.

ARTICLE IX  
REIMBURSEMENT

Any participating government rendering aid in another jurisdiction pursuant to this compact shall be reimbursed by the participating government receiving the emergency aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with the requests. However, an aiding political subdivision may assume in whole or in part the loss, damage, expense, or other cost, or may loan the equipment or donate the services to the receiving participating government

without charge or cost, and any two or more participating governments may enter into supplementary agreements establishing a different allocation of costs among the participating governments. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X  
EVACUATION AND SHELTERING

Plans for the orderly evacuation and reception of portions of the civilian population as the result of any emergency or disaster shall be worked out and maintained between the participating governments and the emergency management or services directors of the various jurisdictions where any type of incident requiring evacuations might occur. The plans shall be put into effect by request of the participating government from which evacuees come and shall include the manner of transporting the evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of the evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. The plans shall provide that the participating government receiving evacuees and the participating government from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. The expenditures shall be reimbursed as agreed by the participating government from which the evacuees come. After the termination of the emergency or disaster, the participating government from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI  
IMPLEMENTATION

1. This compact shall become operative immediately upon its adoption by ordinance or resolution by the governing bodies of any two political subdivisions. Thereafter, this compact shall become effective as to any other political subdivision upon its adoption by ordinance or resolution of the governing body of the political subdivision.

2. Any participating government may withdraw from this compact by adopting an ordinance or resolution repealing the same, but a withdrawal shall not take effect until thirty days after the governing body of the withdrawing participating government has given notice in writing of the withdrawal to the administrator of the homeland security and emergency management division who shall notify all other participating govern-

ments. The action shall not relieve the withdrawing political subdivision from obligations assumed under this compact prior to the effective date of withdrawal.

3. Duly authenticated copies of this compact and any supplementary agreements as may be entered into shall be deposited, at the time of their approval, with the administrator of the homeland security and emergency management division who shall notify all participating governments and other appropriate agencies of state government.

ARTICLE XII  
VALIDITY

This compact shall be construed to effectuate the purposes stated in article I. If any provision of this compact is declared unconstitutional, or the applicability of the compact to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability of this compact to other persons and circumstances shall not be affected.

2003 Acts, ch 179, §157  
Terminology change applied

## CHAPTER 35

### VETERANS AFFAIRS

#### 35.1 Definitions.

As used in this chapter and chapters 35A through 35D:

1. “*Commission*” means the commission of veterans affairs created in section 35A.2.

2. *a.* “*Veteran*” means a resident of this state who served in the armed forces of the United States at any time during the following dates and who was discharged under honorable conditions:

(1) World War I from April 6, 1917, through November 11, 1918.

(2) Occupation of Germany from November 12, 1918, through July 11, 1923.

(3) American expeditionary forces in Siberia from November 12, 1918, through April 30, 1920.

(4) Second Haitian suppression of insurrections from 1919 through 1920.

(5) Second Nicaragua campaign with marines or navy in Nicaragua or on combatant ships from 1926 through 1933.

(6) Yangtze service with navy and marines in Shanghai or in the Yangtze valley from 1926 through 1927 and 1930 through 1932.

(7) China service with navy and marines from 1937 through 1939.

(8) World War II from December 7, 1941, through December 31, 1946.

(9) Korean conflict from June 25, 1950, through January 31, 1955.

(10) Vietnam conflict from February 28, 1961, through May 7, 1975.

(11) Lebanon or Grenada service from August 24, 1982, through July 31, 1984.

(12) Panama service from December 20, 1989, through January 31, 1990.

(13) Persian Gulf conflict from August 2, 1990, through the date the president or the Congress of the United States declares a cessation of hostilities. However, if the United States Congress enacts a date different from August 2, 1990, as the beginning of the Persian Gulf conflict for purposes of determining whether a veteran is entitled to re-

ceive military benefits as a veteran of the Persian Gulf conflict, that date shall be substituted for August 2, 1990.

*b.* “*Veteran*” includes the following persons:

(1) Former members of the reserve forces of the United States who served at least twenty years in the reserve forces after January 28, 1973, and who were discharged under honorable conditions. However, a member of the reserve forces of the United States who completed a minimum aggregate of ninety days of active federal service, other than training, and was discharged under honorable conditions, or was retired under Title X of the United States Code shall be included as a veteran.

(2) Former members of the Iowa national guard who served at least twenty years in the Iowa national guard after January 28, 1973, and who were discharged under honorable conditions. However, a member of the Iowa national guard who was activated for federal duty, other than training, for a minimum aggregate of ninety days, and was discharged under honorable conditions or was retired under Title X of the United States Code shall be included as a veteran.

(3) Former members of the active, oceangoing merchant marines who served during World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, who were discharged under honorable conditions.

(4) Former members of the women’s air force service pilots and other persons who have been conferred veterans status based on their civilian duties during World War II in accordance with federal Pub. L. No. 95-202, 38 U.S.C. § 106.

(5) Former members of the armed forces of the United States if any portion of their term of enlistment would have occurred within the time period specified in paragraph “*a*”, subparagraph (9), but who instead opted to serve five years in the reserve forces of the United States, as allowed by federal law, and who were discharged under honorable

conditions.

2003 Acts, ch 142, §4, 11  
 2003 amendment adding new subparagraph (5) to paragraph b of subsection 2 takes effect May 21, 2003; 2003 Acts, ch 142, §11  
 Subsection 2, paragraph b, NEW subparagraph (5)

### 35.10 Eligibility and payment of aid.

Eligibility for aid shall be determined upon application to the commission of veterans affairs, whose decision is final. The eligibility of eligible applicants shall be certified by the commission of veterans affairs to the director of the department of administrative services, and all amounts that are or become due to an individual or a training institution under this chapter shall be paid to the individual or institution by the director of the department of administrative services upon receipt by the director of certification by the president or

governing board of the educational or training institution as to accuracy of charges made, and as to the attendance of the individual at the educational or training institution. The commission of veterans affairs may pay over the annual sum of four hundred dollars to the educational or training institution in a lump sum, or in installments as the circumstances warrant, upon receiving from the institution such written undertaking as the commission may require to assure the use of funds for the child for the authorized purposes and for no other purpose. A person is not eligible for the benefits of this chapter until the person has graduated from a high school or educational institution offering a course of training equivalent to high school training.

2003 Acts, ch 145, §286  
 Terminology change applied

## CHAPTER 35A

### VETERANS AFFAIRS COMMISSION

#### 35A.8 Executive director — term — duties.

1. The governor shall appoint an executive director, subject to confirmation by the senate, who shall serve at the pleasure of the governor. The executive director is responsible for administering the duties of the commission other than those related to the Iowa veterans home.

2. The executive director shall be a resident of the state of Iowa and an honorably discharged veteran who served in the armed forces of the United States during a conflict or war. As used in this section, the dates of service in a conflict or war shall coincide with the dates of service established by the Congress of the United States.

3. Except for the employment duties and responsibilities assigned to the commandant for the Iowa veterans home, the executive director shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the commission. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of chapter 8A, subchapter IV.

4. *a.* The executive director shall provide for the administration of the bonus authorized in this subsection. The commission shall adopt rules, pursuant to chapter 17A, as necessary to administer this subsection including, but not limited to, application procedures, investigation, approval or disapproval, and payment of claims.

*b.* (1) Each person who served on active duty in the active, oceangoing merchant marine service of the United States, at any time between Decem-

ber 7, 1941, and December 31, 1946, both dates inclusive, and who served for a period of not less than one hundred twenty days on or before December 31, 1946, and who at the time of entering into the merchant marine service was a legal resident of the state of Iowa, and who had maintained the person's residence in this state for a period of at least six months immediately before entering the merchant marine service, and was honorably discharged or separated from the merchant marine service, is entitled to receive from moneys appropriated for that purpose the sum of twelve dollars and fifty cents for each month that the person was on active duty in the merchant marine service, all before December 31, 1946, not to exceed a total sum of five hundred dollars. Compensation for a fraction of a month shall not be considered unless the fraction is sixteen days or more, in which case the fraction shall be computed as a full month.

(2) A person is not entitled to compensation pursuant to this subsection if the person received a bonus or compensation similar to that provided in this subsection from another state.

(3) A person is not entitled to compensation pursuant to this subsection if the person was on active duty in the merchant marine service after December 7, 1941, and the person refused on conscientious, political, religious, or other grounds, to be subject to military discipline.

(4) The surviving unremarried widow or widower, child or children, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person, shall be paid the compensation that the deceased person would

be entitled to pursuant to this subsection, if living, but if any person has died or shall die, or is disabled, from service-connected causes incurred during the period and in the area from which the person is entitled to receive compensation pursuant to this subsection, the person or the first survivor as designated by this subsection, and in the order named, shall be paid five hundred dollars, regardless of the length of service.

c. A person who knowingly makes a false statement relating to a material fact in supporting an application under this subsection is guilty of a serious misdemeanor. A person convicted pursuant to this subsection shall forfeit all benefits to which the person may have been entitled under this subsection.

d. All payments and allowances made under this subsection shall be exempt from taxation and from levy and sale on execution.

e. The bonus compensation authorized under this subsection shall be paid from moneys appropriated for that purpose.

f. A merchant marine bonus fund is created in the state treasury. The merchant marine bonus fund shall consist of all moneys appropriated to the fund to pay the bonus compensation authorized in this subsection. Notwithstanding section 12C.7, interest or earnings on investments or time deposits of the moneys in the merchant marine bonus fund shall be credited to the merchant marine bonus fund. Section 8.33 does not apply to moneys appropriated to the merchant marine bonus fund.

2003 Acts, ch 145, §148  
Confirmation, see §2.32  
Subsection 3 amended

### **35A.10 Multiyear construction program — construction, repair, and improvement projects.**

1. The commission shall work with the department of administrative services to prepare and submit to the director of the department of management, as provided in section 8.23, a multiyear construction program including estimates of the expenditure requirements for the construction, repair, or improvement of buildings, grounds, or equipment at the commission of veterans affairs building at Camp Dodge and the Iowa veterans home in Marshalltown.

2. The commandant and the commission shall have plans and specifications prepared by the department of administrative services for authorized construction, repair, or improvement projects in excess of twenty-five thousand dollars. An appropriation for a project shall not be expended until the department of administrative services has adopted plans and specifications and has completed a detailed estimate of the cost of the project, prepared under the supervision of a registered architect or registered professional engineer.

3. The director of the department of administrative services shall, in writing, let all contracts

for authorized improvements in excess of twenty-five thousand dollars in accordance with chapter 8A, subchapter III. The director of the department of administrative services shall not authorize payment for construction purposes until satisfactory proof has been furnished by the proper officer or supervising architect that the parties have complied with the contract.

2003 Acts, ch 145, §149  
Section amended

### **35A.13 Veterans trust fund.**

1. For the purposes of this section, “*veteran*” means the same as defined in section 35.1 or a resident of this state who served in the armed forces of the United States, completed a minimum aggregate of ninety days of active federal service, and was discharged under honorable conditions.

2. A veterans trust fund is created in the state treasury under the control of the commission.

3. The trust fund shall consist of all of the following:

a. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the trust fund.

b. Interest attributable to investment of moneys in the fund or an account of the trust fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the trust fund shall be credited to the trust fund.

4. Moneys credited to the trust fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except as provided in this section. Moneys in the trust fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the trust fund by the end of that fiscal year.

5. The minimum balance of the trust fund required prior to expenditure of moneys from the trust fund is fifty million dollars. Once the minimum balance is reached, the interest and earnings on the fund and any moneys received under subsection 3, paragraph “a”, are appropriated to the commission to be used to achieve the purposes of this section.

6. Moneys appropriated to the commission under this section shall not be used to supplant funding previously provided by other sources. The moneys may be expended upon a majority vote of the commission membership for the benefit of veterans and the spouses and dependents of veterans, for any of the following purposes:

a. College tuition aid.

b. Job training aid.

c. Expenses relating to an individual receiving care by a nursing facility that are not payable by any other sources.

d. Benefits provided to children of disabled or deceased veterans.

e. Unemployment aid needed during a veter-

an's unemployment due to prolonged illness or disability resulting from military service. A diagnosed case of mental distress due to military service-related activities shall be included as a disability under this paragraph.

f. Other purposes identified by the commission.

2003 Acts, ch 131, §1  
NEW section

## CHAPTER 35C

### VETERANS PREFERENCE

#### **35C.1 Appointments and employment — applications.**

1. In every public department and upon all public works in the state, and of the counties, cities, and school corporations of the state, veterans as defined in section 35.1 who are citizens and residents of this state are entitled to preference in appointment and employment over other applicants of no greater qualifications. The preference in appointment and employment for employees of cities under a municipal civil service is the same as provided in section 400.10.

2. In all jobs of the state and its political subdivisions, an application form shall be completed. The application form shall contain an inquiry into the applicant's military service during the wars or armed conflicts as specified in subsection 1.

The department of administrative services shall

inform the agency to which the person is seeking employment of the person's military service as specified in subsection 1.

3. In all jobs of political subdivisions of the state which are to be filled by competitive examination or by appointment, public notice of the application deadline to fill a job shall be posted at least ten days before the deadline in the same manner as notices of meetings are posted under section 21.4.

4. For jobs in political subdivisions of the state that are filled through a point-rated qualifying examination, the preference afforded to veterans shall be equivalent to that provided for municipal civil service systems in section 400.10.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 35D

### VETERANS HOME

#### **35D.14 Personnel — expenses — compensation.**

The commandant or the commandant's designee shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the commandant. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of

chapter 8A, subchapter IV.

The commandant and employees of the Iowa veterans home are entitled to receive, in addition to salary, reimbursement for actual expenses incurred while engaged in the performance of official duties pursuant to section 35A.9.

2003 Acts, ch 145, §150  
Unnumbered paragraph 1 amended

## CHAPTER 37

### MEMORIAL HALLS AND MONUMENTS

#### **37.9 Commissioners appointed — vacancies — request for appropriation.**

When the proposition to erect any such building or monument has been carried by a majority vote, the board of supervisors or the city council, as the case may be, shall appoint a commission consisting of five or seven members, in the manner and with the qualifications provided in this chapter,

which shall have charge and supervision of the erection of the building or monument, and when erected, the management and control of the building or monument.

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

On or before January 15 of each year, a commission which manages and controls a county memorial hospital shall prepare and submit to the county auditor a request for an appropriation for the next fiscal year from the general fund for the operation and maintenance of the county memorial hospital. On or before January 20, the county auditor shall submit the request to the county board of supervisors. The board of supervisors may adjust the commission's request and may make an appropriation for the county memorial hospital as provided in section 331.427, subsection 3, paragraph "b". For the purposes of public notice, the commission is a certifying board and is subject to the requirements of sections 24.3 through 24.5, sections 24.9 through 24.12, and section 24.16.

The term of office of each member shall be three years, and any vacancies occurring in the membership shall be filled in the same manner as the original appointment.

Commencing with the commissioners appointed to take office after January 1, 1952, the terms of office of the commissioners shall be staggered so that all commissioners' terms will not end in the same year. Thereafter, the successors in each instance shall hold office for a term of three years or until a successor is appointed and qualified.

The commissioners having the management and control of a memorial hospital shall, within ten days after their appointment, qualify by taking the usual oath of office, but no bonds shall be required of them except as hereinafter provided. The commissioners shall organize by electing a chairperson, secretary, and treasurer. The secretary and treasurer shall each file with the chairperson of the commission a surety bond in such sum as the commission may require, with sureties approved by the commission, for the use and benefit of the memorial hospital. The reasonable costs of such bonds shall be paid from operating funds of the hospital. The secretary shall immediately report to the county auditor and county treasurer the names of the chairperson, secretary, and treasurer of the commission. The commission shall meet at least once each month. Three members of a five-member commission and five members of a seven-member commission shall constitute a quorum for the transaction of business. The secretary shall keep a complete record of its proceedings.

Memorial hospital funds shall be received, disbursed, and accounted for in the same manner and by the same procedure as provided by section 347.12.

Section not amended; internal reference change applied

## CHAPTER 39

### ELECTIONS, ELECTORS, APPOINTMENTS, TERMS AND OFFICERS

#### 39.3 Definitions.

The definitions established by this section shall apply wherever the terms so defined appear in this chapter and in chapters 39A, 43, 44, 45, 47, 48A through 53, and 68A unless the context in which any such term is used clearly requires otherwise.

1. "Absentee ballot" means any ballot authorized by chapter 53.

2. "City" means a municipal corporation not including a county, township, school district, or any special purpose district or authority. When used in relation to land area, "city" includes only the land area within the city limits.

3. "City election" means any election held in a city for nomination or election of the officers thereof including a city primary or runoff election.

4. "Commissioner" means the county commissioner of elections as defined in section 47.2.

5. "Election" means a general election, primary election, city election, school election or special election.

6. "Eligible elector" means a person who possesses all of the qualifications necessary to entitle the person to be registered to vote, whether or not the person is in fact so registered.

7. "General election" means the biennial election for national or state officers, members of Con-

gress and of the general assembly, county and township officers, and for the choice of other officers or the decision of questions as provided by law.

8. "Infamous crime" means a felony as defined in section 701.7, or an offense classified as a felony under federal law.

9. "Primary election" means that election by the members of various political parties for the purpose of placing in nomination candidates for public office held as required by chapter 43.

10. "Public measure" means any question authorized or required by law to be submitted to the voters at an election.

11. "Registered voter" means a person who is registered to vote pursuant to chapter 48A.

12. "Registrar" means the state registrar of voters designated by section 47.7.

13. "Registration commission" means the state voter registration commission established by section 47.8.

14. "School election" means that election held pursuant to section 277.1.

15. "Special election" means any other election held for any purpose authorized or required by law.

16. "State commissioner" means the state com-

missioner of elections as defined in section 47.1.

17. “*Written*” and “*in writing*” may include any mode of representing words or letters in general use. A signature, when required by law, must be made by the writing or markings of the person whose signature is required. If a person is unable due to a physical disability to make a written signature or mark, that person may substitute either of the following in lieu of a signature required by law:

*a.* The name of the person with a disability

written by another upon the request and in the presence of the person with a disability.

*b.* A rubber stamp reproduction of the name or facsimile of the actual signature of the person with a disability when adopted by that person for all purposes requiring a signature and then only when affixed by that person or another upon the request and in the presence of the person with a disability.

Section not amended; internal reference change applied

## CHAPTER 42

### REDISTRICTING GENERAL ASSEMBLY AND CONGRESSIONAL DISTRICTS

#### 42.1 Definitions.

As used in this chapter, unless the context requires otherwise:

1. “*Chief election officer*” means the state commissioner of elections as defined by section 47.1.

2. “*Commission*” means the temporary redistricting advisory commission established pursuant to this chapter.

3. “*Federal census*” means the decennial census required by federal law to be conducted by the United States bureau of the census in every year ending in zero.

4. “*Four selecting authorities*” means:

*a.* The majority floor leader of the state senate.

*b.* The minority floor leader of the state senate.

*c.* The majority floor leader of the state house of representatives.

*d.* The minority floor leader of the state house of representatives.

5. “*Partisan public office*” means:

*a.* An elective or appointive office in the executive or legislative branch or in an independent establishment of the federal government.

*b.* An elective office in the executive or legislative branch of the government of this state, or an office which is filled by appointment and is exempt from the merit system under section 8A.412.

*c.* An office of a county, city or other political subdivision of this state which is filled by an election process involving nomination and election of candidates on a partisan basis.

6. “*Plan*” means a plan for legislative and congressional reapportionment drawn up pursuant to the requirements of this chapter.

7. “*Political party office*” means an elective office in the national or state organization of a political party, as defined by section 43.2.

8. “*Relative*” means an individual who is related to the person in question as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, father-in-law, mother-in-law, son-

in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister.

2003 Acts, ch 145, §151  
Subsection 5, paragraph b amended

#### 42.2 Preparations for redistricting.

1. The legislative services agency shall acquire appropriate information, review and evaluate available facilities, and develop programs and procedures in preparation for drawing congressional and legislative redistricting plans on the basis of each federal census. Funds shall be expended for the purchase or lease of equipment and materials only with prior approval of the legislative council.

2. By December 31 of each year ending in zero, the legislative services agency shall obtain from the United States bureau of the census information regarding geographic and political units in this state for which federal census population data has been gathered and will be tabulated. The legislative services agency shall use the data so obtained to:

*a.* Prepare necessary descriptions of geographic and political units for which census data will be reported, and which are suitable for use as components of legislative districts.

*b.* Prepare maps of counties, cities and other geographic units within the state, which may be used to illustrate the locations of legislative district boundaries proposed in plans drawn in accordance with section 42.4.

3. As soon as possible after January 1 of each year ending in one, the legislative services agency shall obtain from the United States bureau of the census the population data needed for legislative districting which the census bureau is required to provide this state under United States Pub. L. 94-171, and shall use that data to assign a population figure based upon certified federal census

data to each geographic or political unit described pursuant to subsection 2, paragraph “a”. Upon completing that task, the legislative services agency shall begin the preparation of congressional and legislative districting plans as required by section 42.3.

2003 Acts, ch 35, §44, 49  
Terminology change applied

#### 42.3 Timetable for preparation of plan.

1. Not later than April 1 of each year ending in one, the legislative services agency shall deliver to the secretary of the senate and the chief clerk of the house of representatives identical bills embodying a plan of legislative and congressional districting prepared in accordance with section 42.4. It is the intent of this chapter that the general assembly shall bring the bill to a vote in either the senate or the house of representatives expeditiously, but not less than seven days after the report of the commission required by section 42.6 is received and made available to the members of the general assembly, under a procedure or rule permitting no amendments except those of a purely corrective nature. It is further the intent of this chapter that if the bill is approved by the first house in which it is considered, it shall expeditiously be brought to a vote in the second house under a similar procedure or rule.

2. If the bill embodying the plan submitted by the legislative services agency under subsection 1 fails to be approved by a constitutional majority in either the senate or the house of representatives, the secretary of the senate or the chief clerk of the house, as the case may be, shall at once transmit to the legislative services agency information which the senate or house may direct regarding reasons why the plan was not approved. The legislative services agency shall prepare a bill embodying a second plan of legislative and congressional districting prepared in accordance with section 42.4, and taking into account the reasons cited by the senate or house of representatives for its failure to approve the plan insofar as it is possible to do so within the requirements of section 42.4. If a second plan is required under this subsection, the bill embodying it shall be delivered to the secretary of the senate and the chief clerk of the house of representatives not later than May 1 of the year ending in one, or twenty-one days after the date of the vote by which the senate or the house of representatives fails to approve the bill submitted under subsection 1, whichever date is later. It is the intent of this chapter that, if it is necessary to submit a bill under this subsection, the bill be brought to a vote not less than seven days after the bill is printed and made available to the members of the general assembly, in the same manner as prescribed for the bill required under subsection 1.

3. If the bill embodying the plan submitted by the legislative services agency under subsection 2 fails to be approved by a constitutional majority in

either the senate or the house of representatives, the same procedure as prescribed by subsection 2 shall be followed. If a third plan is required under this subsection, the bill embodying it shall be delivered to the secretary of the senate and the chief clerk of the house of representatives not later than June 1 of the year ending in one, or twenty-one days after the date of the vote by which the senate or the house of representatives fails to approve the bill submitted under subsection 2, whichever date is later. It is the intent of this chapter that, if it is necessary to submit a bill under this subsection, the bill be brought to a vote within the same time period after its delivery to the secretary of the senate and the chief clerk of the house of representatives as is prescribed for the bill submitted under subsection 2, but shall be subject to amendment in the same manner as other bills.

4. Notwithstanding subsections 1, 2 and 3 of this section:

a. If population data from the federal census which is sufficient to permit preparation of a congressional districting plan complying with article III, section 37 of the Constitution of the State of Iowa becomes available at an earlier time than the population data needed to permit preparation of a legislative districting plan in accordance with section 42.4, the legislative services agency shall so inform the presiding officers of the senate and house of representatives. If the presiding officers so direct, the legislative services agency shall prepare a separate bill establishing congressional districts and submit it separately from the bill establishing legislative districts. It is the intent of this chapter that the general assembly shall proceed to consider the congressional districting bill in substantially the manner prescribed by subsections 1, 2 and 3 of this section.

b. If the population data for legislative districting which the United States census bureau is required to provide this state under United States Pub. L. 94-171 and, if used by the legislative services agency, the corresponding topologically integrated geographic encoding and referencing data file for that population data, is not available to the legislative services agency on or before February 1 of the year ending in one, the dates set forth in this section shall be extended by a number of days equal to the number of days after February 1 of the year ending in one that the federal census population data and the topologically integrated geographic encoding and referencing data file for legislative districting becomes available.

2003 Acts, ch 35, §44, 49  
Terminology change applied

#### 42.6 Duties of commission.

The functions of the commission shall be as follows:

1. If, in preparation of plans as required by this chapter, the legislative services agency is confronted with the necessity to make any decision for

which no clearly applicable guideline is provided by section 42.4, the legislative services agency may submit a written request for direction to the commission.

2. Prior to delivering any plan and the bill embodying that plan to the secretary of the senate and the chief clerk of the house of representatives in accordance with section 42.3, the legislative services agency shall provide to persons outside the legislative services agency staff only such information regarding the plan as may be required by policies agreed upon by the commission. This subsection does not apply to population data furnished to the legislative services agency by the United States bureau of the census.

3. Upon each delivery by the legislative services agency to the general assembly of a bill embodying a plan, pursuant to section 42.3, the commission shall at the earliest feasible time make available to the public the following information:

- a. Copies of the bill delivered by the legislative services agency to the general assembly.
- b. Maps illustrating the plan.
- c. A summary of the standards prescribed by section 42.4 for development of the plan.
- d. A statement of the population of each dis-

trict included in the plan, and the relative deviation of each district population from the ideal district population.

4. Upon the delivery by the legislative services agency to the general assembly of a bill embodying an initial plan, as required by section 42.3, subsection 1, the commission shall:

a. As expeditiously as reasonably possible, schedule and conduct at least three public hearings, in different geographic regions of the state, on the plan embodied in the bill delivered by the legislative services agency to the general assembly.

b. Following the hearings, promptly prepare and submit to the secretary of the senate and the chief clerk of the house a report summarizing information and testimony received by the commission in the course of the hearings. The commission's report shall include any comments and conclusions which its members deem appropriate on the information and testimony received at the hearings, or otherwise presented to the commission.

2003 Acts, ch 35, §44, 49  
Terminology change applied

## CHAPTER 43

### PARTISAN NOMINATIONS — PRIMARY ELECTION

#### 43.5 Applicable statutes.

The provisions of chapters 39, 47, 48A, 49, 50, 51, 52, 53, 57, 58, 59, 61, 62, 68A, and 722 shall apply, so far as applicable, to all primary elections, except as hereinafter provided.

Criminal offenses, §39A.2 – 39A.5  
Section not amended; internal reference change applied

#### 43.18 Affidavit of candidacy.

Each candidate shall complete and file a signed, notarized affidavit of candidacy. The affidavit shall be in the form prescribed by the secretary of state and shall include the following information:

- 1. The candidate's name in the form the candidate wants it to appear on the ballot.
- 2. The candidate's home address.
- 3. The name of the county in which the candidate resides.
- 4. The political party with which the candidate is registered to vote.
- 5. The office sought by the candidate, and the district the candidate seeks to represent, if any.
- 6. A declaration that if the candidate is nominated and elected the candidate will qualify by taking the oath of office.
- 7. A statement that the candidate is aware that the candidate is required to organize a candidate's committee which shall file an organization statement and disclosure reports if the committee

or the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of the reporting threshold in section 68A.102, subsection 5. This subsection shall not apply to candidates for federal office.

8. A statement that the candidate is aware of the prohibition in section 43.20 against being a candidate for more than one office appearing on the primary election ballot.

9. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

Section not amended; internal reference change applied

#### 43.45 Canvass of votes.

1. Upon the closing of the polls the precinct election officials shall immediately publicly canvass the vote. The canvass shall be conducted using the procedures established in this section which are appropriate for the voting system used in the precinct.

2. In precincts where paper ballots are used, precinct election officials shall do all of the following:

- a. Place the ballots of the several political parties in separate piles.

b. Separately count the ballots of each party, and make the correct entries thereof on the tally sheets.

c. Certify the number of votes cast upon the ticket of each political party for each candidate for each office.

d. Place the ballots cast on behalf of each of the parties in separate envelopes. Seal each envelope and place the signature of all board members of the precinct across the seal of the envelope so that it cannot be opened without breaking the seal.

e. On the outside of each envelope enter the number of ballots cast by each party in the precinct and contained in the envelope.

f. Seal the tally sheets and certificates of the precinct election officials in an envelope on the outside of which are written or printed the names of the several political parties with the names of the candidates for the different offices under their party name, and opposite each candidate's name enter the number of votes cast for such candidate in the precinct.

g. Enter on the envelope the total number of voters of each party who cast ballots in the precinct.

h. Communicate the results in the manner required by section 50.11, to the commissioner of the county in which the polls are located, who shall remain on duty until the results are communicated to the commissioner from each polling place in the county.

3. In precincts where voting machines are used, precinct election officials shall do all of the following:

a. Close the machines to prevent additional voting, and print the results for the precinct.

b. Tabulate all write-in votes. If necessary, add the votes, including write-in votes, from all machines to obtain the total number of votes cast in the precinct by the members of each political party for each office on the ballot.

c. Put any forms used by voters to cast write-in votes in an envelope with one copy of the printed results from each voting machine. Seal the envelope and place the signature of all board members of the precinct across the seal of the envelope so that it cannot be opened without breaking the seal.

d. On the outside of the envelope enter the number of voters from each party in the precinct. Report the number of votes cast for each office by the voters of each political party. A copy of the printed tape from the voting machine may be used to report vote totals.

e. Communicate the results to the commissioner in the manner required by section 50.11. The commissioner shall remain on duty until the results are communicated to the commissioner from each polling place in the county.

4. In precincts where electronic voting systems are used and ballots are counted in the pre-

inct, precinct election officials shall do all of the following:

a. Close and secure the ballot reader to prevent the insertion of additional ballots.

b. Print the results for the precinct.

c. Open the ballot container. Secure all ballots counted by the vote-tabulating device. Sort the remaining ballots by party. Tally all write-in votes and any other ballots not yet counted. Record the results in the tally list.

d. Put all ballots in an envelope or other package and seal it. All members of the board shall sign their names across the seal of the envelope. The seal shall be placed so that the envelope or package cannot be opened without breaking the seal.

5. In precincts where electronic voting systems are used and ballots are counted at a central location, precinct election officials shall follow the procedures in section 52.32.

2003 Acts, ch 44, §21, 22  
Subsection 1 amended  
Subsection 2, paragraph c amended

#### **43.67 Nominee's right to place on ballot.**

Each candidate nominated pursuant to section 43.52 or 43.65 is entitled to have the candidate's name printed on the official ballot to be voted at the general election without other certificate unless the candidate was nominated by write-in votes. Immediately after the completion of the canvass held under section 43.49, the county auditor shall notify each person who was nominated by write-in votes for a county or township office that the person is required to file an affidavit of candidacy if the person wishes to be a candidate for that office at the general election. Immediately after the completion of the canvass held under section 43.63, the secretary of state shall notify each person who was nominated by write-in votes for a state or federal office that the person is required to file an affidavit of candidacy if the person wishes to be a candidate for that office at the general election. If the affidavit is not filed by five p.m. on the seventh day after the completion of the canvass, that person's name shall not be placed upon the official general election ballot. The affidavit shall be signed by the candidate, notarized, and filed with the county auditor or the secretary of state, whichever is applicable.

The affidavit shall be in the form prescribed by the secretary of state. The affidavit shall include the following information:

1. The candidate's name in the form the candidate wants it to appear on the ballot.

2. The candidate's home address.

3. The name of the county in which the candidate resides.

4. The political party by which the candidate was nominated.

5. The office sought by the candidate, and the district the candidate seeks to represent, if any.

6. A declaration that if the candidate is elected

the candidate will qualify by taking the oath of office.

7. A statement that the candidate is aware that the candidate is required to organize a candidate's committee which shall file an organization statement and disclosure reports if the committee or the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of the reporting threshold in section 68A.102, subsection 5. This subsection shall not apply to candidates for federal office.

8. A statement that the candidate is aware of

the prohibition in section 49.41 against being a candidate for more than one office to be filled at the same election, except county agricultural extension council and soil and water conservation district commission.

9. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

Section not amended; internal reference change applied

## CHAPTER 44

### NOMINATIONS BY NONPARTY POLITICAL ORGANIZATIONS

#### 44.3 Certificate.

1. The certificate required by section 44.2 shall state the following information:

- a. The name of each candidate nominated.
- b. The office to which each candidate is nominated.
- c. The name of the political organization making such nomination, expressed in not more than five words.
- d. The place of residence of each nominee, with the street or number thereof, if any.
- e. In case of presidential candidates, the names and addresses of presidential electors shall be stated, and the names of the candidates for president and vice president shall be added to the name of the organization.
- f. The name and address of each member of the organization's executive or central committee.
- g. The provisions, if any, made for filling vacancies in nominations.
- h. The name and address of each delegate or voter in attendance at a convention or caucus where a nomination is made.

2. Each candidate nominated by the convention or caucus shall complete and file a signed, notarized affidavit of candidacy. The affidavit shall be in the form prescribed by the secretary of state. The affidavit shall include the following information:

- a. The candidate's name in the form the candidate wants it to appear on the ballot.
- b. The candidate's home address.

c. The name of the county in which the candidate resides.

d. The name of the political organization by which the candidate was nominated.

e. The office sought by the candidate, and the district the candidate seeks to represent, if any.

f. A declaration that if the candidate is elected the candidate will qualify by taking the oath of office.

g. A statement that the candidate is aware that the candidate is required to organize a candidate's committee which shall file an organization statement and disclosure reports if the committee or the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of the reporting threshold in section 68A.102, subsection 5. This subsection shall not apply to candidates for federal office.

h. A statement that the candidate is aware of the prohibition in section 49.41 against being a candidate for more than one office to be filled at the same election, except county agricultural extension council and soil and water conservation district commission.

i. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

Additional certification, §44.13

Section not amended; internal reference change applied

## CHAPTER 45

### NOMINATIONS BY PETITION

#### 45.3 Affidavit of candidacy.

Each candidate shall complete and file a signed, notarized affidavit of candidacy. The affidavit

shall be filed at the same time as the nomination petition. The affidavit shall be in the form prescribed by the secretary of state and shall include

the following information:

1. The candidate's name in the form the candidate wants it to appear on the ballot.
2. The candidate's home address.
3. The name of the county in which the candidate resides.
4. The name of the political organization by which the candidate was nominated, if any.
5. The office sought by the candidate, and the district the candidate seeks to represent, if any.
6. A declaration that if the candidate is elected the candidate will qualify by taking the oath of office.
7. A statement that the candidate is aware that the candidate is required to organize a candidate's committee which shall file an organization statement and disclosure reports if the committee or the candidate receives contributions, makes expenditures, or incurs indebtedness in excess of the reporting threshold in section 68A.102, subsection 5. This subsection shall not apply to candidates for federal office.
8. A statement that the candidate is aware of the prohibition in section 49.41 against being a candidate for more than one office to be filled at the same election, except county agricultural extension council and soil and water conservation district commission.
9. A statement that the candidate is aware that the candidate is disqualified from holding office if the candidate has been convicted of a felony or other infamous crime and the candidate's rights have not been restored by the governor or by the president of the United States.

Section not amended; internal reference change applied

#### **45.5 Form of nomination papers.**

1. Nomination papers shall include a petition and an affidavit of candidacy. All nomination petitions shall be eight and one-half by eleven inches in size and shall be in substantially the form prescribed by the state commissioner of elections. They shall provide spaces for the following information:

- a.* A statement identifying the signers of the petition as eligible electors of the appropriate county or legislative district and of the state of Iowa.
- b.* The name of the candidate nominated by the petition.
- c.* A statement that the candidate is or will be a resident of the appropriate ward, city, county,

school district, or legislative or other district as required by section 39.27.

*d.* The office sought by the candidate, including the district number, if any.

*e.* The name and date of the election for which the candidate is nominated.

Signatures on a petition page shall be counted only if the required information is written or printed at the top of the page. Nomination papers on behalf of candidates for seats in the general assembly need only designate the number of the senatorial or representative district, as appropriate, and not the county or counties, in which the candidate and the petitioners reside. A signature line in a nomination petition shall not be counted if the line lacks the signature of the eligible elector and the signer's address and city. The person examining the petition shall mark any deficiencies on the petition.

2. The pages of the petition shall be securely fastened together to form a single bundle. Nomination petitions that are not bound shall be returned without further examination. The state commissioner shall prescribe by rule the acceptable methods for binding nomination petitions.

3. Signed nomination petitions and the signed and notarized affidavit of candidacy shall not be altered to correct deficiencies noted during the examination. If the nomination petition lacks a sufficient number of acceptable signatures, the nomination papers shall be rejected and returned to the candidate.

The nomination papers shall be rejected if the affidavit lacks any of the following:

- a.* The candidate's name.
- b.* The name of the office sought, including the district, if any.
- c.* The signature of the candidate.
- d.* The signature of a notary public or other officer empowered to witness oaths.

The candidate may replace a deficient affidavit with a corrected one only if the replacement is filed before the filing deadline. The candidate may re-submit a nomination petition that has been rejected by adding a sufficient number of pages or signatures to correct the deficiency. A nomination petition and affidavit filed to replace rejected nomination papers shall be filed together before the deadline for filing.

2003 Acts, ch 44, §23, 24

Oaths; see chapter 63A

Subsection 1, paragraph c amended

Subsection 1, unnumbered paragraph 2 amended

## CHAPTER 46

### NOMINATION AND ELECTION OF JUDGES

#### **46.12 Notification of vacancy and resignation.**

When a vacancy occurs or will occur within one

hundred twenty days in the supreme court, the court of appeals, or district court, the state commissioner of elections shall forthwith so notify the

chairperson of the proper judicial nominating commission, unless the chief justice has ordered the state commissioner of elections to delay sending the notification. The chief justice may order the delay for up to one hundred eighty days for budgetary reasons. The chairperson shall call a meeting of the commission within ten days after such notice; if the chairperson fails to do so, the chief justice shall call such meeting.

When a judge of the supreme court, court of appeals, or district court resigns, the judge shall submit a copy of the resignation to the state commissioner of elections at the time the judge submits the resignation to the governor; and when a judge of the supreme court, court of appeals, or district court dies, the clerk of district court of the county of the judge's residence shall in writing forthwith notify the state commissioner of elections of such fact.

2003 Acts, ch 151, §1  
 For future repeal of 2003 amendment to unnumbered paragraph 1, effective July 1, 2006, see 2003 Acts, ch 151, §64  
 Unnumbered paragraph 1 amended

**46.14 Nomination.**

1. Each judicial nominating commission shall carefully consider the individuals available for judge, and within sixty days after receiving notice of a vacancy shall certify to the governor and the chief justice the proper number of nominees, in alphabetical order. Such nominees shall be chosen by the affirmative vote of a majority of the full statutory number of commissioners upon the basis of their qualifications and without regard to political affiliation. Nominees shall be members of the bar of Iowa, shall be residents of the state or district of the court to which they are nominated, and shall be of such age that they will be able to serve an initial and one regular term of office to which they are nominated before reaching the age of seventy-two years. Nominees for district judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the district judicial nominating commission. Absence of a commissioner or vacancy upon the commission shall not invalidate a nomination. The chairperson of the commission shall promptly certify the names of the nominees, in alphabetical order, to the governor and the chief justice.

2. A commissioner shall not be eligible for nomination by the commission during the term for which the commissioner was elected or appointed to that commission. A commissioner shall not be eligible to vote for the nomination of a family member, current law partner, or current business partner. For purposes of this subsection, "family mem-

ber" means a spouse, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, father, mother, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

2003 Acts, ch 151, §2  
 Section amended

**46.16 Terms of judges.**

1. Subject to sections 602.1610 and 602.1612 and to removal for cause:

a. The initial term of office of judges of the supreme court, court of appeals and district court shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year; and

b. The regular term of office of judges of the supreme court retained at a judicial election shall be eight years, and of judges of the court of appeals and district court so retained shall be six years, from the expiration of their initial or previous regular term as the case may be.

For the purpose of initial appointments to the court of appeals, two of the judges appointed shall serve an irregular term ending December 31 of the fourth year after expiration of the initial term prescribed in subsection 1 and two of the judges appointed shall serve an irregular term ending December 31 of the fifth year after expiration of the initial term prescribed in subsection 1. Expiration of irregular terms shall be deemed expiration of regular terms for all purposes.

2. Subject to removal for cause, the initial term of office of a district associate judge shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year, and the regular term of office of a district associate judge retained at a judicial election shall be six years from the expiration of the initial or previous regular term, as the case may be.

3. Subject to removal for cause, the initial term of office of a full-time associate juvenile judge or a full-time associate probate judge shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year, and the regular term of office of a full-time associate juvenile judge or a full-time associate probate judge retained at a judicial election shall be six years from the expiration of the initial or previous regular term, as the case may be.

2003 Acts, ch 151, §3, 65  
 2003 amendments to subsections 2 and 3 apply to elections for retaining a judge occurring after May 23, 2003; 2003 Acts, ch 151, §65  
 Subsections 2 and 3 amended

## CHAPTER 47

### ELECTION COMMISSIONERS

#### 47.1 State commissioner of elections.

The secretary of state is designated as the state commissioner of elections and shall supervise the activities of the county commissioners of elections. There is established within the office of the secretary of state a division of elections which shall be under the direction of the state commissioner of elections. The state commissioner of elections may appoint a person to be in charge of the division of elections who shall perform the duties assigned by the state commissioner of elections. The state commissioner of elections shall prescribe uniform election practices and procedures, shall prescribe the necessary forms required for the conduct of elections, shall assign a number to each proposed constitutional amendment and statewide public measure for identification purposes, and shall adopt rules, pursuant to chapter 17A, to carry out this section.

The state commissioner of elections may exercise emergency powers over any election being held in a district in which either a natural or other disaster or extremely inclement weather has occurred. The state commissioner of elections may also exercise emergency powers during an armed conflict involving United States armed forces, or mobilization of those forces, or if an election contest court finds that there were errors in the conduct of an election making it impossible to determine the result.

The secretary of state is designated the chief state election official and is responsible for coordination of state responsibilities under the federal National Voter Registration Act of 1993.

The state commissioner shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

See also §68A.201, subsection 4  
Section not amended; footnote revised

#### 47.5 Purchasing by competitive bidding.

1. Except for legal services and printing of ballots, the commissioner shall take bids for goods and services which are needed in connection with registration of voters or preparation for or administration of elections and which will be performed or provided by persons who are not employees of the commissioner under the following circumstances:

*a.* In any case where it is proposed to purchase data processing services. The commissioner shall give the registrar written notice in advance on each occasion when it is proposed to have data processing services, necessary in connection with the administration of elections, performed by any person other than the registrar or an employee of the county. Such notice shall be made at least thirty

days prior to publication of the specifications.

*b.* In all other cases, where the cost of the goods or services to be purchased will exceed one thousand dollars.

2. When it is proposed to purchase any goods or services, other than data processing services, in connection with administration of elections, the commissioner shall publish notice to bidders, including specifications regarding the goods or services to be purchased or a description of the nature and object of the services to be retained, in a newspaper of general circulation in the county not less than fifteen days before the final date for submission of bids. When competitive bidding procedures are used, the purchase of goods or services shall be made from the lowest responsible bidder which meets the specifications or description of the services needed or the commissioner may reject all bids and readvertise. In determining the lowest responsible bidder, various factors may be considered, including but not limited to the past performance of the bidder relative to quality of product or service, the past experience of the purchaser in relation to the product or service, the relative quality of products or services, the proposed terms of delivery and the best interest of the county.

3. The procedure for purchasing data processing services in connection with administration of elections is the same as prescribed in subsection 2, except that the required copy of the bid specifications shall be filed with the registrar rather than the state commissioner. The specifications for data processing contracts relative to voter registration records shall be specified by the registration commission. The registrar shall, not later than the final date for submission of bids, inform the commissioner in writing whether the department of administrative services data processing facilities are currently capable of furnishing the services the county proposes to purchase, and if so the cost to the county of so obtaining the services as determined in accordance with the standard charges adopted by the registration commission. The commissioner, with approval of the board of supervisors, may reject all bids and enter into an arrangement with the registrar for the services to be furnished by the state. The commissioner may recommend and the board of supervisors may approve purchasing the needed services from the lowest responsible bidder; however, if the needed services could be obtained through the registrar at a lower cost, the board shall publish notice twice in a newspaper of general circulation in the county of its intent to accept such bid and of the difference in the amount of the bid and the cost of purchasing the needed services from the department of administrative services data processing facilities

through the registrar. Each contract for the furnishing of data processing services necessary in connection with the administration of elections, by any person other than the registrar or an employee of the county, shall be executed with the contractor by the board of supervisors of the county purchasing the services, but only after the contract has been reviewed and approved by the registration commission. The contract shall be of not more than one year's duration. Each county exercising the option to purchase such data processing services from a provider other than the registrar shall provide the registrar, at the county's expense, original and updated voter registration lists in a form and at times prescribed by rules adopted by the registration commission.

4. Any election or registration data or records which may be in the possession of a contractor shall remain the property of the commissioner. Contracts with a private person relating to the maintenance and use of voter registration data, which were properly entered into in compliance with this section and with all other laws relating to bidding on such contracts, shall remain in force only until the most recently negotiated termination date of that contract. A new contract with the same provider may be entered into in accordance with subsection 3.

2003 Acts, ch 145, §286  
Terminology change applied

#### 47.7 State registrar of voters.

1. The state commissioner of elections is designated the state registrar of voters, and shall regulate the preparation, preservation, and maintenance of voter registration records, the preparation of precinct election registers for all elections administered by the commissioner of any county, and the preparation of other data on voter registration and participation in elections which is requested and purchased at actual cost of preparation and production by a political party or any resident of this state. The registrar shall maintain a log, which is a public record, showing all lists and reports which have been requested or generated or which are capable of being generated by existing programs of the data processing services of the registrar. In the execution of the duties provided by this chapter, the state registrar of voters shall provide the maximum public access to the electoral process permitted by law.

2. The registrar shall offer to each county in the state the opportunity to arrange for performance of all functions referred to in subsection 1 by the data processing facilities of the registrar, commencing at the earliest practicable time, at a cost to the county determined in accordance with the standard charges for those services adopted annually by the registration commission. A county may accept this offer without taking bids under section 47.5.

3. Any county may use its own data processing

facilities for voter registration recordkeeping and utilization functions, if the system design and the form in which the registration records are kept conform to specifications established by rules promulgated by the registration commission. Each county exercising the option to maintain its own voter registration records under this subsection shall provide the registrar, at the county's expense, original and updated voter registration lists in a form and at times prescribed by the registrar.

4. Not later than July 1, 1984, information listed in section 48A.11 contained in a county's manual records but not on the county's computer readable records shall be provided to the registrar in a form specified by the registrar. The registrar shall require that any information supplied under section 48A.11, except the signature and attestation of the registrant, be provided to the registrar in a form specified by the registrar.

Legislative intent that state data processing services to support voter registration file maintenance and storage be provided without charge; 2003 Acts, ch 181, §15

Section not amended; footnote revised

#### 47.8 Voter registration commission — composition — duties.

1. A state voter registration commission is established which shall meet at least quarterly to make and review policy, adopt rules, and establish procedures to be followed by the registrar in discharging the duties of that office, and to promote interagency cooperation and planning. The commission shall consist of the state commissioner of elections or the state commissioner's designee, the state chairpersons of the two political parties whose candidates for president of the United States or governor, as the case may be, received the greatest and next greatest number of votes in the most recent general election, or their respective designees, and a county commissioner of registration appointed by the president of the Iowa state association of county auditors, or an employee of the commissioner. The commission membership shall be balanced by political party affiliation pursuant to section 69.16. Members shall serve without additional salary or reimbursement.

The state commissioner of elections, or the state commissioner's designee, shall serve as chairperson of the state voter registration commission.

2. The registration commission shall prescribe the forms required for voter registration by rules promulgated pursuant to chapter 17A.

3. The registrar shall provide staff services to the commission and shall make available to it all information relative to the activities of the registrar's office in connection with voter registration policy which may be requested by any commission member. The registrar shall also provide to the commission at no charge statistical reports for planning and analyzing voter registration services in the state.

The commission may authorize the registrar to

employ such additional staff personnel as it deems necessary to permit the duties of the registrar's office to be adequately and promptly discharged. Such personnel shall be employed pursuant to chapter 8A, subchapter IV.

4. The registration commission shall annually adopt a set of standard charges to be made for the services the registrar is required to offer to the several commissioners, and for furnishing of voter registration records which are requested by per-

sons other than the registrar, the state commissioner or any commissioner pursuant to section 48A.38. These charges shall be sufficient to reimburse the state for the actual cost of furnishing such services or information, and shall be specified by unit wherever possible. The standard charges shall be adopted by the commission by January 15 of each calendar year.

2003 Acts, ch 145, §152

Subsection 3, unnumbered paragraph 2 amended

## CHAPTER 48A

### VOTER REGISTRATION

#### **48A.24 Voter registration forms in income tax returns and booklets.**

For odd-numbered tax years, the director of revenue shall insert securely in each individual income tax return form or instruction booklet two voter registration forms, designed according to rules adopted by the state voter registration commission.

2003 Acts, ch 145, §286  
Terminology change applied

#### **48A.29 Procedure upon return of confirmation card.**

1. If a confirmation notice and return card sent pursuant to section 48A.28 is returned as undeliverable by the United States postal service, the commissioner shall make the registration record inactive and shall mail a notice to the registered voter at the registered voter's most recent mailing address, as shown by the registration records.

The notice shall be sent by forwardable mail, and shall include a postage paid preaddressed return card on which the registered voter may state the registered voter's current address. The notice shall contain a statement in substantially the following form: "Information received from the United States postal service indicates that you are no longer a resident of (residence address) in (name of county) County, Iowa. If this information is not correct, and you still live in (name of county) County, please complete and mail the attached postage paid card at least ten days before the primary or general election and at least eleven days before any other election at which you wish to vote. If the information is correct, and you have moved, please contact a local official in your new area for assistance in registering there. If you do not mail in the card, you may be required to show identification before being allowed to vote in (name of county) County. If you do not return the card, and you do not vote in some election in (name of county) County, Iowa, on or before (date of second general election following the date of the notice) your name will be removed from the list of voters

in that county."

2. When a detachable return card originally attached to a confirmation notice is returned indicating that the registered voter is still a resident of the address shown on the registration records, the commissioner shall make a record of the date the card was received.

3. When a detachable return card originally attached to a confirmation notice is returned by anyone other than the registered voter indicating that the registered voter is no longer a resident of the registration address, the commissioner shall make the registration record inactive, and shall mail a notice to the registered voter at the registered voter's most recent mailing address, as shown by the registration records.

The notice shall be sent by forwardable mail, and shall include a postage paid preaddressed return card on which the registered voter may state the registered voter's current address. The notice shall contain a statement in substantially the following form: "Information received by this office indicates that you are no longer a resident of (residence address) in (name of county) County, Iowa. If the information is not correct, and you still live at that address, please complete and mail the attached postage paid card at least ten days before the primary or general election and at least eleven days before any other election at which you wish to vote. If the information is correct, and you have moved within the county, you may update your registration by listing your new address on the card and mailing it back. If you have moved outside the county, please contact a local official in your new area for assistance in registering there. If you do not mail in the card, you may be required to show identification before being allowed to vote in (name of county) County. If you do not return the card, and you do not vote in some election in (name of county) County, Iowa, on or before (date of second general election following the date of the notice) your name will be removed from the list of registered voters in that county."

2003 Acts, ch 44, §25

Subsection 1, unnumbered paragraph 2 amended

CHAPTER 49

METHOD OF CONDUCTING ELECTIONS

**49.7 Reprecincting schedule and filing requirements.**

Where reprecincting is necessary, city councils and county boards of supervisors or the temporary county redistricting commission shall make any necessary changes in precincts as soon as possible after the redistricting of congressional and legislative districts becomes law.

City councils shall complete any changes in precinct and ward boundaries necessary to comply with sections 49.3 and 49.5 not later than sixty days after the redistricting of congressional and legislative districts becomes law, or September 1 of the year immediately following each year in which the federal decennial census is taken, whichever is later. Different compliance dates may be set by the general assembly by joint resolution.

County boards of supervisors or the temporary county redistricting commission shall complete any changes in precinct and supervisor district boundaries necessary to comply with sections 49.3, 49.4, and 331.209 not later than ninety days after the redistricting of congressional and legislative districts becomes law, or October 15 of the year immediately following each year in which the federal decennial census is taken, whichever is later. Different compliance dates may be set by the general assembly by joint resolution.

Each county board of supervisors or the temporary county redistricting commission and city council shall immediately notify the state commissioner and the commissioner when the boundaries of election precincts are changed, and shall provide a map showing the new boundary lines. Each county board or the temporary county redistricting commission and city council shall certify to the state commissioner the populations of the new election precincts or retained election precincts as determined by the latest federal decennial census. Materials filed with the state commissioner shall be postmarked no later than the deadline specified in this section.

If the state commissioner determines that a county board or the temporary county redistricting commission or city council has failed to make the required changes by the dates specified by this section, the state commissioner shall make or cause to be made the necessary changes as soon as possible. The state commissioner shall assess to the county or city, as the case may be, the expenses incurred in making the necessary changes. The state commissioner may request the services of personnel and materials available to the legislative services agency to assist the state commis-

sioner in making required changes in election precincts which become the state commissioner's responsibility.

Precinct boundaries shall become effective on January 15 of the second year following the year in which the census was taken and shall be used for all subsequent elections. Precinct boundaries drawn by the state commissioner shall be incorporated into the ordinances of the city or county.

Changes made to precincts in years other than the year following the year in which the federal decennial census is taken shall be filed with the state commissioner as soon as possible.

2003 Acts, ch 35, §44, 49  
Terminology change applied

**49.54 Cost of publication.**

The cost of the publication required by section 49.53, shall not exceed an amount determined by the director of the department of administrative services or the director's designee.

2003 Acts, ch 145, §286  
Terminology change applied

**49.71 Posting instruction cards and sample ballots.**

The precinct election officials, before the opening of the polls, shall cause the instructions for voters required pursuant to section 49.70 to be securely posted as follows:

1. One copy in each voting booth.
2. Not less than four copies, with an equal number of sample ballots, in and about the polling place.

2003 Acts, ch 44, §26  
Sample primary ballots, §43.30  
Sample voting machine ballots, §52.13  
Unnumbered paragraph 1 amended

**49.125 Compensation of trainees.**

All election personnel attending such training course shall be paid for attending such course, and shall be reimbursed for travel to and from the place where the training is given at the rate determined by the board of supervisors if the distance involved is more than five miles. The wages shall be computed at the hourly rate established pursuant to section 49.20 and payment of wages and mileage for attendance shall be made at the time that payment is made for duties performed on election day.

2003 Acts, ch 44, §27  
Section amended

**49.131 Political advertisements.** Repealed by 86 Acts, ch 1023, § 12. See § 68A.405.

Repeal entry revised

## CHAPTER 49A

### CONSTITUTIONAL AMENDMENTS AND PUBLIC MEASURES

#### 49A.9 Expenses.

Expenses incurred under the provisions of this chapter shall be audited and allowed by the director of the department of administrative services

and paid out of any money in the state treasury not otherwise appropriated.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 53

### ABSENT VOTERS

#### 53.9 Prohibited persons.

No person required to file reports under chapter 68A, and no person acting as an actual or implied agent for a person required to file reports under chapter 68A, shall receive absentee ballots on behalf of voters. This prohibition does not apply to section 53.17.

Section not amended; internal reference change applied

of administrative services from the general fund of the state such sums as may be necessary to purchase any materials provided for herein. The proceeds from sale of such materials to counties shall be turned into the general fund of the state upon receipt of same by the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

#### 53.47 Materials furnished by department of administrative services.

In order to establish uniformity in size, weight and other characteristics of the ballot and facilitate its distribution and return, the department of administrative services shall upon direction of the state commissioner purchase any material needed for any special ballots, envelopes and other printed matter, and sell any such materials to the several counties of the state at cost plus handling and transportation costs.

There is hereby appropriated to the department

#### 53.50 Appropriation.

There is hereby appropriated to the state commissioner from the general fund of the state such sums as are necessary to pay the state commissioner's expenses and perform the state commissioner's functions under this division. Warrants shall be drawn by the director of the department of administrative services upon certification by the state commissioner or the state commissioner's deputy.

2003 Acts, ch 145, §286  
Appropriation limited for fiscal years beginning July 1, 1993; see §8.59  
Terminology change applied

## CHAPTER 55

### LEAVE OF ABSENCE FOR CANDIDACY AND PUBLIC SERVICE

#### 55.1 Leave of absence for service in elective office.

A person who is elected to a municipal, county, state, or federal office shall, upon written application to the employer of that person, be granted a leave of absence from regular employment to serve in that office except where prohibited by the federal law. The leave of absence may be granted without pay and shall be granted without loss of net credited service and benefits earned. This section shall not be construed to require an employer to pay pension, health or other benefits during the leave of absence to an employee taking a leave of absence under this section.

A leave of absence for a person regularly em-

ployed pursuant to chapter 8A, subchapter IV, is subject to section 8A.416.

An employee shall not be prohibited from returning to regular employment before the period expires for which the leave of absence was granted. This section applies only to employers which employ twenty or more full-time persons. The leave of absence granted by this section need not exceed six years. The leave of absence granted by this section does not apply to an elective office held by the employee prior to the election.

Temporary substitute teachers and teachers hired on a temporary basis to replace teachers who have been granted leaves of absence pursuant to this section are not subject to the provisions of

chapter 279 relating to the termination of continuing contracts.

2003 Acts, ch 145, §153  
Unnumbered paragraph 2 amended

**55.4 Leave of absence for public employee candidacy.**

Any public employee who becomes a candidate for any elective public office shall, upon request of the employee and commencing any time within thirty days prior to a contested primary, special, or general election and continuing until after the day following that election, automatically be given a period of leave. If the employee is under chapter 8A, subchapter IV, the employee may choose to use

accrued vacation leave, accrued compensatory leave or leave without pay to cover these periods. The appointing authority may authorize other employees to use accrued vacation leave or accrued compensatory leave instead of leave without pay to cover these periods. An employee who is a candidate for any elective public office shall not campaign while on duty as an employee.

This section does not apply to employees of the federal government or to a public employee whose position is financed by federal funds if the application of this section would be contrary to federal law or result in the loss of the federal funds.

2003 Acts, ch 145, §154  
Unnumbered paragraph 1 amended

**CHAPTER 56**

**CAMPAIGN FINANCE**

Transferred to chapter 68A; 2003 Acts, ch 40, §9

**CHAPTER 63A**

**ADMINISTRATION OF OATHS**

**63A.2 Limited authority.**

The following officers and persons are empowered to administer oaths and to take affirmations in any matter pertaining to the business of their respective office, position, or appointment:

1. Governor, secretary of state, secretary of agriculture, auditor of state, treasurer of state, attorney general.
2. Members of all boards, commissions, or bodies created by law.
3. All county officers other than those named in section 63A.1.
4. Mayors and clerks of cities, precinct election

officials, township clerks, assessors, and surveyors.

5. All duly appointed referees or appraisers.
6. All investigators for supplemental assistance as provided for under chapter 249.

7. The director and employees of the department of revenue, as authorized by the director, and as set forth in chapters 421 and 422.

2003 Acts, ch 145, §286  
Members of general assembly, §2.8  
Veterinary assistants, §163.5  
Law enforcement agencies, §805.6  
Terminology change applied

**CHAPTER 64**

**OFFICIAL AND PRIVATE BONDS**

**64.6 State officers — blanket bonds.**

State officials are not required to obtain bonds, but may be covered under a blanket bond for state employees. The blanket bond purchases shall be made in an amount and with the level of assumption of risk by the state that is determined by the

department of administrative services. The state shall pay the reasonable cost of bonds under this section.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 66

### REMOVAL FROM OFFICE

#### 66.1A Removal by court.

Any appointive or elective officer, except such as may be removed only by impeachment, holding any public office in the state or in any division or municipality thereof, may be removed from office by the district court for any of the following reasons:

1. For willful or habitual neglect or refusal to perform the duties of the office.
2. For willful misconduct or maladministra-

tion in office.

3. For corruption.
4. For extortion.
5. Upon conviction of a felony.
6. For intoxication, or upon conviction of being intoxicated.
7. Upon conviction of violating the provisions of chapter 68A.

Impeachable officers, Constitution, Art. III, §20  
Section not amended; internal reference change applied

## CHAPTER 68A

### CAMPAIGN FINANCE

Transferred from ch 56 in Code Supplement 2003 pursuant to Code editor directive; 2003 Acts, ch 40, §9  
Chapter applicable to primary elections; §43.5  
See §68B.32 et seq. for establishment and duties of ethics and campaign disclosure board  
See also definitions in §39.3

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### 68A.101 Citation.

This chapter may be cited as the “*Campaign Disclosure – Income Tax Checkoff Act*”.

2003 Acts, ch 40, §9  
Section transferred from §56.1 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

##### 68A.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Ballot issue*” means a question, other than the nomination or election of a candidate to a public office, which has been approved by a political subdivision or the general assembly or is required by law to be placed before the voters of the political subdivision by a commissioner of elections, or to be placed before the voters by the state commissioner of elections.
2. “*Board*” means the Iowa ethics and campaign disclosure board established under section 68B.32.
3. “*Campaign function*” means any meeting related to a candidate’s campaign for election.
4. “*Candidate*” means any individual who has taken affirmative action to seek nomination or election to a public office and shall also include any judge standing for retention in a judicial election.
5. “*Candidate’s committee*” means the committee designated by the candidate for a state, county, city, or school office to receive contributions in excess of seven hundred fifty dollars in the aggre-

gate, expend funds in excess of seven hundred fifty dollars in the aggregate, or incur indebtedness on behalf of the candidate in excess of seven hundred fifty dollars in the aggregate in any calendar year.

6. “*Clearly identified*” means that a communication contains an unambiguous reference to a particular candidate or ballot issue, including but not limited to one or more of the following:

- a. Use of the name of the candidate or ballot issue.
- b. Use of a photograph or drawing of the candidate, or the use of a particular symbol associated with a specific ballot issue.
- c. Use of a candidate’s initials, nickname, office, or status as a candidate, or use of acronym, popular name, or characterization of a ballot issue.

7. “*Commissioner*” means the county auditor of each county, who is designated as the county commissioner of elections pursuant to section 47.2.

8. “*Committee*” includes a political committee and a candidate’s committee.

9. “*Consultant*” means a person who provides or procures services for or on behalf of a candidate including but not limited to consulting, public relations, advertising, fundraising, polling, managing or organizing services.

10. “*Contribution*” means:

- a. A gift, loan, advance, deposit, rebate, refund, or transfer of money or a gift in kind.
- b. The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee

for any such purpose.

“*Contribution*” shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate’s committee or political committee or a state or county statutory political committee except when organized or provided on a collective basis by a business, trade association, labor union, or any other organized group or association. “*Contribution*” shall not include refreshments served at a campaign function so long as such refreshments do not exceed fifty dollars in value or transportation provided to a candidate so long as its value computed at a rate of twenty cents per mile does not exceed one hundred dollars in value in any one reporting period. “*Contribution*” shall not include something provided to a candidate for the candidate’s personal consumption or use and not intended for or on behalf of the candidate’s committee.

11. “*County office*” includes the office of drainage district trustee.

12. “*County statutory political committee*” means a committee as defined in section 43.100.

13. “*Disclosure report*” means a statement of contributions received, expenditures made, and indebtedness incurred on forms prescribed by rules adopted by the board in accordance with chapter 17A.

14. “*Express advocacy*” or to “*expressly advocate*” means communication that can be characterized according to at least one of the following descriptions:

*a.* The communication is political speech made in the form of a contribution.

*b.* In advocating the election or defeat of one or more clearly identified candidates or the passage or defeat of one or more clearly identified ballot issues, the communication includes explicit words that unambiguously indicate that the communication is recommending or supporting a particular outcome in the election with regard to any clearly identified candidate or ballot issue.

15. “*Fundraising event*” means any campaign function to which admission is charged or at which goods or services are sold.

16. “*National political party*” means a party which meets the definition of a political party established for this state by section 43.2, and which also meets the statutory definition of the term “political party” or a term of like import in at least twenty-five other states of the United States.

17. “*Person*” means, without limitation, any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, labor union, or any other legal entity.

18. “*Political committee*” means either of the following:

*a.* A committee, but not a candidate’s committee, that accepts contributions in excess of seven hundred fifty dollars in the aggregate, makes ex-

penditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

*b.* An association, lodge, society, cooperative, union, fraternity, sorority, educational institution, civic organization, labor organization, religious organization, or professional organization that accepts contributions in excess of seven hundred fifty dollars in the aggregate, makes expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

19. “*Political purpose*” or “*political purposes*” means the express advocacy of a candidate or ballot issue.

20. “*Public office*” means any state, county, city, or school office filled by election.

21. “*State income tax liability*” means the state individual income tax imposed under section 422.5 reduced by the sum of the deductions from the computed tax as provided under section 422.12.

22. “*State statutory political committee*” means a committee as defined in section 43.111.

2003 Acts, ch 40, §9  
Section transferred from §56.2 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

### **68A.103 Applicability to federal candidates.**

1. The requirements of this chapter relative to disclosure of contributions shall apply to candidates and political committees for federal office only in the event such candidates are not subject to a federal law requiring the disclosure of campaign financing. Any such federal law shall supersede the provisions of this chapter.

2. The provisions of this chapter under which money from the Iowa election campaign fund may be made available to or used for the benefit of candidates and candidates’ committees shall apply to candidates for federal office and their candidates’ committees only if matching funds to pay a portion of their campaign expenses are not available to such candidates or their committees from the federal government.

2003 Acts, ch 40, §9  
Section transferred from §56.17 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

### **68A.104 Certain accounts by officeholders prohibited.**

A holder of public office shall not maintain an account, other than a campaign account, to receive

contributions for the purpose of publishing and distributing newsletters or performing other constituent services related to the official duties of public office. This section applies whether or not the officeholder is a candidate.

2003 Acts, ch 40, §9  
Section transferred from §56.46 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

## SUBCHAPTER II

### COMMITTEE ORGANIZATION — DUTIES OF OFFICERS

#### **68A.201 Organization statement.**

1. Every committee, as defined in this chapter, shall file a statement of organization within ten days from the date of its organization. Unless formal organization has previously occurred, a committee is deemed to have organized as of the date that committee transactions exceed the financial activity threshold established in section 68A.102, subsection 5 or 18.

2. The statement of organization shall include:

*a.* The name, purpose, mailing address, and telephone number of the committee. The committee name shall not duplicate the name of another committee organized under this section. For candidate's committees filing initial statements of organization on or after July 1, 1995, the candidate's name shall be contained within the committee name.

*b.* The name, mailing address, and position of the committee officers.

*c.* The name, address, office sought, and the party affiliation of all candidates whom the committee is supporting and, if the committee is supporting the entire ticket of any party, the name of the party. If, however, the committee is supporting several candidates who are not identified by name or are not of the same political affiliation, the committee may provide a statement of purpose in lieu of candidate names or political party affiliation.

*d.* Such other information as may be required by this chapter or rules adopted pursuant to this chapter.

*e.* A signed statement by the treasurer of the committee and the candidate, in the case of a candidate's committee, which shall verify that they are aware of the requirement to file disclosure reports if the committee, the committee officers, the candidate, or both the committee officers and the candidate receive contributions in excess of seven hundred fifty dollars in the aggregate, make expenditures in excess of seven hundred fifty dollars in the aggregate, or incur indebtedness in excess of seven hundred fifty dollars in the aggregate in a calendar year to expressly advocate the nomination, election, or defeat of any candidate for public office. In the case of political committees, state-

ments shall be made by the treasurer of the committee and the chairperson.

*f.* The identification of any parent entity or other affiliates or sponsors.

*g.* The name of the financial institution in which the committee receipts will be deposited.

3. Any change in information previously submitted in a statement of organization or notice in case of dissolution of the committee shall be reported to the board or commissioner not more than thirty days from the date of the change or dissolution.

4. A list, by office and district, of all candidates who have filed an affidavit of candidacy in the office of the secretary of state shall be prepared by the secretary of state and delivered to the board not more than ten days after the last day for filing nomination papers.

5. A committee or organization not organized as a committee under this section which makes a contribution to a candidate's committee or political committee organized in Iowa shall disclose each contribution to the board. A committee or organization not organized as a committee under this section which is not registered and filing full disclosure reports of all financial activities with the federal election commission or another state's disclosure commission shall register and file full disclosure reports with the board pursuant to this chapter, and shall either appoint an eligible Iowa elector as committee or organization treasurer, or shall maintain all committee funds in an account in a financial institution located in Iowa. A committee which is currently filing a disclosure report in another jurisdiction shall either file a statement of organization under subsections 1 and 2 and file disclosure reports, the same as those required of committees organized only in Iowa, under section 68A.402, or shall file one copy of a verified statement with the board and a second copy with the treasurer of the committee receiving the contribution. The form shall be completed and filed at the time the contribution is made. The verified statement shall be on forms prescribed by the board and shall attest that the committee is filing reports with the federal election commission or in a jurisdiction with reporting requirements which are substantially similar to those of this chapter, and that the contribution is made from an account which does not accept contributions which would be in violation of section 68A.503. The form shall include the complete name, address, and telephone number of the contributing committee, the state or federal jurisdiction under which it is registered or operates, the identification of any parent entity or other affiliates or sponsors, its purpose, the name and address of an Iowa resident authorized to receive service of original notice and the name and address of the receiving committee, the amount of the cash or in-kind contribution, and

the date the contribution was made.

2003 Acts, ch 40, §2, 9; 2003 Acts, ch 179, §81  
 Section transferred from §56.5 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
 Internal reference changes applied  
 Subsection 2, paragraph d stricken and former paragraphs e – h redesignated as d – g

#### **68A.202 Candidate's committee.**

1. Each candidate for state, county, city, or school office shall organize one, and only one, candidate's committee for a specific office sought when the candidate receives contributions in excess of seven hundred fifty dollars in the aggregate, makes expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in a calendar year.

2. A political committee shall not be established to expressly advocate the nomination, election, or defeat of only one candidate for office, except that a political committee may be established to expressly advocate the passage or defeat of approval of a single judge standing for retention.

2003 Acts, ch 40, §9  
 Section transferred from §56.5A in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

#### **68A.203 Committee treasurer and chairperson — duties.**

1. *a.* Every candidate's committee shall appoint a treasurer who shall be an Iowa resident who has reached the age of majority. Every political committee, state statutory political committee, and county statutory political committee shall appoint both a treasurer and a chairperson, each of whom shall have reached the age of majority.

*b.* Every candidate's committee shall maintain all of the committee's funds in bank accounts in a financial institution located in Iowa. Every political committee, state statutory political committee, and county statutory political committee shall either have an Iowa resident as treasurer or maintain all of the committee's funds in bank accounts in a financial institution located in Iowa.

*c.* An expenditure shall not be made by the treasurer or treasurer's designee for or on behalf of a committee without the approval of the chairperson of the committee, or the candidate. Expenditures shall be remitted to the designated recipient within fifteen days of the date of the issuance of the payment.

2. An individual who receives contributions for a committee without the prior authorization of the chairperson of the committee or the candidate shall be responsible for either rendering the contributions to the treasurer within fifteen days of the date of receipt of the contributions, or depositing the contributions in the account maintained by the committee within seven days of the date of receipt of the contributions. A person who receives contributions for a committee shall, not later than fifteen days from the date of receipt of the con-

tributions or on demand of the treasurer, render to the treasurer the contributions and an account of the total of all contributions, including the name and address of each person making a contribution in excess of ten dollars, the amount of the contributions, and the date on which the contributions were received. The treasurer shall deposit all contributions within seven days of receipt by the treasurer in an account maintained by the committee. All funds of a committee shall be segregated from any other funds held by officers, members, or associates of the committee or the committee's candidate. However, if a candidate's committee receives contributions only from the candidate, or if a permanent organization temporarily engages in activity which qualifies it as a political committee and all expenditures of the organization are made from existing general operating funds and funds are not solicited or received for this purpose from sources other than operating funds, then that committee is not required to maintain a separate account in a financial institution. The funds of a committee are not attachable for the personal debt of the committee's candidate or an officer, member, or associate of the committee.

3. The treasurer of a committee shall keep a detailed and exact account of:

*a.* All contributions made to or for the committee.

*b.* The name and mailing address of every person making contributions in excess of ten dollars, and the date and amount of the contribution.

*c.* All disbursements made from contributions by or on behalf of the committee.

*d.* The name and mailing address of every person to whom any expenditure is made, the purpose of the expenditure, the date and amount of the expenditure and the name and address of, and office sought by each candidate, if any, on whose behalf the expenditure was made. Notwithstanding this paragraph, the treasurer may keep a miscellaneous account for disbursements of less than five dollars which need only show the amount of the disbursement so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars.

*e.* Notwithstanding the provisions of subsection 3, paragraph "d", of this section, when an expenditure is made by a committee in support of the entire state or local political party ticket, only the name of the party shall be given.

4. The treasurer and candidate in the case of a candidate's committee, and the treasurer and chairperson in the case of a political committee, shall preserve all records required to be kept by this section for a period of five years. However, a committee is not required to preserve any records for more than three years from the certified date of dissolution of the committee. For purposes of this section, the five-year period shall commence with the due date of the disclosure report covering

the activity documented in the records.

2003 Acts, ch 40, §1, 9  
Section transferred from §56.3 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Subsection 1 amended

### SUBCHAPTER III

#### CAMPAIGN FUNDS AND PROPERTY

##### **68A.301 Campaign funds.**

As used in this division, “*campaign funds*” means contributions to a candidate or candidate’s committee which are required by this chapter to be deposited in a separate campaign account. A candidate’s committee shall not accept contributions from any other candidate’s committee including candidate’s committees from other states or for federal office, unless the candidate for whom each committee is established is the same person. For purposes of this section, “*contributions*” does not mean travel costs incurred by a candidate in attending a campaign event of another candidate. This section shall not be construed to prohibit a candidate or candidate’s committee from using campaign funds or accepting contributions for tickets to meals if the candidate attends solely for the purpose of enhancing the person’s candidacy or the candidacy of another person.

2003 Acts, ch 40, §9  
Section transferred from §56.40 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

##### **68A.302 Uses of campaign funds.**

1. A candidate and the candidate’s committee shall use campaign funds only for campaign purposes, educational and other expenses associated with the duties of office, or constituency services, and shall not use campaign funds for personal expenses or personal benefit. The purchase of subscriptions to newspapers from or which circulate within the area represented by the office which a candidate is seeking or holds is presumed to be an expense that is associated with the duties of the campaign for and duties of office.

2. Campaign funds shall not be used for any of the following purposes:

*a.* Payment of civil or criminal penalties. However, payment of civil penalties relating to campaign finance and disclosure requirements is permitted.

*b.* Satisfaction of personal debts, other than campaign loans.

*c.* Personal services, including the services of attorneys, accountants, physicians, and other professional persons. However, payment for personal services directly related to campaign activities is permitted.

*d.* Clothing or laundry expense of a candidate or members of the candidate’s family.

*e.* Purchase of or installment payments for a motor vehicle. However, a candidate may lease a motor vehicle during the duration of the campaign

if the vehicle will be used for campaign purposes. If a vehicle is leased, detailed records shall be kept on the use of the vehicle and the cost of noncampaign usage shall not be paid from campaign funds. Candidates and campaign workers may be reimbursed for actual mileage for campaign related travel at a rate not to exceed the current rate of reimbursement allowed under the standard mileage rate method for computation of business expenses pursuant to the Internal Revenue Code.

*f.* Mortgage payments, rental payments, furnishings, or renovation or improvement expenses for a permanent residence of a candidate or family member, including a residence in the state capital during a term of office or legislative session.

*g.* Membership in professional organizations.

*h.* Membership in service organizations, except those organizations which the candidate joins solely for the purpose of enhancing the candidacy.

*i.* Meals, groceries, or other food expense, except for tickets to meals that the candidate attends solely for the purpose of enhancing the candidacy or the candidacy of another person. However, payment for food and drink purchased for campaign related purposes and for entertainment of campaign volunteers is permitted.

*j.* Payments clearly in excess of the fair market value of the item or service purchased.

3. The board shall adopt rules which list items that represent proper campaign expenses.

2003 Acts, ch 40, §9  
Section transferred from §56.41 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

##### **68A.303 Transfer of campaign funds.**

1. In addition to the uses permitted under section 68A.302, a candidate’s committee may only transfer campaign funds in one or more of the following ways:

*a.* Contributions to charitable organizations.

*b.* Contributions to national, state, or local political party central committees, or to partisan political committees organized to represent persons within the boundaries of a congressional district.

*c.* Transfers to the treasurer of state for deposit in the general fund of the state, or to the appropriate treasurer for deposit in the general fund of a political subdivision of the state.

*d.* Return of contributions to contributors on a pro rata basis, except that any contributor who contributed five dollars or less may be excluded from the distribution.

*e.* Contributions to another candidate’s committee when the candidate for whom both committees are formed is the same person.

2. If an unexpended balance of campaign funds remains when a candidate’s committee dissolves, the unexpended balance shall be transferred pursuant to subsection 1.

3. A candidate or candidate’s committee making a transfer of campaign funds pursuant to sub-

section 1 or 2 shall not place any requirements or conditions on the use of the campaign funds transferred.

4. A candidate or candidate's committee shall not transfer campaign funds except as provided in this section.

5. A candidate, candidate's committee, or any other person shall not directly or indirectly receive or transfer campaign funds with the intent of circumventing the requirements of this section. A candidate for statewide or legislative office shall not establish, direct, or maintain a political committee.

6. An individual or a political committee shall not knowingly make transfers or contributions to a candidate or candidate's committee for the purpose of transferring the funds to another candidate or candidate's committee to avoid the disclosure of the source of the funds pursuant to this chapter. A candidate or candidate's committee shall not knowingly accept transfers or contributions from an individual or political committee for the purpose of transferring funds to another candidate or candidate's committee as prohibited by this subsection. A candidate or candidate's committee shall not accept transfers or contributions which have been transferred to another candidate or candidate's committee as prohibited by this subsection. The board shall notify candidates of the prohibition of such transfers and contributions under this subsection.

2003 Acts, ch 40, §9  
Section transferred from §56.42 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Internal reference change applied

**68A.304 Campaign property.**

1. *a.* Equipment, supplies, or other materials purchased with campaign funds or received in-kind are campaign property.

*b.* Campaign property belongs to the candidate's committee and not to the candidate.

*c.* Campaign property that has a value of five hundred dollars or more at the time it is acquired by the committee shall be separately disclosed as committee inventory on reports filed pursuant to section 68A.402, including a declaration of the approximate current value of the property. The campaign property shall continue to be reported as committee inventory until it is disposed of by the committee or until the property has been reported once as having a residual value of less than one hundred dollars.

*d.* Consumable campaign property is not required to be reported as committee inventory, regardless of the initial value of the consumable campaign property. "*Consumable campaign property*", for purposes of this section, means stationery, yard signs, and other campaign materials that have been permanently imprinted to be specific to a candidate or election.

2. Upon dissolution of the candidate's commit-

tee, a report accounting for the disposition of all items of campaign property, excluding consumable campaign property, having a residual value of one hundred dollars or more shall be filed with the board. Campaign property, excluding consumable campaign property, having a residual value of one hundred dollars or more shall be disposed of by one of the following methods:

*a.* Sale of the property at fair market value, in which case the proceeds shall be treated the same as other campaign funds.

*b.* Donation of the property under one of the options for transferring campaign funds set forth in section 68A.303.

2003 Acts, ch 40, §8, 9  
Section transferred from §56.43 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Internal reference changes applied  
Subsection 1 amended

SUBCHAPTER IV

REPORTS — INDEPENDENT EXPENDITURES  
— POLITICAL MATERIAL

**68A.401 Reports filed with board.**

1. All statements and reports required to be filed under this chapter shall be filed with the board. The board shall provide copies of all statements and reports filed under this chapter for a county, city, school, or other political subdivision to the commissioner responsible under section 47.2.

2. The board shall retain filed statements and reports for at least five years from the date of the election in which the committee is involved, or at least five years from the certified date of dissolution of the committee, whichever date is later.

3. The commissioner shall retain statements and reports provided by the board for a county, city, school, or other political subdivision for at least three years from the date of the election in which the committee is involved. However, statements and reports provided by the board for county statutory political committees shall be retained for five years from the date of the election in which the committee is involved.

4. Political committees expressly advocating the nomination, election, or defeat of candidates for both federal office and any elected office created by law or the Constitution of the State of Iowa shall file statements and reports with the board in addition to any federal reports required to be filed with the board. However, a political committee that is registered and filing full disclosure reports of all financial activities with the federal election commission may file verified statements as provided in section 68A.201.

2003 Acts, ch 40, §9; 2003 Acts, ch 44, §28  
Section transferred from §56.4 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Internal reference change applied  
Subsection 1 amended

**68A.402 Disclosure reports.**

1. *a.* Each treasurer of a committee shall file

with the board disclosure reports of contributions received and disbursed on forms prescribed by rules as provided by chapter 17A. The reports from all committees, except those committees for municipal and school elective offices and for local ballot issues, shall be filed on the nineteenth day or mailed bearing a United States postal service postmark dated on or before the nineteenth day of January, May, July, and October of each year. The May, July, and October reports shall be current as of five days prior to the filing deadline. The January report shall be the annual report covering activity through December 31. However, a state, county, or city statutory political committee is not required to file the May and July reports for a year in which no primary or general election is held at the respective state, county, or city level. A candidate's committee, other than for municipal and school elective offices, for a year in which the candidate is not standing for election, is not required to file the May, July, and October reports. Reports for committees for a ballot issue placed before the voters of the entire state shall be filed at the January, May, July, and October deadlines.

b. A candidate's committee of a candidate for statewide office or the general assembly shall file a supplementary report in a year in which a primary, general or special election for that office is held if the committee of a candidate for governor receives ten thousand dollars or more, a committee of a candidate for any other statewide office receives five thousand dollars or more, or the committee of a candidate for the general assembly receives one thousand dollars or more after the close of the period covered by the last report filed prior to that primary, general or special election. The amounts of contributions causing a supplementary report under this paragraph shall include the estimated fair market value of in-kind contributions. The report shall be filed by the Friday immediately preceding the election and be current through the Tuesday immediately preceding the election.

c. A candidate's committee for a candidate for the general assembly at a special election shall file a report by the fourteenth day prior to the special election which is current through the nineteenth day prior to the special election.

d. Committees for municipal and school elective offices and local ballot issues shall file their first reports five days prior to any election in which the name of the candidate or the local ballot issue which they expressly advocate appears on the printed ballot and shall file their next report on the first day of the month following the final election in a calendar year in which the candidate's name or the ballot issue appears on the ballot. A committee expressly advocating the nomination, election, or defeat of a candidate for a municipal or school elective office or the passage or defeat of a local ballot issue shall also file disclosure reports on the nineteenth day of January and October of

each year in which the candidate or ballot issue does not appear on the ballot and on the nineteenth day of January, May, and July of each year in which the candidate or ballot issue appears on the ballot, until the committee dissolves. These reports shall be current to five days prior to the filing deadline and are considered timely filed if mailed bearing a United States postal service postmark on or before the due date.

e. A state statutory political committee and congressional district committees as authorized by the constitution of the state statutory political committee are not subject to this subsection if the state statutory political committee and congressional district political committees file copies of campaign disclosure reports as required by federal law with the board at the times the reports are required to be filed under federal law, provided that the federal reports contain all information required by this chapter. A committee of a national political party is not required to file a disclosure report with the board if it is required by federal law to file a campaign disclosure report with a federal agency.

2. If any committee, after having filed a statement of organization or one or more disclosure reports, dissolves or determines that it shall no longer receive contributions or make disbursements, the committee shall notify the board within thirty days following such dissolution by filing a dissolution report on forms prescribed by the board. Monies refunded in accordance with sections 68A.302 and 68A.303 shall be considered a disbursement or expense but the names of persons receiving refunds need not be released or reported unless the contributors' names were required to be reported when the contribution was received.

3. Each report under this section shall disclose:

a. The amount of cash on hand at the beginning of the reporting period.

b. The name and mailing address of each person who has made one or more contributions of money to the committee including the proceeds from any fund-raising events except those reportable under paragraph "f" of this subsection, when the aggregate amount in a calendar year exceeds the amount specified in the following schedule:

- (1) For any candidate for school or township office . . . . . \$ 25
- (2) For any candidate for city office . . . \$ 25
- (3) For any candidate for county office \$ 25
- (4) For any candidate for the general assembly . . . . . \$ 25
- (5) For any candidate for the Congress of the United States . . . . . \$100
- (6) For any candidate for statewide office . . . . . \$ 25
- (7) For any committee of a national political party . . . . . \$200
- (8) For any state statutory political committee . . . . . \$200

(9) For any county statutory political committee ..... \$ 50

(10) For any other political committee \$ 25

(11) For any ballot issue ..... \$ 25

c. The total amount of contributions made to the political committee during the reporting period and not reported under paragraph “b” of this subsection.

d. The name and mailing address of each person who has made one or more in-kind contributions to the committee when the aggregate market value of the in-kind contribution in a calendar year exceeds the amount specified in subsection 3, paragraph “b”, of this section. In-kind contributions shall be designated on a separate schedule from schedules showing contributions of money and shall identify the nature of the contribution and provide its estimated fair market value.

e. Each loan to any person or committee within the calendar year in an aggregate amount in excess of those amounts enumerated in the schedule in paragraph “b” of this subsection, together with the name and mailing address of the lender and endorsers, the date and amount of each loan received, and the date and amount of each loan repayment. Loans received and loan repayments shall be reported on a separate schedule.

f. The total amount of proceeds from any fundraising event. Contributions and sales at fundraising events which involve the sale of a product acquired at less than market value and sold for an amount of money in excess of the amount specified in paragraph “b” of this subsection shall be designated separately from in-kind and monetary contributions and the report shall include the name and address of the donor, a description of the product, the market value of the product, the sales price of the product, and the name and address of the purchaser.

g. The name and mailing address of each person to whom disbursements or loan repayments have been made by the committee from contributions during the reporting period and the amount, purpose, and date of each disbursement except that disbursements of less than five dollars may be shown as miscellaneous disbursements so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars. If disbursements are made to a consultant, the consultant shall provide the committee with a statement of disbursements made by the consultant during the reporting period showing the name and address of the recipient, amount, purpose, and date to the same extent as if made by the candidate, which shall be included in the report by the committee.

h. The amount and nature of debts and obligations owed in excess of those amounts stated in the schedule in paragraph “b” of this subsection by the committee. Loans made to a committee and reported under paragraph “b” of this subsection shall not be considered a debt or obligation under

this paragraph. A loan made by a committee to any person shall be considered a disbursement.

i. If a person listed under paragraph “b”, “d”, “e”, or “f” as making a contribution or loan to or purchase from a candidate’s committee is related to the candidate within the third degree of consanguinity or affinity, the existence of that person’s family relationship shall be indicated on the report.

j. The name and mailing address of each person with whom a candidate’s committee has entered into a contract during the reporting period for future or continuing performance and the nature of the performance, period of performance and total, anticipated compensation for performance. For a report filed under subsection 1, paragraph “b”, this paragraph also requires the reporting of estimates of performance which the candidate’s committee reasonably expects to contract for during the balance of the period running until thirty days after the election.

k. Other pertinent information required by this chapter, by rules adopted pursuant to this chapter, or forms approved by the board.

4. If the report is the first report filed by the committee, the report shall include all information required under subsection 3 covering the period from the beginning of the committee’s financial activity, even if from a different calendar year, through the end of the current reporting period. If no contributions have been accepted nor any disbursements made or indebtedness incurred during that reporting period, the treasurer of the committee shall file a disclosure statement which shows only the amount of cash on hand at the beginning of the reporting period.

5. a. A committee shall not dissolve until all loans, debts and obligations are paid, forgiven, or transferred and the remaining money in the account is distributed according to sections 68A.302 and 68A.303. If a loan is transferred or forgiven, the amount of the transferred or forgiven loan must be reported as an in-kind contribution and deducted from the loans payable balance on the disclosure form. If, upon review of a committee’s statement of dissolution and final report, the board determines that the requirements for dissolution have been satisfied, the dissolution shall be certified and the committee relieved of further filing requirements.

b. A statutory political committee is prohibited from dissolving, but may be placed in an inactive status upon the approval of the board. Inactive status may be requested for a statutory political committee when no officers exist and the statutory political committee has ceased to function. The request shall be made by the previous treasurer or chairperson of the committee and by the appropriate state statutory political committee. A statutory political committee granted inactive status shall not solicit or expend funds in its name until the committee reorganizes and fulfills the re-

quirements of a political committee under this chapter.

6. A permanent organization temporarily engaging in activity which would qualify it as a political committee shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The political committee shall file reports in accordance with this chapter. When the permanent organization ceases to be involved in the political activity, it shall dissolve the political committee.

A communication regarding any subject by a permanent organization, which is a nonprofit organization, to its dues-paying members is not political activity requiring the organization of a political committee, reporting, or disclosure pursuant to this chapter.

As used in this subsection, “*permanent organization*” means an organization which is continuing, stable, and enduring, and which was originally organized for purposes other than engaging in election activities.

2003 Acts, ch 40, §3, 9  
Section transferred from §56.6 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Internal reference changes applied  
Subsections 2 and 5 amended

#### 68A.403 Reports signed.

1. A report or statement required to be filed by a treasurer of a political committee, a candidate, or by any other person, shall be signed by the person filing the report.

2. A copy of every report or statement shall be preserved by the person filing it or the person’s successor for at least three years following the filing of the report or statement.

2003 Acts, ch 40, §9  
Section transferred from §56.7 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

#### 68A.404 Independent expenditures.

1. As used in this section, “*independent expenditure*” means an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate or the passage or defeat of a ballot issue that is made without the prior approval or coordination with a candidate, candidate’s committee, or a ballot issue committee.

2. An individual who meets all of the following criteria shall file an independent expenditure statement:

- a. The individual is not a candidate.
- b. The individual is acting independently and not in coordination with another individual, organization, or committee.
- c. The individual makes one or more independent expenditures in excess of seven hundred fifty dollars in the aggregate to advocate the election or defeat of one or more candidates or the passage or defeat of one or more ballot issues.

3. a. Any combination of two or more individ-

uals, or a person other than an individual, that makes one or more independent expenditures in excess of seven hundred fifty dollars in the aggregate to advocate the election or defeat of one or more candidates or the passage or defeat of one or more ballot issues shall file an independent expenditure statement.

b. Sections 68A.201, 68A.202, 68A.402, and 68A.403 shall not apply to persons meeting the requirements of paragraph “a”.

c. This subsection shall not apply to a candidate, candidate’s committee, state statutory political committee, county statutory political committee, or a political committee.

4. a. An independent expenditure statement shall be filed within forty-eight hours of the making of an independent expenditure in excess of seven hundred fifty dollars in the aggregate.

b. An independent expenditure statement shall be filed with the board and the board shall immediately make the independent expenditure statement available for public viewing.

c. For purposes of this section, an independent expenditure is made at the time that the cost is incurred.

5. The independent expenditure statement shall contain all of the following information:

a. Identification of the individuals or persons filing the statement.

b. Description of the position advocated by the individuals or persons with regard to the clearly identified candidate or ballot issue.

c. Identification of the candidate or ballot issue benefited by the independent expenditure.

d. The dates on which the expenditure or expenditures took place or will take place.

e. Description of the nature of the action taken that resulted in the expenditure or expenditures.

f. The fair market value of the expenditure or expenditures.

6. Any person making an independent expenditure shall comply with the attribution requirements of section 68A.405.

7. a. The board shall develop, prescribe, furnish, and distribute forms for the independent expenditure statements required by this section.

b. The board shall adopt rules pursuant to chapter 17A for the implementation of this section.

2003 Acts, ch 40, §4, 9  
Section transferred from §56.13 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Section stricken and rewritten

#### 68A.405 Political material — yard signs.

1. a. A person who causes the publication or distribution of published material designed to expressly advocate the nomination, election, or defeat of a candidate for public office or the passage or defeat of a constitutional amendment or public measure shall include conspicuously on the published material the identity and address of the per-

son responsible for the material. If the person responsible is an organization, the name of one officer of the organization shall appear on the material. However, if the organization is a committee which has filed a statement of organization under this chapter, only the name of the committee is required to be included on the published material. Published material designed to expressly advocate the nomination, election, or defeat of a candidate for public office or the passage or defeat of a constitutional amendment or public measure which contains language or depictions which a reasonable person would understand as asserting that an entity which is incorporated or is a registered committee had authored the material shall, if the entity is not incorporated or a registered committee, include conspicuously on the published material a statement that the apparent organization or committee is not incorporated or a registered committee in addition to the attribution statement required by this section. For purposes of this section, “*registered committee*” means a committee which has an active statement of organization filed under section 68A.201.

b. This subsection does not apply to the editorials or news articles of a newspaper or magazine which are not political advertisements. For the purpose of this subsection, “*published material*” means any newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, or any other form of printed general public political advertising; however, the identification need not be conspicuous on posters. This subsection does not apply to yard signs, bumper stickers, pins, buttons, pens, matchbooks, and similar small items upon which the inclusion of the attribution statement would be impracticable or to published material which is subject to federal regulations regarding an attribution requirement.

c. This subsection shall not be construed to require the inclusion of published material of information which discloses the identity or address of any individual who is acting independently and using the individual’s own modest resources to publish or distribute the material.

2. a. The placement or erection of yard signs shall be exempt from the requirements of chapter 480.

b. This subsection does not prohibit the placement of yard signs on agricultural land owned by individuals or by a family farm operation as defined in section 9H.1, subsections 8, 9, 10, and 18; does not prohibit the placement of yard signs on property owned by private individuals who have rented or leased the property to a corporation, if the prior written permission of the property owner is obtained; and does not prohibit the placement of yard signs on residential property owned by a corporation but rented or leased to a private individual if the prior permission of the renter or lessee is

obtained. For the purposes of this chapter, “*agricultural land*” means agricultural land as defined in section 9H.1.

2003 Acts, ch 40, §9  
 Section transferred from §56.14 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
 Internal reference changes applied  
 Footnote deleted

SUBCHAPTER V  
 PROHIBITED CONTRIBUTIONS —  
 PUBLIC MONEYS

**68A.501 Funds from unknown source — escheat.**

The expenditure of funds from an unknown or unidentifiable source received by a candidate or committee is prohibited. Such funds received by a candidate or committee shall escheat to the state. Any candidate or committee receiving such contributions shall remit such contributions to the director of the department of administrative services for deposit in the general fund of the state. Persons requested to make a contribution at a fundraising event shall be advised that it is illegal to make a contribution in excess of ten dollars unless the person making the contribution also provides the person’s name and address.

2003 Acts, ch 40, §9; 2003 Acts, ch 145, §286  
 Section transferred from §56.3A in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
 Terminology change applied

**68A.502 Contribution in name of another — prohibited.**

A person shall not make a contribution or expenditure in the name of another person, and a person shall not knowingly accept a contribution or expenditure made by one person in the name of another. For the purpose of this section, a contribution or expenditure made by one person which is ultimately reimbursed by another person who has not been identified as the ultimate source or recipient of the funds is considered to be an illegal contribution or expenditure in the name of another.

Any candidate or committee receiving funds, the original source of which was a loan, shall be required to list the lender as a contributor. No candidate or committee shall knowingly receive funds from a contributor who has borrowed the money without listing the original source of said money.

2003 Acts, ch 40, §9  
 Section transferred from §56.12 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

**68A.503 Financial institution, insurance company, and corporation restrictions.**

1. Except as provided in subsections 3 and 4, it is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state, the United States, or any other state, territory, or foreign country, whether for profit or not, or an of-

ficer, agent, or representative acting for such insurance company, savings and loan association, bank, credit union, or corporation, to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office, except that such resources may be so expended in connection with a utility franchise election held pursuant to section 364.2, subsection 4, or a ballot issue. All such expenditures are subject to the disclosure requirements of this chapter.

2. Except as provided in subsection 3, it is unlawful for a member of a committee, or its employee or representative, except a ballot issue committee, or for a candidate for office or the representative of the candidate, to solicit, request, or knowingly receive from an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state, the United States, or any other state, territory, or foreign country, whether for profit or not, or its officer, agent, or representative, any money, property, or thing of value belonging to the insurance company, savings and loan association, bank, or corporation for campaign expenses, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office. This section does not restrain or abridge the freedom of the press or prohibit the consideration and discussion in the press of candidacies, nominations, public officers, or public questions.

3. It is lawful for an insurance company, savings and loan association, bank, credit union, and corporation organized pursuant to the laws of this state, the United States, or any other state or territory, whether for profit, and for their officers, agents, and representatives, to use the money, property, labor, or any other thing of value of the entity for the purposes of soliciting its stockholders, administrative officers, and members for contributions to a committee sponsored by that entity and of financing the administration of a committee sponsored by that entity. The entity's employees to whom the foregoing authority does not extend may voluntarily contribute to such a committee but shall not be solicited for contributions. All contributions made under this subsection are subject to the disclosure requirements of this chapter. A committee member, committee employee, committee representative, candidate, or representative referred to in subsection 2 lawfully may solicit, request, and receive money, property and other things of value from a committee sponsored by an insurance company, savings and loan association, bank, credit union, or corporation as permitted by this subsection.

4. The restrictions imposed by this section relative to making, soliciting or receiving contributions shall not apply to a nonprofit corporation or organization which uses those contributions to en-

courage registration of voters and participation in the political process, or to publicize public issues, or both, but does not use any part of those contributions to expressly advocate the nomination, election, or defeat of any candidate for public office. A nonprofit corporation or organization may use contributions solicited or received to expressly advocate the passage or defeat of ballot issues but the expenditures shall be disclosed by the nonprofit corporation or organization in the manner provided for a permanent organization temporarily engaged in a political activity under section 68A.402.

This section does not prohibit a family farm corporation, as defined in section 9H.1, from placing a yard sign on agricultural land, and does not prohibit the placement of yard signs, with the prior written permission of the individual property owner, on property rented or leased by a corporation from private individuals, subject to the requirements of section 68A.405. This section also does not prohibit the placement of a yard sign on residential property that is owned by a corporation, but rented or leased to a private individual, if the prior permission of the renter or lessee is obtained.

5. For purposes of this section, "committee" shall include statutory political committees organized under chapter 43, and nonparty political organizations organized under chapter 44.

6. Any person convicted of a violation of any of the provisions of this section shall be guilty of a serious misdemeanor.

2003 Acts, ch 40, §9  
Section transferred from §56.15 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Internal reference changes applied

#### **68A.504 Prohibiting contributions during the legislative session.**

A lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, shall not contribute to, act as an agent or intermediary for contributions to, or arrange for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session and, in the case of the governor or a gubernatorial candidate, during the thirty days following the adjournment of a regular legislative session allowed for the signing of bills. This section shall not apply to the receipt of contributions by an elected state official, member of the general assembly, or other state official who has taken affirmative action to seek nomination or election to a federal elective office.

This section shall not apply to a candidate for state office who filed nomination papers for an office for which a special election is called or held during the regular legislative session, if the candi-

date receives the contribution at any time during the period commencing on the date on which at least two candidates have been nominated for the office and ending on the date on which the election is held. A person who is an elected state official shall not, however, solicit contributions during a legislative session from any lobbyist or political committee, other than a state statutory political committee, county statutory political committee, or a national political party, for another candidate for a state office for which a special election is held.

2003 Acts, ch 40, §9  
Section transferred from §56.15A in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

#### **68A.505 Use of public moneys for political purposes.**

The state and the governing body of a county, city, or other political subdivision of the state shall not expend or permit the expenditure of public moneys for political purposes, including expressly advocating the passage or defeat of a ballot issue.

This section shall not be construed to limit the freedom of speech of officials or employees of the state or of officials or employees of a governing body of a county, city, or other political subdivision of the state. This section also shall not be construed to prohibit the state or a governing body of a political subdivision of the state from expressing an opinion on a ballot issue through the passage of a resolution or proclamation.

2003 Acts, ch 40, §9  
Section transferred from §56.12A in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

### SUBCHAPTER VI

#### INCOME TAX CHECKOFF

#### **68A.601 Checkoff — income tax.**

A person whose state income tax liability for any taxable year is one dollar and fifty cents or more may direct that one dollar and fifty cents of that liability be paid over to the Iowa election campaign fund when submitting the person's state income tax return to the department of revenue. In the case of a joint return of husband and wife having a state income tax liability of three dollars or more, each spouse may direct that one dollar and fifty cents be paid to the fund. The director of revenue shall draft the income tax form to provide spaces on the tax return which the taxpayer may use to designate that contributions made under this section be credited to a specified political party as defined by section 43.2, or to the Iowa election campaign fund as a contribution to be shared by all such political parties in the manner prescribed by section 68A.602. The form shall inform the taxpayer of the consequences of the choices provided under this section, but this information may be contained in a footnote or other suitable form if the director of revenue finds it is not feasible to place the information immediately above the signature

line. The action taken by a person for the checkoff is irrevocable.

2003 Acts, ch 40, §9; 2003 Acts, ch 145, §286  
Section transferred from §56.18 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Terminology change applied  
Internal reference change applied

#### **68A.602 Fund created.**

The "Iowa election campaign fund" is created within the office of the treasurer of state. The fund shall consist of funds paid by persons as provided in section 68A.601. The treasurer of state shall maintain within the fund a separate account for each political party as defined in section 43.2. The director of revenue shall remit funds collected as provided in section 68A.601 to the treasurer of state who shall deposit such funds in the appropriate account within the Iowa election campaign fund. All contributions directed to the Iowa election campaign fund by taxpayers who do not designate any one political party to receive their contributions shall be divided by the director of revenue equally among each account currently maintained in the fund. However, at any time when more than two accounts are being maintained within the fund contributions to the fund by taxpayers who do not designate any one political party to receive their contributions shall be divided among the accounts in the same proportion as the number of registered voters declaring affiliation with each political party for which an account is maintained bears to the total number of registered voters who have declared an affiliation with a political party. Any interest income received by the treasurer of state from investment of moneys deposited in the fund shall be deposited in the Iowa election campaign fund. Such funds shall be subject to payment to the chairperson of the specified political party by the director of revenue in the manner provided by section 68A.605.

2003 Acts, ch 40, §9; 2003 Acts, ch 145, §286  
Section transferred from §56.19 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Terminology change applied  
Internal reference changes applied

#### **68A.603 Rules promulgated.**

The ethics and campaign disclosure board shall administer the provisions of sections 68A.601 through 68A.609 and shall promulgate all necessary rules in accordance with chapter 17A.

2003 Acts, ch 40, §5, 9  
Section transferred from §56.20 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Section amended  
Internal reference change applied

#### **68A.604 Funds.**

Any candidate for a partisan public office, except as otherwise provided by section 68A.103, subsection 2, may receive campaign funds from the Iowa election campaign fund through the state central committee of the candidate's political party. However, the state central committee of each political party shall have discretion which of

the party's candidates for public office shall be allocated campaign funds out of money received by that party from the Iowa election campaign fund.

2003 Acts, ch 40, §9  
Section transferred from §56.21 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Internal reference change applied

**68A.605 Distribution of campaign fund — restrictions on use.**

1. The money accumulated in the Iowa election campaign fund to the account of each political party in the state shall be remitted to the party on the first business day of each month by warrant of the director of the department of administrative services drawn upon the fund in favor of the state chairperson of that party. The money received by each political party under this section shall be used as directed by the party's state statutory political committee.

2. Funds distributed to statutory political committees pursuant to this chapter shall not be used to expressly advocate the nomination, election, or defeat of any candidate during the primary election. Nothing in this subsection shall be construed to prohibit a statutory political committee from using such funds to pay expenses incurred in arranging and holding a nominating convention.

2003 Acts, ch 40, §6, 9; 2003 Acts, ch 145, §286  
Section transferred from §56.22 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Terminology change applied  
Subsection 2 amended

**68A.606 Funds — campaign expenses only.**

1. The chairperson of the state statutory political committee shall produce evidence to the ethics and campaign disclosure board not later than the twenty-fifth day of January each year, that all income tax checkoff funds expended for campaign expenses have been utilized exclusively for campaign expenses.

2. The ethics and campaign disclosure board shall issue, prior to the payment of any money, guidelines that explain which expenses and evidence thereof qualify as acceptable campaign expenses.

3. Should the ethics and campaign disclosure board determine that any part of the funds have been used for noncampaign or improper expenses, the board may order the political party or the candidate to return all or any part of the total funds paid to that political party for that election. When

such funds are returned, they shall be deposited in the general fund of the state.

2003 Acts, ch 40, §7, 9; 2003 Acts, ch 145, §286  
Section transferred from §56.23 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
See Code editor's note to §2.9  
Section amended

**68A.607 Reversion of funds.**

All funds on account for the campaign expenses of any designated political party which are not utilized by that political party by January 1 of the year following a general election, shall revert to the general fund of the state.

2003 Acts, ch 40, §9  
Section transferred from §56.24 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

**68A.608 Income tax form — checkoff space.**

The director of revenue shall provide space for this campaign finance income tax checkoff on the most frequently used Iowa income tax form. An explanation shall be included which clearly states that this checkoff does not constitute an additional tax liability. The form shall provide for the taxpayer to designate that the checkoff shall go either to the political party of the taxpayer's choice or be divided among all political parties as prescribed by section 68A.602.

2003 Acts, ch 40, §9; 2003 Acts, ch 145, §286  
Section transferred from §56.25 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9  
Terminology change applied  
Internal reference change applied

**68A.609 Appropriation.**

There is appropriated from the Iowa election campaign fund within the office of the treasurer of state such funds as are legally payable from such fund in accordance with the provisions of this chapter.

2003 Acts, ch 40, §9  
Section transferred from §56.26 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

SUBCHAPTER VII

PENALTY

**68A.701 Penalty.**

Any person who willfully violates any provisions of this chapter shall upon conviction, be guilty of a serious misdemeanor.

2003 Acts, ch 40, §9  
Section transferred from §56.16 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 40, §9

CHAPTER 68B

GOVERNMENT ETHICS AND LOBBYING

**68B.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Agency" means a department, division, board, commission, bureau, or office of the executive or legislative branch of state government, the

office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, or any department, division, board, commission, bureau, or office of a political subdivision of the state, but does not include any agricultural commodity promotional board, which is subject to a producer referendum.

2. “*Agency of state government*” or “*state agency*” means a department, division, board, commission, bureau, or office of the executive or legislative branch of state government, the office of attorney general, the state board of regents, community colleges, and the office of the governor, including a regulatory agency, but does not include any agricultural commodity promotional board, which is subject to a producer referendum.

3. “*Board*” means the Iowa ethics and campaign disclosure board.

4. “*Candidate*” means a candidate under chapter 68A but does not include any judge standing for retention in a judicial election.

5. “*Candidate’s committee*” means the committee designated by a candidate for a state, county, city, or school office, as provided under chapter 68A, to receive contributions in excess of seven hundred fifty dollars in the aggregate, expend funds in excess of seven hundred fifty dollars in the aggregate, or incur indebtedness on behalf of the candidate in excess of seven hundred fifty dollars in the aggregate in any calendar year.

6. “*Client*” means a private person or a state, federal, or local government entity that pays compensation to or designates an individual to be a lobbyist.

7. “*Compensation*” means any money, thing of value, or financial benefit conferred in return for services rendered or to be rendered.

8. “*Contribution*” means a loan, advance, deposit, rebate, refund, transfer of money, an in-kind transfer, or the payment of compensation for the personal services of another person.

9. “*Gift*” means a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received.

10. “*Honorarium*” means anything of value that is accepted or given as consideration for an appearance, speech, or article.

11. “*Immediate family members*” means the spouse and dependent children of a public official or public employee.

12. “*Legislative employee*” means a permanent full-time employee of the general assembly but does not include members of the general assembly.

13. *a.* “*Lobbyist*” means an individual who, by acting directly, does any of the following:

(1) Receives compensation to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by the members of the general assembly, a state agency, or any statewide elected official.

(2) Is a designated representative of an orga-

nization which has as one of its purposes the encouragement of the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order before the general assembly, a state agency, or any statewide elected official.

(3) Represents the position of a federal, state, or local government agency, in which the person serves or is employed as the designated representative, for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by members of the general assembly, a state agency, or any statewide elected official.

(4) Makes expenditures of more than one thousand dollars in a calendar year, other than to pay compensation to an individual who provides the services specified under subparagraph (1) or to communicate with only the members of the general assembly who represent the district in which the individual resides, to communicate in person with members of the general assembly, a state agency, or any statewide elected official for purposes of encouraging the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order.

*b.* “*Lobbyist*” does not mean:

(1) Officials and employees of a political party organized in the state of Iowa representing more than two percent of the total votes cast for governor in the last preceding general election, but only when representing the political party in an official capacity.

(2) Representatives of the news media only when engaged in the reporting and dissemination of news and editorials.

(3) All federal, state, and local elected officials, while performing the duties and responsibilities of office.

(4) Persons whose activities are limited to appearances to give testimony or provide information or assistance at sessions of committees of the general assembly or at public hearings of state agencies or who are giving testimony or providing information or assistance at the request of public officials or employees.

(5) Members of the staff of the United States Congress or the Iowa general assembly.

(6) Agency officials and employees while they are engaged in activities within the agency in which they serve or are employed or with another agency with which the official’s or employee’s agency is involved in a collaborative project.

(7) An individual who is a member, director, trustee, officer, or committee member of a business, trade, labor, farm, professional, religious, education, or charitable association, foundation, or organization who either is not paid compensation or is not specifically designated as provided in paragraph “*a*”, subparagraph (1) or (2).

(8) Persons whose activities are limited to submitting data, views, or arguments in writing, or requesting an opportunity to make an oral presen-

tation under section 17A.4, subsection 1.

14. “*Local employee*” means a person employed by a political subdivision of this state and does not include an independent contractor.

15. “*Local official*” means an officeholder of a political subdivision of this state.

16. “*Member of the general assembly*” means an individual duly elected to the senate or the house of representatives of the state of Iowa.

17. “*Official*” means all statewide elected officials, the executive or administrative head or heads of an agency of state government, the deputy executive or administrative head or heads of an agency of state government, members of boards or commissions as defined under section 7E.4, and heads of the major subunits of departments or independent state agencies whose positions involve a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules of the board adopted in consultation with the department or agency and pursuant to chapter 17A. “*Official*” does not include officers or employees of political subdivisions of the state, members of the general assembly, legislative employees, officers or employees of the judicial branch of government who are not members or employees of the office of attorney general, members of state government entities which are or exercise the same type of authority that is exercised by councils or committees as defined under section 7E.4, or members of any agricultural commodity promotional board, if the board is subject to a producer referendum.

18. “*Person*” means, without limitation, any individual, corporation, business trust, estate, trust, partnership or association, labor union, or any other legal entity.

19. “*Public disclosure*” means a written report filed by a person as required by this chapter or required by rules adopted and issued pursuant to this chapter.

20. “*Public employee*” means state employees, legislative employees, and local employees.

21. “*Public office*” means any state, county, city, or school office or any other office of a political subdivision of the state that is filled by election.

22. “*Public official*” means officials, local officials, and members of the general assembly.

23. “*Regulatory agency*” means the department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue, department of inspections and appeals, department of administrative services, public employment relations board, state department of transportation, civil rights commission, department of public defense, and department of natural resources.

24. “*Restricted donor*” means a person who is

in any of the following categories:

a. Is or is seeking to be a party to any one or any combination of sales, purchases, leases, or contracts to, from, or with the agency in which the donee holds office or is employed.

b. Will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee’s official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region.

c. Is personally, or is the agent of a person who is, the subject of or party to a matter which is pending before a subunit of a regulatory agency and over which the donee has discretionary authority as part of the donee’s official duties or employment within the regulatory agency subunit.

d. Is a lobbyist or a client of a lobbyist with respect to matters within the donee’s jurisdiction.

25. “*State employee*” means a person who is not an official and is a paid employee of the state of Iowa and does not include an independent contractor, an employee of the judicial branch who is not an employee of the office of attorney general, an employee of the general assembly, an employee of a political subdivision of the state, or an employee of any agricultural commodity promotional board, if the board is subject to a producer referendum.

26. “*Statewide elected official*” means the governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, and attorney general of the state of Iowa.

2003 Acts, ch 145, §286  
Terminology change applied  
Internal reference changes applied

#### **68B.4 Sales by regulatory agency employees.**

An official or employee of any regulatory agency shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the agency of which the person is an official or employee, except when the official or employee has met all of the following conditions:

1. The consent of the regulatory agency for which the person is an official or employee is obtained and the person is not the official or employee with the authority to determine whether agency consent is to be given under this section.

2. The duties or functions performed by the official or employee for the regulatory agency are not related to the regulatory authority of the agency over the individual, association, or corporation, or the selling of goods or services by the official or employee to the individuals, associations, or corporations does not affect the official’s or employee’s duties or functions at the regulatory agency.

3. The selling of any goods or services by the of-

ficial or employee to an individual, association, or corporation does not include advocacy on behalf of the individual, association, or corporation to the regulatory agency in which the person is an official or employee.

4. The selling of any goods or services by the official or employee to an individual, association, or corporation does not cause the official or employee to sell goods or services to the regulatory agency on behalf of the individual, association, or corporation.

The department of administrative services shall adopt rules specifying the method by which employees may obtain agency consent under this section. Each regulatory agency shall adopt rules specifying the method by which officials may obtain agency consent under this section.

2003 Acts, ch 145, §286  
Terminology change applied

#### **68B.22 Gifts accepted or received.**

1. Except as otherwise provided in this section, a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor. A public official, public employee, candidate, or the person's immediate family member shall not solicit any gift or series of gifts from a restricted donor at any time.

2. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, offer or make a gift or a series of gifts to a public official, public employee, or candidate. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, join with one or more other restricted donors to offer or make a gift or a series of gifts to a public official, public employee, or candidate.

3. A restricted donor may give, and a public official, public employee, or candidate, or the person's immediate family member, may accept an otherwise prohibited nonmonetary gift or a series of otherwise prohibited nonmonetary gifts and not be in violation of this section if the nonmonetary gift or series of nonmonetary gifts is donated within thirty days to a public body, the department of administrative services, or a bona fide educational or charitable organization, if no part of the net earnings of the educational or charitable organization inures to the benefit of any private stockholder or other individual. All such items donated to the department of administrative services shall be disposed of by assignment to state agencies for official use or by public sale.

4. Notwithstanding subsections 1 and 2, the following gifts may be received by public officials, public employees, candidates, or members of the immediate family of public officials, public employees, or candidates:

*a.* Contributions to a candidate or a candidate's committee.

*b.* Informational material relevant to a public official's or public employee's official functions, such as books, pamphlets, reports, documents, periodicals, or other information that is recorded in a written, audio, or visual format.

*c.* Anything received from anyone related within the fourth degree by kinship or marriage, unless the donor is acting as an agent or intermediary for another person not so related.

*d.* An inheritance.

*e.* Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient. This paragraph shall not apply to receptions described under paragraph "r".

*f.* Items received from a bona fide charitable, professional, educational, or business organization to which the donee belongs as a dues-paying member, if the items are given to all members of the organization without regard to individual members' status or positions held outside of the organization and if the dues paid are not inconsequential when compared to the items received.

*g.* Actual expenses of a donee for food, beverages, registration, travel, and lodging for a meeting, which is given in return for participation in a panel or speaking engagement at the meeting when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.

*h.* Plaques or items of negligible resale value which are given as recognition for the public services of the recipient.

*i.* Nonmonetary items with a value of three dollars or less that are received from any one donor during one calendar day.

*j.* Items or services solicited by or given to a state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member for purposes of a business or educational conference, seminar, or other meeting; or solicited by or given to state, national, or regional government organizations, whose memberships and officers are primarily composed of state or local government officials or employees, for purposes of a business or educational conference, seminar, or other meeting.

*k.* Items or services received by members or representatives of members at a regularly scheduled event that is part of a business or educational conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member, or received at such an event by members or representatives of members of state, national, or regional government organizations whose memberships and officers are primarily composed of state or local government officials or employees.

*l.* Funeral flowers or memorials to a church or nonprofit organization.

*m.* Gifts which are given to a public official or

public employee for the public official's or public employee's wedding or twenty-fifth or fiftieth wedding anniversary.

*n.* Payment of salary or expenses by a person's employer or the firm in which the person is a member for the cost of attending a meeting of a subunit of an agency when the person whose expenses are being paid serves on a board, commission, committee, council, or other subunit of the agency and the person is not entitled to receive compensation or reimbursement of expenses from the state or a political subdivision of the state for attending the meeting.

*o.* Gifts of food, beverages, travel, or lodging received by a public official or public employee if all of the following apply:

(1) The public official or public employee is officially representing an agency in a delegation whose sole purpose is to attract a specific new business to locate in the state, encourage expansion or retention of an existing business already established in the state, or to develop markets for Iowa businesses or products.

(2) The donor of the gift is not the business or businesses being contacted. However, food or beverages provided by the business or businesses being contacted which are consumed during the meeting are not a gift under section 68B.2, subsection 9, or this section.

(3) The public official or public employee plays a significant role in the presentation to the business or businesses on behalf of the public official's or public employee's agency.

*p.* Gifts other than food, beverages, travel, and lodging received by a public official or public employee which are received from a person who is a citizen of a country other than the United States and are given during a ceremonial presentation or as a result of a custom of the other country and are of personal value only to the donee.

*q.* Actual registration costs for informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions. The costs of food, drink, lodging and travel are not "registration costs" under this paragraph. Meetings or sessions which a public official or public employee attends for personal or professional licensing purposes are not "informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions" under this paragraph.

*r.* Gifts of food, beverage, and entertainment received by public officials or public employees at a reception where every member of the general assembly has been invited to attend, when the reception takes place during a regular session of the general assembly. A sponsor of a reception under this paragraph shall file a report disclosing the total amount expended, including in-kind expenditures, on food, beverage, and entertainment for

the reception. The report shall be filed with the secretary of the senate, the chief clerk of the house, and the board within five business days following the date of the reception.

5. For purposes of determining the value of an item given or received, an individual who gives an item on behalf of more than one person shall not divide the value of the item by the number of persons on whose behalf the item is given and the value of an item received shall be the value actually received by the donee.

6. A gift shall not be considered to be received by a public official or public employee if the state is the donee of the gift and the public official or public employee is required to receive the gift on behalf of the state as part of the performance of the person's duties of office or employment.

7. A person shall not request, and a member of the general assembly shall not agree, that a member of the general assembly sell tickets for a community-related social event that is to be held for members of the general assembly in Polk county during the legislative session. This section shall not apply to Polk county or city of Des Moines events that are open to the public generally or are held only for Polk county or city of Des Moines legislators.

8. Except as otherwise provided in subsection 4, an organization or association which has as one of its purposes the encouragement of the passage, defeat, introduction, or modification of legislation shall not give and a member of the general assembly shall not receive food, beverages, registration, or scheduled entertainment with a per person value in excess of three dollars.

2003 Acts, ch 145, §286; 2003 Acts, ch 161, §1, 2  
Terminology change applied  
Subsection 4, paragraph e amended  
Subsection 4, NEW paragraph r

#### **68B.23 Honoraria — banned.**

1. Except as provided in subsection 2, a public official or public employee shall not seek or accept an honorarium from a restricted donor.

2. A public official or public employee may accept an honorarium from any person under the following circumstances:

*a.* The honorarium consists of payment of actual expenses of a donee for registration, food, beverages, travel, and lodging paid in return for participation in a panel or speaking engagement at a meeting when the expenses relate directly to the day or days on which the recipient has participation or presentation responsibilities.

*b.* The honorarium consists of a nonmonetary item or series of nonmonetary items that the public official or public employee donates within thirty days to a public body, a bona fide educational or charitable organization, or the department of administrative services as provided in section 68B.22, subsection 3.

*c.* The honorarium consists of a payment made

to a public official or public employee for services rendered as part of a bona fide private business, trade, or profession in which the public official or public employee is engaged if the payment is commensurate with the actual services rendered and is not being made because of the person's status as a public official or public employee, but, rather, because of some special expertise or other qualification.

2003 Acts, ch 145, §286  
Terminology change applied

**68B.32 Independent ethics and campaign disclosure board — established.**

1. An Iowa ethics and campaign disclosure board is established as an independent agency. Effective January 1, 1994, the board shall administer this chapter and set standards for, investigate complaints relating to, and monitor the ethics of officials, employees, lobbyists, and candidates for office in the executive branch of state government. The board shall also administer and set standards for, investigate complaints relating to, and monitor the campaign finance practices of candidates for public office. The board shall consist of six members and shall be balanced as to political affiliation as provided in section 69.16. The members shall be appointed by the governor, subject to confirmation by the senate.

2. Members shall serve staggered six-year terms beginning and ending as provided in section 69.19. Any vacancy on the board shall be filled by appointment for the unexpired portion of the term, within ninety days of the vacancy and in accordance with the procedures for regular appointments. A member of the board may be reappointed to serve additional terms on the board. Members may be removed in the manner provided in chapter 69.

3. The board shall annually elect one member to serve as the chairperson of the board and one member to serve as vice chairperson. The vice chairperson shall act as the chairperson in the absence or disability of the chairperson or in the event of a vacancy in that office.

4. Members of the board shall receive a per diem as specified in section 7E.6 while conducting business of the board, and payment of actual and necessary expenses incurred in the performance of their duties. Members of the board shall file statements of financial interest under section 68B.35.

5. The board shall employ a full-time executive director who shall be the board's chief administrative officer. The board shall employ or contract for the employment of legal counsel notwithstanding section 13.7, and any other personnel as may be necessary to carry out the duties of the board. The board's legal counsel shall be the chief legal officer of the board and shall advise the board on all legal matters relating to the administration of this chapter and chapter 68A. The state may be repre-

sented by the board's legal counsel in any civil action regarding the enforcement of this chapter or chapter 68A, or at the board's request, the state may be represented by the office of the attorney general. Notwithstanding section 8A.412, all of the board's employees, except for the executive director and legal counsel, shall be employed subject to the merit system provisions of chapter 8A, subchapter IV. The salary of the executive director shall be fixed by the board, within the range established by the general assembly. The salary of the legal counsel shall be fixed by the board, within a salary range established by the department of administrative services for a position requiring similar qualifications and experience.

2003 Acts, ch 145, §155, 286  
Confirmation, see §2.32  
Terminology change applied  
Internal reference changes applied  
Subsection 5 amended

**68B.32A Duties of the board.**

The duties of the board shall include, but are not limited to, all of the following:

1. Adopt rules pursuant to chapter 17A and conduct hearings under sections 68B.32B and 68B.32C and chapter 17A, as necessary to carry out the purposes of this chapter and chapter 68A.

2. Develop, prescribe, furnish, and distribute any forms necessary for the implementation of the procedures contained in this chapter and chapter 68A for the filing of reports and statements by persons required to file the reports and statements under this chapter and chapter 68A.

The board may establish a process to assign signature codes to a person or committee for purposes of facilitating an electronic filing procedure. The assignment of signature codes shall be kept confidential, notwithstanding section 22.2.

3. Review the contents of all campaign finance disclosure reports and statements filed with the board and promptly advise each person or committee of errors found. The board may verify information contained in the reports with other parties to assure accurate disclosure. The board may also verify information by requesting that a candidate or committee produce copies of receipts, bills, logbooks, or other memoranda of reimbursements of expenses to a candidate for expenses incurred during a campaign. The board, upon its own motion, may initiate action and conduct a hearing relating to requirements under chapter 68A. The board may require a county commissioner of elections to periodically file summary reports with the board.

4. Receive and file registration and reporting from lobbyists of the executive branch of state government, client disclosure from clients of lobbyists of the executive branch of state government, and personal financial disclosure information from officials and employees in the executive branch of state government who are required to file personal financial disclosure information under this chapter. The board, upon its own motion, may initiate

action and conduct a hearing relating to reporting requirements under this chapter.

5. Prepare and publish a manual setting forth examples of approved uniform systems of accounts and approved methods of disclosure for use by persons required to file statements and reports under this chapter and chapter 68A. The board shall also prepare and publish other educational materials, and any other reports or materials deemed appropriate by the board. The board shall annually provide all officials and state employees with notification of the contents of this chapter and chapter 68A by distributing copies of educational materials to associations that represent the interests of the various governmental entities for dissemination to their membership.

6. Assure that the statements and reports which have been filed in accordance with this chapter and chapter 68A are available for public inspection and copying during the regular office hours of the office in which they are filed and not later than by the end of the day during which a report or statement was received. Rules adopted relating to public inspection and copying of statements and reports may include a charge for any copying and mailing of the reports and statements, shall provide for the mailing of copies upon the request of any person and upon prior receipt of payment of the costs by the board, and shall prohibit the use of the information copied from reports and statements for soliciting contributions or for any commercial purpose by any person other than statutory political committees.

7. Require that the candidate of a candidate's committee, or the chairperson of a political committee, is responsible for filing disclosure reports under chapter 68A, and shall receive notice from the board if the committee has failed to file a disclosure report at the time required under chapter 68A. A candidate of a candidate's committee, or the chairperson of a political committee, may be subject to a civil penalty for failure to file a disclosure report required under section 68A.402, subsection 1.

8. Establish and impose penalties, and recommendations for punishment of persons who are subject to penalties of or punishment by the board or by other bodies, for the failure to comply with the requirements of this chapter or chapter 68A.

9. Determine, in case of dispute, at what time a person has become a candidate.

10. Preserve copies of reports and statements filed with the board for a period of five years from the date of receipt.

11. Establish a procedure for requesting and issuing formal and informal board opinions to local officials and employees and to persons subject to the authority of the board under this chapter or chapter 68A. Advice contained in formal board opinions shall, if followed, constitute a defense to a complaint filed with the board alleging a viola-

tion of this chapter, chapter 68A, or rules of the board that is based on the same facts and circumstances.

12. Establish rules relating to ethical conduct for persons holding a state office in the executive branch of state government, including candidates, and for employees of the executive branch of state government and regulations governing the conduct of lobbyists of the executive branch of state government, including but not limited to conflicts of interest, abuse of office, misuse of public property, use of confidential information, participation in matters in which an official or state employee has a financial interest, and rejection of improper offers.

13. Impose penalties upon, or refer matters relating to, persons who discharge any employee, or who otherwise discriminate in employment against any employee, for the filing of a complaint with, or the disclosure of information to, the board if the employee has filed the complaint or made the disclosure in good faith.

14. Establish fees, where necessary, to cover the costs associated with preparing, printing, and distributing materials to persons subject to the authority of the board.

Section not amended; internal reference changes applied

#### **68B.32B Complaint procedures.**

1. Any person may file a complaint alleging that a candidate, committee, person holding a state office in the executive branch of state government, employee of the executive branch of state government, or other person has committed a violation of chapter 68A or rules adopted by the board. Any person may file a complaint alleging that a person holding a state office in the executive branch of state government, an employee of the executive branch of state government, or a lobbyist or a client of a lobbyist of the executive branch of state government has committed a violation of this chapter or rules adopted by the board. The board shall prescribe and provide forms for this purpose. A complaint must include the name and address of the complainant, a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged, and a certification by the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge.

2. The board staff shall review the complaint to determine if the complaint is sufficient as to form. If the complaint is deficient as to form, the complaint shall be returned to the complainant with a statement of the deficiency and an explanation describing how the deficiency may be cured. If the complaint is sufficient as to form, the complaint shall be referred for legal review.

3. Unless the chairperson of the board concludes that immediate notification would preju-

dice a preliminary investigation or subject the complainant to an unreasonable risk, the board shall mail a copy of the complaint to the subject of the complaint within three working days of the acceptance of the complaint. If a determination is made by the chairperson not to mail a copy of the complaint to the subject of the complaint within the three working days time period, the board shall approve and establish the time and conditions under which the subject will be informed of the filing and contents of the complaint.

4. Upon completion of legal review, the chairperson of the board shall be advised whether, in the opinion of the legal advisor, the complaint states an allegation which is legally sufficient. A legally sufficient allegation must allege all of the following:

a. Facts that would establish a violation of a provision of this chapter, chapter 68A, or rules adopted by the board.

b. Facts that would establish that the conduct providing the basis for the complaint occurred within three years of the complaint.

c. Facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board.

5. After receiving an evaluation of the legal sufficiency of the complaint, the chairperson shall refer the complaint to the board for a formal determination by the board of the legal sufficiency of the allegations contained in the complaint.

6. If the board determines that none of the allegations contained in the complaint are legally sufficient, the complaint shall be dismissed. The complainant shall be sent a notice of dismissal stating the reason or reasons for the dismissal. If a copy of the complaint was sent to the subject of the complaint, a copy of the notice shall be sent to the subject of the complaint. If the board determines that any allegation contained in the complaint is legally sufficient, the complaint shall be referred to the board staff for investigation of any legally sufficient allegations.

7. Notwithstanding subsections 1 through 6, the board may, on its own motion and without the filing of a complaint by another person, initiate investigations into matters that the board believes may be subject to the board's jurisdiction. This section does not preclude persons from providing information to the board for possible board-initiated investigation instead of filing a complaint.

8. The purpose of an investigation by the board's staff is to determine whether there is probable cause to believe that there has been a violation of this chapter or of rules adopted by the board. To facilitate the conduct of investigations, the board may issue and seek enforcement of subpoenas requiring the attendance and testimony of witnesses and subpoenas requiring the production of books, papers, records, and other real evidence relating to the matter under investigation. Upon the request of the board, an appropriate

county attorney or the attorney general shall assist the staff of the board in its investigation.

9. If the board determines on the basis of an investigation by board staff that there is probable cause to believe the existence of facts that would establish a violation of this chapter, or of rules adopted by the board, the board may issue a statement of charges and notice of a contested case proceeding to the complainant and to the person who is the subject of the complaint, in the manner provided for the issuance of statements of charges under chapter 17A. If the board determines on the basis of an investigation by staff that there is no probable cause to believe that a violation has occurred, the board shall close the investigation, dismiss any related complaint, and the subject of the complaint shall be notified of the dismissal. If the investigation originated from a complaint filed by a person other than the board, the person making the complaint shall also be notified of the dismissal.

10. At any stage during the investigation or after the initiation of a contested case proceeding, the board may approve a settlement regarding an alleged violation. Terms of a settlement shall be reduced to writing and be available for public inspection. An informal settlement may provide for any remedy specified in section 68B.32D. However, the board shall not approve a settlement unless the board determines that the terms of the settlement are in the public interest and are consistent with the purposes of this chapter and rules of the board. In addition, the board may authorize board staff to seek informal voluntary compliance in routine matters brought to the attention of the board or its staff.

11. A complaint shall be a public record, but some or all of the contents may be treated as confidential under section 22.7, subsection 18, to the extent necessary under subsection 3 of this section. Information informally reported to the board and board staff which results in a board-initiated investigation shall be a public record but may be treated as confidential information consistent with the provisions of section 22.7, subsection 18. If the complainant, the person who provides information to the board, or the person who is the subject of an investigation publicly discloses the existence of an investigation, the board may publicly confirm the existence of the disclosed formal complaint or investigation and, in the board's discretion, make the complaint or the informal referral public, as well as any other documents that were issued by the board to any party to the investigation. However, investigative materials may be furnished to the appropriate law enforcement authorities by the board at any time. Upon the commencement of a contested case proceeding by the board, all investigative material relating to that proceeding shall be made available to the subject of the proceeding. The entire record of any contested case proceeding initiated under this section

shall be a public record.

12. Board records used to achieve voluntary compliance to resolve discrepancies and deficiencies shall not be confidential unless otherwise required by law.

Section not amended; internal reference changes applied

**68B.32C Contested case proceedings.**

1. Contested case proceedings initiated as a result of the issuance of a statement of charges pursuant to section 68B.32B, subsection 9, shall be conducted in accordance with the requirements of chapter 17A. Clear and convincing evidence shall be required to support a finding that a person has violated this chapter or any rules adopted by the board pursuant to this chapter. A preponderance of the evidence shall be required to support a finding that a person has violated chapter 68A or any rules adopted by the board pursuant to chapter 68A. The case in support of the statement of charges shall be presented at the hearing by one of the board's attorneys or staff unless, upon the request of the board, the charges are prosecuted by another legal counsel designated by the attorney general. A person making a complaint under section 68B.32B, subsection 1, is not a party to contested case proceedings conducted relating to allegations contained in the complaint.

2. Hearings held pursuant to this chapter shall be heard by a quorum of the board, unless the board designates a board member or an administrative law judge to preside at the hearing. If a quorum of the board does not preside at the hearing, the board member or administrative law judge shall make a proposed decision. The board or presiding board member may be assisted by an administrative law judge in the conduct of the hearing and the preparation of a decision.

3. Upon a finding by the board that the party charged has violated this chapter or rules adopted by the board, the board may impose any penalty provided for by section 68B.32D. Upon a final decision of the board finding that the party charged has not violated this chapter or the rules of the board, the complaint shall be dismissed and the party charged and the original complainant, if any, shall be notified.

4. The right of an appropriate county attorney or the attorney general to commence and maintain a district court prosecution for criminal violations of the law is unaffected by any proceedings under this section.

5. The board shall adopt rules, pursuant to chapter 17A, establishing procedures to implement this section.

Section not amended; internal reference changes applied

**68B.32D Penalties — recommended actions.**

1. The board, after a hearing and upon a finding that a violation of this chapter, chapter 68A, or rules adopted by the board has occurred, may do

one or more of the following:

*a.* Issue an order requiring the violator to cease and desist from the violation found.

*b.* Issue an order requiring the violator to take any remedial action deemed appropriate by the board.

*c.* Issue an order requiring the violator to file any report, statement, or other information as required by this chapter, chapter 68A, or rules adopted by the board.

*d.* Publicly reprimand the violator for violations of this chapter, chapter 68A, or rules adopted by the board in writing and provide a copy of the reprimand to the violator's appointing authority.

*e.* Make a written recommendation to the violator's appointing authority that the violator be removed or suspended from office, and include in the recommendation the length of the suspension.

*f.* If the violation is a violation of this chapter or rules adopted by the board pursuant to this chapter and the violator is an elected official of the executive branch of state government, other than an official who can only be removed by impeachment, make a written recommendation to the attorney general or the appropriate county attorney that an action for removal from office be initiated pursuant to chapter 66.

*g.* If the violation is a violation of this chapter or rules adopted by the board pursuant to this chapter and the violator is a lobbyist of the executive branch of state government, censure, reprimand, or impose other sanctions deemed appropriate by the board. A lobbyist may also be suspended from lobbying activities if the board finds that suspension is an appropriate sanction for the violation committed.

*h.* Issue an order requiring the violator to pay a civil penalty of not more than two thousand dollars for each violation of this chapter, chapter 68A, or rules adopted by the board.

*i.* Refer the complaint and supporting information to the attorney general or appropriate county attorney with a recommendation for prosecution or enforcement of criminal penalties.

2. At any stage during an investigation or during the board's review of routine compliance matters, the board may resolve the matter by admonishment to the alleged violator or by any other means not specified in subsection 1 as a posthearing remedy.

3. If a person fails to comply with an action of the board under subsection 1, the board may petition the Polk county district court for an order for enforcement of the action of the board. The enforcement proceeding shall be conducted as provided in section 68B.33.

Section not amended; internal reference changes applied

**68B.35 Personal financial disclosure — certain officials, members of the general assembly, and candidates.**

1. The persons specified in subsection 2 shall

file a financial statement at times and in the manner provided in this section that contains all of the following:

*a.* A list of each business, occupation, or profession in which the person is engaged and the nature of that business, occupation, or profession, unless already apparent.

*b.* A list of any other sources of income if the source produces more than one thousand dollars annually in gross income. Such sources of income listed pursuant to this paragraph may be listed under any of the following categories, or under any other categories as may be established by rule:

- (1) Securities.
- (2) Instruments of financial institutions.
- (3) Trusts.
- (4) Real estate.
- (5) Retirement systems.
- (6) Other income categories specified in state and federal income tax regulations.

2. The financial statement required by this section shall be filed by the following persons:

- a.* Any statewide elected official.
- b.* The executive or administrative head or heads of any agency of state government.
- c.* The deputy executive or administrative head or heads of an agency of state government.
- d.* The head of a major subunit of a department or independent state agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds as defined under rules adopted by the board, pursuant to chapter 17A, in consultation with the department or agency.
- e.* Members of the banking board, the ethics and campaign disclosure board, the credit union review board, the economic development board, the employment appeal board, the environmental protection commission, the health facilities council, the Iowa finance authority, the Iowa public employees' retirement system investment board, the board of the Iowa lottery authority, the natural resource commission, the board of parole, the petroleum underground storage tank fund board, the public employment relations board, the state racing and gaming commission, the state board of regents, the tax review board, the transportation commission, the office of consumer advocate, the utilities board, the Iowa telecommunications and technology commission, and any full-time members of other boards and commissions as defined under section 7E.4 who receive an annual salary for their service on the board or commission.
- f.* Members of the general assembly.
- g.* Candidates for state office.
- h.* Legislative employees who are the head or deputy head of a legislative agency or whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

3. The board, in consultation with each executive department or independent agency, shall adopt rules pursuant to chapter 17A to implement

the requirements of this section that provide for the time and manner for the filing of financial statements by persons in the department or independent agency.

4. The ethics committee of each house of the general assembly shall recommend rules for adoption by each house for the time and manner for the filing of financial statements by members or employees of the particular house. The legislative council shall adopt rules for the time and manner for the filing of financial statements by legislative employees of the central legislative staff agencies. The rules shall provide for the filing of the financial statements with either the chief clerk of the house, the secretary of the senate, or other appropriate person or body.

5. A candidate for statewide office shall file a financial statement with the ethics and campaign disclosure board, a candidate for the office of state representative shall file a financial statement with the chief clerk of the house of representatives, and a candidate for the office of state senator shall file a financial statement with the secretary of the senate. Statements shall contain information concerning the year preceding the year in which the election is to be held. The statement shall be filed no later than thirty days after the date on which a person is required to file nomination papers for state office under section 43.11, or, if the person is a candidate in a special election, as soon as practicable after the certification of the name of the nominee under section 43.88, but the statement shall be postmarked no later than seven days after certification. The ethics and campaign disclosure board shall adopt rules pursuant to chapter 17A providing for the filing of the financial statements with the board and for the deposit, retention, and availability of the financial statements. The ethics committees of the house of representatives and the senate shall recommend rules for adoption by the respective houses providing for the filing of the financial statements with the chief clerk of the house or the secretary of the senate and for the deposit, retention, and availability of the financial statements. Rules adopted shall also include a procedure for notification of candidates of the duty to file disclosure statements under this section.

2003 Acts, ch 178, §100, 121; 2003 Acts, ch 179, §142  
Subsection 2, paragraph e amended

### **68B.38 Lobbyist's client reporting.**

1. *a.* On or before July 1 of each year, a lobbyist's client shall file with the general assembly or board a report that contains information on all salaries, fees, and retainers paid by the lobbyist's client to the lobbyist for lobbying purposes during the preceding twelve calendar months.

*b.* Reports by a lobbyist's clients shall be filed with the same entity with which the lobbyist filed the lobbyist's registration.

2. *a.* The report shall include a cumulative to-

tal of all salaries, fees, retainers, and reimbursements of expenses paid to the lobbyist for lobbying activities during the preceding calendar year.

b. The secretary of the senate, chief clerk of the house, and the board shall develop forms to implement this section.

2003 Acts, ch 161, §3  
Section amended

#### **68B.39 Supreme court rules.**

The supreme court of this state shall prescribe rules establishing a code of ethics for officials and employees of the judicial branch of this state, and

the immediate family members of the officials and employees. Rules prescribed under this paragraph shall include provisions relating to the receipt or acceptance of gifts and honoraria, interests in public contracts, services against the state, and financial disclosure which are substantially similar to the requirements of this chapter.

The supreme court of this state shall also prescribe rules which relate to activities by officials and employees of the judicial branch which constitute conflicts of interest.

2003 Acts, ch 108, §21  
Unnumbered paragraph 1 amended

## CHAPTER 69

### VACANCIES — REMOVAL — TERMS

#### **69.8 Vacancies — how filled.**

Vacancies shall be filled by the officer or board named, and in the manner, and under the conditions, following:

1. *United States senator.* In the office of United States senator, when the vacancy occurs when the senate of the United States is in session, or when such senate will convene prior to the next general election, by the governor. An appointment made under this subsection shall be for the period until the vacancy is filled by election pursuant to law.

2. *State offices.* In all state offices, judges of courts of record, officers, trustees, inspectors, and members of all boards or commissions, and all persons filling any position of trust or profit in the state, by the governor, except when some other method is specially provided. An appointment made under this subsection to a state office subject to section 69.13 shall be for the period until the vacancy is filled by election pursuant to law.

3. *County offices.* In county offices, by the board of supervisors, unless an election is called as provided in section 69.14A.

4. *Board of supervisors.* In the membership of the board of supervisors, by the treasurer, auditor, and recorder, or as provided in section 69.14A. If any of these offices have been abolished through consolidation, the county attorney shall serve on this committee.

5. *Elected township offices.* When a vacancy occurs in the office of township clerk or township trustee, the vacancy shall be filled by appointment by the trustees. All appointments to fill vacancies in township offices shall be until a successor is elected at the next general election and qualifies by taking the oath of office. If the term of office in which the vacancy exists will expire within seventy days after the next general election, the person elected to the office for the succeeding term shall qualify by taking the oath of office within ten days after the election and shall serve for the remainder of the unexpired term, as well as for the next four-year term.

However, if the offices of two trustees are vacant the county board of supervisors shall fill the vacancies by appointment. If the offices of three trustees are vacant the board may fill the vacancies by appointment, or the board may adopt a resolution stating that the board will exercise all powers and duties assigned by law to the trustees of the township in which the vacancies exist until the vacancies are filled at the next general election. If a township office vacancy is not filled by the trustees within thirty days after the vacancy occurs, the board of supervisors may appoint a successor to fill the vacancy until the vacancy can be filled at the next general election.

Auditor to act temporarily for other officers, §331.502(6)  
Section not amended; footnote revised

## CHAPTER 70A

### FINANCIAL AND OTHER PROVISIONS FOR PUBLIC OFFICERS AND EMPLOYEES

#### **70A.1 Salaries — payment — vacations — sick leave — educational leave.**

Salaries specifically provided for in an appropriation Act of the general assembly shall be in lieu of existing statutory salaries, for the positions pro-

vided for in the Act, and all salaries, including longevity where applicable by express provision in the Code, shall be paid according to the provisions of chapter 91A and shall be in full compensation of all services, including any service on committees,

boards, commissions or similar duty for Iowa government, except for members of the general assembly. A state employee on an annual salary shall not be paid for a pay period an amount which exceeds the employee's annual salary transposed into a rate applicable to the pay period by dividing the annual salary by the number of pay periods in the fiscal year. Salaries for state employees covered by the overtime payment provisions of the federal Fair Labor Standards Act shall be established on an hourly basis.

All employees of the state earn two weeks' vacation per year during the first year of employment and through the fourth year of employment, and three weeks' vacation per year during the fifth and through the eleventh year of employment, and four weeks' vacation per year during the twelfth year through the nineteenth year of employment, and four and four-tenths weeks' vacation per year during the twentieth year through the twenty-fourth year of employment, and five weeks' vacation per year during the twenty-fifth year and all subsequent years of employment, with pay. One week of vacation is equal to the number of hours in the employee's normal work week. Vacation allowances accrue according to chapter 91A as provided by the rules of the department of administrative services. The vacations shall be granted at the discretion and convenience of the head of the department, agency, or commission, except that an employee shall not be granted vacation in excess of the amount earned by the employee. Vacation leave earned under this paragraph shall not be cumulated to an amount in excess of twice the employee's annual rate of accrual. The head of the department, agency, or commission shall make every reasonable effort to schedule vacation leave sufficient to prevent any loss of entitlements. If the employment of an employee of the state is terminated the provisions of chapter 91A relating to the termination apply.

If said termination of employment shall be by reason of the death of the employee, such vacation allowance shall be paid to the estate of the deceased employee if such estate shall be opened for probate. If no estate be opened, the allowance shall be paid to the surviving spouse, if any, or to the legal heirs if no spouse survives.

Payments authorized by this section shall be approved by the department subject to rules of the department of administrative services and paid from the appropriation or fund of original certification of the claim.

Commencing July 1, 1979, permanent full-time and permanent part-time employees of state departments, boards, agencies, and commissions, excluding employees covered under a collective bargaining agreement which provides otherwise, shall accrue sick leave at the rate of one and one-half days for each complete month of full-time employment. The accrual rate for part-time employees shall be prorated to the accrual rate for

full-time employees. Sick leave shall not accrue during any period of absence without pay. Employees may use accrued sick leave for physical or mental personal illness, bodily injury, medically related disabilities, including disabilities resulting from pregnancy and childbirth, or contagious disease:

1. Which require the employee's confinement,
2. Which render the employee unable to perform assigned duties, or
3. When performance of assigned duties would jeopardize the employee's health or recovery.

Separation from state employment shall cancel all unused accrued sick leave. However, if an employee is laid off and the employee is re-employed by any state department, board, agency, or commission within one year of the date of the layoff, accrued sick leave of the employee shall be restored.

State employees, excluding state board of regents' faculty members with nine-month appointments, and employees covered under a collective bargaining agreement negotiated with the public safety bargaining unit who are eligible for accrued vacation benefits and accrued sick leave benefits, who have accumulated thirty days of sick leave, and who do not use sick leave during a full month of employment may elect to accrue up to one-half day of additional vacation. The accrual of additional vacation time by an employee for not using sick leave during a month is in lieu of the accrual of up to one and one-half days of sick leave for that month. The director of the department of administrative services may adopt the necessary rules and procedures for the implementation of this program for all state employees except employees of the state board of regents. The state board of regents may adopt necessary rules for the implementation of this program for its employees.

The head of any department, agency, or commission, subject to rules of the department of administrative services, may grant an educational leave to employees for whom the head of the department, agency, or commission is responsible pursuant to section 70A.25 and funds appropriated by the general assembly may be used for this purpose. The head of the department, agency, or commission shall notify the legislative council and the director of the department of administrative services of all educational leaves granted within fifteen days of the granting of the educational leave. If the head of a department, agency, or commission fails to notify the legislative council and the director of the department of administrative services of an educational leave, the expenditure of funds appropriated by the general assembly for the educational leave shall not be allowed.

A specific annual salary rate or annual salary adjustment commencing with a fiscal year shall commence on July 1 except that if a pay period overlaps two fiscal years, a specific annual salary rate or annual salary adjustment shall commence

with the first day of a pay period as specified by the general assembly.

2003 Acts, ch 145, §286  
Paid holidays; §1C.2  
Terminology change applied

#### **70A.9 Charge for use of automobile by other than state officer or employee.**

When a public officer or employee, other than a state officer or employee, is entitled to be paid for expenses in performing a public duty, a charge shall be made, allowed and paid for the use of an automobile, as determined by the local governing body, in an amount which may be the maximum allowable under federal internal revenue service rules per mile, notwithstanding established mileage requirements or depreciation allowances. A statutory provision stipulating necessary mileage, travel, or actual reimbursement to a local public officer or employee falls within the mileage reimbursement limitation specified in this section unless specifically provided otherwise. A political subdivision may authorize the use of private vehicles for the conduct of official business of the political subdivision at an annual amount in lieu of actual and necessary travel expense reimbursement provided in this section. A peace officer, other than a state officer or employee as defined in section 801.4, who is required to use a private vehicle in the performance of official duties shall receive reimbursement for mileage expense at the rate specified in this section.

State officers and employees mileage allowance, §8A.363; see also §602.1509, expenses for judicial officers, court employees and others  
Section not amended; footnote revised

#### **70A.15 Payroll deduction.**

The responsible official in charge of the payroll system may deduct from the salary or wages of a state officer or employee an amount specified by the officer or employee for payment to a charitable organization if:

1. The request for the payroll deduction is made in writing during the enrollment period for the charitable organization.
2. The deduction shall not continue in effect for a period of time exceeding one year unless a new written request is filed according to the requirements of this section.
3. The pay period during which the deduction is made, the frequency, and the amount of the deduction are compatible with the payroll system.

Moneys deducted pursuant to this section shall be paid over promptly to the appropriate charitable organization. The deduction may be made notwithstanding that the compensation actually paid to the officer or employee is reduced to an amount below the minimum prescribed by law. Payment to an officer or employee of compensation less the deduction shall constitute a full and complete discharge of claims and demands for services rendered by the employee during the period covered by the payment. The request for the deduction

may be withdrawn at any time by filing a written notification of withdrawal with the responsible official in charge of the payroll system.

Combined charitable campaign program administered by department of administrative services; §8A.432  
Section not amended; footnote revised

#### **70A.16 Interview and moving expenses.**

1. If approved by the appointing authority, a person who interviews for employment by the state shall be reimbursed for expenses incurred in the interview.

2. A state employee who is reassigned shall be reimbursed for moving expenses incurred in accordance with rules and policies adopted by the director of the department of administrative services when all of the following circumstances exist:

- a. The employee is reassigned at the direction of the appointing authority.
- b. The reassignment constitutes a permanent change of duty station.
- c. The reassignment requires the employee to change the place of personal residence beyond a reasonable commuting distance.
- d. The reassignment is not primarily for the benefit or convenience of the employee.

3. If approved by the appointing authority, a person newly hired for a state position shall receive reimbursement for moving expenses incurred after the person is hired at the same rate provided for a state employee.

4. Reimbursement for moving expenses authorized under this section does not include reimbursement for the expense of moving animals.

2003 Acts, ch 145, §286  
Terminology change applied

#### **70A.20 Employees disability program.**

A state employees disability insurance program is created, which shall be administered by the director of the department of administrative services and which shall provide disability benefits in an amount and for the employees as provided in this section. The monthly disability benefits shall provide twenty percent of monthly earnings if employed less than one year, forty percent of monthly earnings if employed one year or more but less than two years, and sixty percent of monthly earnings thereafter, reduced by primary and family social security determined at the time social security disability payments commence, railroad retirement disability income, workers' compensation if applicable, and any other state-sponsored sickness or disability benefits payable. However, the amount of benefits payable under the Iowa public employees' retirement system pursuant to chapter 97B shall not reduce the benefits payable pursuant to this section. Subsequent social security or railroad retirement increases shall not be used to further reduce the insurance benefits payable. As used in this section, "primary and family social security" shall not include social security benefits

awarded to an adult child with a disability of the state employee with a disability who does not reside with the state employee with a disability if the social security benefits were awarded to the adult child with a disability prior to the approval of the state employee's benefits under this section, regardless of whether the United States social security administration records the benefits to the social security number of the adult child with a disability, the state employee with a disability, or any other family member, and such social security benefits shall not reduce the benefits payable pursuant to this section. As used in this section, unless the context otherwise requires, "adult" means a person who is eighteen years of age or older. State employees shall receive credit for the time they were continuously employed prior to and on July 1, 1974. The following provisions apply to the employees disability insurance program:

1. Waiting period, ninety working days of continuous sickness or accident disability or the expiration of accrued sick leave, whichever is greater.

2. Maximum period benefits paid for both accident or sickness disability:

a. If the disability occurs prior to the time the employee attains the age of sixty-one years, the maximum benefit period shall end sixty months after continuous benefit payments begin or on the date on which the employee attains the age of sixty-five years, whichever is later.

b. If the disability occurs on or after the time the employee attains the age of sixty-one years but prior to the age of sixty-nine years, the maximum benefit period shall end sixty months after continuous benefit payments begin or on the date on which the employee attains the age of seventy years, whichever is earlier.

c. If the disability occurs on or after the time the employee attains the age of sixty-nine years, the maximum benefit period shall end twelve months after continuous benefit payments begin.

3. a. Minimum and maximum benefits, not less than fifty dollars per month and not exceeding two thousand dollars per month.

b. In no event shall benefits exceed one hundred percent of the claimant's predisability covered monthly compensation.

4. All permanent full-time state employees shall be covered under the employees disability insurance program, except board members and members of commissions who are not full-time state employees, and state employees who on July 1, 1974, are under another disability program financed in whole or in part by the state, and state employees who have agreed to participation in another disability program through a collective bargaining agreement. For purposes of this section, members of the general assembly serving on or after January 1, 1989, are eligible for the plan during their tenure in office, on the basis of enrollment rules established for full-time state em-

ployees excluded from collective bargaining as provided in chapter 20.

2003 Acts, ch 145, §286  
Terminology change applied

### 70A.23 Credit for accrued sick leave.

When a state employee, excluding an employee covered under a collective bargaining agreement which provides otherwise, retires under a retirement system in the state maintained in whole or in part by public contributions or payments, the number of accrued days of active and banked sick leave of the employee shall be credited to the employee. When an employee retires, is eligible, and has applied for benefits under a retirement system authorized under chapter 97A or 97B, including the teachers insurance and annuity association-college retirement equities fund (TIAA-CREF), or an employee dies on or after July 1, 1984, while the employee is in active employment but is eligible for retirement benefits under one of the listed chapters, the employee shall receive a cash payment for the employee's accumulated, unused sick leave in both the active and banked sick leave accounts, except when, in lieu of cash payment, payment is made for monthly premiums for health or life insurance or both as provided in a collective bargaining agreement negotiated under chapter 20. An employee of the department of public safety or the department of natural resources who has earned benefits of payment of premiums under a collective bargaining agreement and who becomes a manager or supervisor and is no longer covered by the agreement shall not lose the benefits of payment of premium earned while covered by the agreement. The payment shall be calculated by multiplying the number of hours of accumulated, unused sick leave by the employee's hourly rate of pay at the time of retirement. However, the total cash payments for accumulated, unused sick leave shall not exceed two thousand dollars per employee and are payable upon retirement or death. Banked sick leave is defined as accrued sick leave in excess of ninety days.

2003 Acts, ch 108, §22  
Section amended

### 70A.25 Educational leave — educational assistance.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Educational assistance" means reimbursement for tuition, fees, books or other expenses incurred by a state employee in taking coursework at an educational institution or attending a workshop, seminar, or conference without a reduction in ordinary job responsibilities and that the appointing authority determines contributes to the growth and development of the employee in the employee's present position or in a position to which the employee may reasonably be assigned.

b. "Educational leave" means full or partial

absence from an employee's ordinary job responsibilities either with full or partial pay or without pay, to attend a course of study at an educational institution or a course of study conducted by a reputable sponsor on behalf of an educational institution. Educational leave may include reimbursement for all or a portion of educational expenses incurred.

c. "Educational leave and educational assistance" do not apply to job training, employee development programs, or departmental seminars that are conducted or sponsored by a state agency.

2. *General applicability.* The purpose of educational leave with full or partial pay and educational assistance is to assist state employees to develop skills that will improve their ability to perform state job responsibilities or in the case of educational leave to also provide training and educational opportunities for employees of a state agency that will enable the agency director to better meet the staffing needs of the state agency.

The director of the department of administrative services shall not allow the payment of expenses for courses unless the department, agency, or commission can demonstrate a relationship between the employee's job responsibilities and the courses to be taken or that the employee is required to learn new skills for which the department, agency, or commission has a need.

3. *Reporting and review.*

a. The director of the department of administrative services shall periodically and at least annually review the implementation of educational leave and educational assistance programs by state agencies.

b. The head of each state agency, department, or commission shall report to the director of the department of administrative services and the legislative council not later than October 1 of each year the direct and indirect costs to the agency of educational leave and educational assistance granted to agency employees during the preceding fiscal year. The report shall include an estimate of costs saved by the state agency, department, or commission through the use of educational leave and educational assistance. As used in this subsection, "indirect costs" includes but is not limited to adjustments in employee work assignments and agency operations necessitated by educational leave or assistance.

c. The report to the director of the department of administrative services and legislative council shall identify the relationship of each course to the employee who is granted educational leave and how the course may improve the employee's job performance or the task to be accomplished within the agency.

d. The report to the director of the department of administrative services and the legislative council shall also include:

(1) The number of employees who were granted educational leave and the amount of tu-

ition reimbursement allowed by the department, agency or commission.

(2) The number of employees who were granted a leave from work to attend the classes and who continued to receive their salary and the number of hours of work which those employees were excused.

(3) The number of employees who were granted a temporary leave of absence from work to attend the classes without pay and the amount of time missed.

2003 Acts, ch 145, §286  
Terminology change applied

### **70A.28 Prohibitions relating to certain actions by state employees — penalty — civil remedies.**

1. A person who serves as the head of a state department or agency or otherwise serves in a supervisory capacity within the executive or legislative branch of state government shall not require an employee of the state to inform the person that the employee made a disclosure of information permitted by this section and shall not prohibit an employee of the state from disclosing any information to a member or employee of the general assembly or from disclosing information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer.

2. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for a failure by that employee to inform the person that the employee made a disclosure of information permitted by this section, or for a disclosure of any information by that employee to a member or employee of the general assembly, or a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer.

3. Subsections 1 and 2 do not apply if the dis-

closure of the information is prohibited by statute.

4. A person who violates subsection 1 or 2 commits a simple misdemeanor.

5. Subsection 2 may be enforced through a civil action.

a. A person who violates subsection 2 is liable to an aggrieved employee for affirmative relief including reinstatement, with or without back pay, or any other equitable relief the court deems appropriate, including attorney fees and costs.

b. When a person commits, is committing, or proposes to commit an act in violation of subsection 2, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or the attorney general.

6. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for the employee's declining to participate in contributions or donations to charities or community organizations.

7. The director of the department of administrative services or, for employees of the general assembly or of the state board of regents, the legislative council or the state board of regents, respectively, shall provide procedures for notifying new state employees of the provisions of this section and shall periodically conduct promotional campaigns to provide similar information to state employees. The information shall include the toll-free telephone number of the citizens' aide.

8. For purposes of this section, "state employee" and "employee" include, but are not limited to, persons employed by the general assembly and persons employed by the state board of regents.

2003 Acts, ch 145, §286  
See also §8A.417, 70A.29  
Terminology change applied

**70A.30 Establishment of phased retirement program.**

There is established a voluntary employee phased retirement incentive program for full-time state employees who are at least sixty years of age and have completed at least twenty years as full-time state employees.

The phased retirement incentive program is a retirement system for purposes of section 20.9, but is not retirement for purposes of chapter 97A, 97B, or 602 or for the employees who are members of the teachers insurance annuity association-college retirement equities fund (TIAA-CREF).

2003 Acts, ch 108, §23  
Unnumbered paragraph 2 amended

**70A.34 Appropriation.**

Annually after June 30 of each fiscal year, the

department of administrative services shall determine the cost during the preceding fiscal year to the Iowa public employees' retirement fund of participation of state employees in the phased retirement program. Annually, there is appropriated from the general fund of the state to the Iowa public employees' retirement fund an amount sufficient to reimburse the retirement fund for the costs of the phased retirement program.

2003 Acts, ch 145, §286  
Terminology change applied

**70A.37 Collective bargaining agreements.**

Administrative rules adopted by the director of the department of administrative services pursuant to this chapter shall not supersede provisions of collective bargaining agreements negotiated under chapter 20.

2003 Acts, ch 145, §286  
Terminology change applied

**70A.38 Years of service incentive program.**

1. As used in this section, unless the context provides otherwise:

a. "Credited service" means service under the Iowa public employees' retirement system, as service is defined in section 97B.1A, and membership service under the public safety peace officers' retirement, accident, and disability system, as defined in section 97A.1.

b. "Eligible employee" means an employee with ten or more years of credited service as of the date of termination from employment.

c. "Employee" means an employee of the executive branch of the state, including an employee of a judicial district department of correctional services or the department of justice. However, "employee" does not mean an employee of the state board of regents, or an elected official.

d. "Employer" means a department, agency, board, or commission within the executive branch of the state that employs employees.

e. "Participant" means an eligible employee who has been selected for participation in the years of service incentive program, who agrees to such participation, who is approved for participation, and who receives a termination incentive as provided by this section.

f. "Program" means the years of service incentive program established pursuant to this section.

g. "Regular annual salary" means an amount equal to the eligible employee's regular biweekly rate of pay as of the date of separation from employment multiplied by twenty-six.

h. "Termination incentive" means an amount equal to the lesser of two hundred fifty dollars for every quarter year of credited service of the eligible employee or the regular annual salary of the eligible employee.

2. An employer may offer a termination incentive to an eligible employee or eligible employees

if the employer demonstrates that such an offer will assist the employer in effectively managing its resources. Prior to making the offer, the employer shall obtain approval to offer the program from the department of administrative services. As part of the approval process, the employer shall submit a business plan to the department of administrative services which shall be reviewed and approved by the department of management. The business plan shall show the savings that will accrue to the state as a result of the employee's or employees' participation in the program.

3. Upon obtaining approval from the department of administrative services to offer the program, the employer shall inform each eligible employee in writing of the employee's opportunity to participate in the program. The written notice to the eligible employee shall provide a time deadline for acceptance of an offer, a proposed date by which the eligible employee who wishes to accept an offer would have to agree to terminate employment with the state, and other relevant information concerning the employee's rights relating to an offer, including the voluntary nature of an offer to the eligible employee as well as the consequences to the employee of accepting an offer.

4. To become a participant in the program, an eligible employee who receives an offer to participate in the program shall do all of the following:

*a.* Acknowledge in writing the employee's agreement to voluntarily terminate employment in exchange for payment of a termination incentive as provided in this section.

*b.* Agree to waive all rights to file suit against the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.

*c.* Acknowledge, in writing, that participation in the program waives any right to accept permanent part-time or permanent full-time employment with the state other than as an elected official or as an employee of the state board of regents.

*d.* Agree to separate from employment with the state by the date agreed upon by the eligible employee and the employer which date is consistent with the business plan submitted by the employer.

5. Upon acceptance to participate in the program and separation from employment with the state by the date agreed upon, the participant shall be paid a termination incentive. The state shall pay to the participant, in a lump sum, the termination incentive and any other payments due the participant, if any, for accrued sick leave and vacation leave balances.

6. The department of administrative services shall administer the program and shall adopt administrative rules to administer the program.

7. The legislative council shall provide a years of service incentive program for employees of the legislative branch consistent with the program provided in this section for executive branch employees. The benefit provided for employees under this subsection shall be no greater than that provided for executive branch employees.

8. This section is repealed June 30, 2008.

2003 Acts, ch 145, §156, 286, 293  
Terminology change applied  
Subsection 8 amended

### **70A.39 Bone marrow and organ donation incentive program.**

1. For the purposes of this section:

*a.* "*Bone marrow*" means the soft tissue that fills human bone cavities.

*b.* "*Vascular organ*" means a heart, lung, liver, pancreas, kidney, intestine, or other organ that requires the continuous circulation of blood to remain useful for purposes of transplantation.

2. Beginning July 1, 2003, state employees, excluding employees covered under a collective bargaining agreement which provides otherwise, shall be granted leaves of absence in accordance with the following:

*a.* A leave of absence of up to five workdays for an employee who requests a leave of absence to serve as a bone marrow donor if the employee provides written verification from the employee's physician or the hospital involved with the bone marrow donation that the employee will serve as a bone marrow donor.

*b.* A leave of absence of up to thirty workdays for an employee who requests a leave of absence to serve as a vascular organ donor if the employee provides written verification from the employee's physician or the hospital involved with the vascular organ donation that the employee will serve as a vascular organ donor.

3. An employee who is granted a leave of absence under this section shall receive leave without loss of seniority, pay, vacation time, personal days, sick leave, insurance and health coverage benefits, or earned overtime accumulation. The employee shall be compensated at the employee's regular rate of pay for those regular work hours during which the employee is absent from work.

4. An employee deemed to be on leave under this section shall not be deemed to be an employee of the state for purposes of workers' compensation or for purposes of the Iowa tort claims Act.

2003 Acts, ch 32, §1; 2003 Acts, 1st Ex, ch 2, §37, 209  
NEW section

## CHAPTER 73

### PREFERENCES

See also §8A.311, §73A.21

#### 73.2 Advertisements for bids — form.

1. All requests hereafter made for bids and proposals for materials, products, supplies, provisions, and other needed articles to be purchased at public expense, shall be made in general terms and by general specifications and not by brand, trade name, or other individual mark. All such requests and bids shall contain a paragraph in easily legible print, reading as follows:

By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa.

2. In addition to any method of advertisement required by law, any executive branch agency, the general assembly, and the judicial branch shall advertise any request for bids and proposals on the official state internet site operated by the department of administrative services. An electronic link to an internet site maintained by an executive branch agency, the general assembly, or the judicial branch on which requests for bids and proposals for that agency or for the general assembly or judicial branch are posted satisfies the requirements of this subsection.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 73A

### PUBLIC CONTRACTS AND BONDS

#### 73A.21 Reciprocal resident bidder preference by state, its agencies, and political subdivisions.

Notwithstanding this chapter, chapter 73, chapter 309, chapter 310, chapter 331, or chapter 384, when a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country which gives or requires a preference to bidders from that state or foreign country. The preference is equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. “*Resident bidder*” means a person authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least six months prior to the first advertisement for the public improvement and in the case of a corporation, having at least fifty percent of its common

stock owned by residents of this state. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

For purposes of this section, “*public improvement*” means public improvements as defined in section 73A.1 and includes road construction, reconstruction, and maintenance projects.

This section applies to the state, its agencies, and any political subdivisions of the state.

If it is determined that this may cause denial of federal funds which would otherwise be available, or would otherwise be inconsistent with requirements of federal law, this section shall be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

See also §8A.311, chapter 73  
Section not amended; footnote revised

## CHAPTER 74

### PUBLIC OBLIGATIONS NOT PAID FOR WANT OF FUNDS

#### 74.9 Payment in case of default by school.

In the event a school corporation which has issued anticipatory warrants fails to pay principal or interest of its anticipatory warrants when due,

upon certification by the trustee or the paying agent designated pursuant to section 76.10 to the director of the department of administrative services, the director of the department of adminis-

trative services shall withhold and directly apply, from any state appropriation to which the school corporation is entitled, so much as is certified to the trustee or the paying agent to the payment of the principal and interest on the anticipatory warrants of the school corporation then due. The obligation of the director of the department of administrative services to withhold and directly apply moneys from any state appropriation to which the

school corporation is entitled does not create any moral or legal obligations of the state to pay, when due, the principal and interest on the anticipatory warrants of a school corporation. All appropriations for school corporations shall be subject to the provisions of this section.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 76

### PROVISIONS RELATED TO PUBLIC BONDS AND DEBT OBLIGATIONS

#### **76.15 Underwriters doing business in Iowa.**

An underwriter employed to assist in the issuance of obligations by an authority, as defined in section 12.30, state board of regents, or other political subdivision, instrumentality, or agency of the

state, shall meet the requirements for doing business in Iowa sufficient to be subject to tax under rules of the department of revenue.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 80

### DEPARTMENT OF PUBLIC SAFETY

#### **80.15 Examination — oath — probation — discipline — dismissal.**

An applicant for membership in the department of public safety, except clerical workers and special agents appointed under section 80.7, shall not be appointed as a member until the applicant has passed a satisfactory physical and mental examination. In addition, the applicant must be a citizen of the United States and be not less than twenty-two years of age. The mental examination shall be conducted under the direction or supervision of the commissioner of public safety and may be oral or written or both. Each applicant shall take an oath on becoming a member of the force, to uphold the laws and Constitution of the United States and of the state of Iowa. During the period of twelve months after appointment, any member of the department of public safety, except members of the present Iowa state patrol who have served more than six months, is subject to dismissal at the will of the commissioner. After the twelve months' service, a member of the department, who was appointed after having passed the examinations, is not subject to dismissal, suspension, disciplinary demotion, or other disciplinary action resulting in the loss of pay unless charges have been filed with the department of inspections and appeals and a hearing held by the employment appeal board created by section 10A.601, if requested by the member, at which the member has an opportunity to present a defense to the charges. The decision of the appeal board is final, subject to

the right of judicial review in accordance with the terms of the Iowa administrative procedure Act. However, these procedures as to dismissal, suspension, demotion, or other discipline do not apply to a member who is covered by a collective bargaining agreement which provides otherwise nor to the demotion of a division head to the rank which the division head held at the time of appointment as division head, if any. A division head who is demoted has the right to return to the rank which the division head held at the time of appointment as division head, if any. All rules, except employment provisions negotiated pursuant to chapter 20, regarding the enlistment, appointment, and employment affecting the personnel of the department shall be established by the commissioner in consultation with the director of the department of administrative services, subject to approval by the governor.

2003 Acts, ch 145, §286  
Terminology change applied

#### **80.17 General allocation of duties.**

In general, the allocation of duties of the department of public safety shall be as follows:

1. Commissioner's office.
2. Division of statistics and records.
3. Division of criminal investigation.
4. Division of the Iowa state patrol.
5. Division of fire protection.
6. Division of inspection.
7. Division of capitol police.

Nothing in the aforesaid allocation of duties shall be interpreted to prevent flexibility in interdepartmental operations or to forbid other divisional allocations of duties in the discretion of the commissioner of public safety.

2003 Acts, ch 108, §24  
Division of beer and liquor law enforcement, §80.25  
Subsection 3 amended

#### **80.22 Prohibition on other departments.**

All other departments and bureaus of the state are hereby prohibited from employing special peace officers or conferring upon regular employees any police powers to enforce provisions of the statutes which are specifically reserved by 1939 Iowa Acts, chapter 120, to the department of public safety. But the commissioner of public safety shall, upon the requisition of the attorney general, from time to time assign for service in the department of justice such of its officers, not to exceed six in number, as may be requisitioned by the attorney general for special service in the department of justice, and when so assigned such officers shall be under the exclusive direction and control of the attorney general.

2003 Acts, ch 44, §29  
Section amended

#### **80.35 Transition.**

Persons employed by the department of administrative services\* as capitol security force officers shall be transferred to the division of capitol security of the department of public safety on July 1, 1976. Persons transferred pursuant to this section shall retain their positions as capitol police officers, shall not be subject to the requirements and conditions of section 80.15, and shall remain under the Iowa public employees' retirement system. Persons employed after July 1, 1976, by the department of public safety as capitol police officers within the division of capitol police shall be subject to the requirements and conditions of section 80.15, except those requirements relating to age, and shall be subject to the Iowa public employees' retirement system. The minimum age for persons employed by the division of capitol police shall be eighteen.

2003 Acts, ch 145, §286

\*The department of administrative services is the successor agency to the department of general services effective July 1, 2003; see 2003 Acts, ch 145

Terminology change applied

## CHAPTER 80A

### PRIVATE INVESTIGATIVE AGENCIES AND SECURITY AGENTS

#### **80A.4 License requirements.**

1. Applications for a license or license renewal shall be submitted to the commissioner in the form the commissioner prescribes. A license or license renewal shall not be issued unless the applicant:

- a. Is eighteen years of age or older.
- b. Is not a peace officer.
- c. Has never been convicted of a felony or aggravated misdemeanor.
- d. Is not addicted to the use of alcohol or a controlled substance.
- e. Does not have a history of repeated acts of violence.
- f. Is of good moral character and has not been judged guilty of a crime involving moral turpitude.
- g. Has not been convicted of a crime described in section 708.3, 708.4, 708.5, 708.6, 708.8, or 708.9.
- h. Has not been convicted of illegally using, carrying or possessing a dangerous weapon.
- i. Has not been convicted of fraud.
- j. Provides fingerprints to the department.
- k. Complies with other qualifications and requirements the commissioner adopts by rule.

2. If the applicant is a corporation, the requirements of subsection 1 apply to the president and to each officer, commissioner or employee who is actively involved in the licensed business in Iowa.

If the applicant is a partnership or association, the requirements of subsection 1 apply to each partner or association member.

3. Each employee of an applicant or licensee shall possess the same qualifications required by subsection 1 for a licensee.

4. The fingerprints required by subsection 1 may be submitted by the department to the federal bureau of investigation through the state criminal history repository for the purpose of a national criminal history check.

2003 Acts, ch 108, §25  
Subsection 4 amended

#### **80A.7 Identification cards.**

1. The department shall issue to each licensee and to each employee of the licensee an identification card in a form approved by the commissioner. The application for a permanent identification card shall include a temporary identification card valid for fourteen days from the date of receipt of the application by the applicant.

2. The fee for each application for an identification card is ten dollars.

3. It is unlawful for an agency licensed under this chapter to employ a person to act in the bail enforcement business, private investigation business, or private security business unless the per-

son has in the person's immediate possession an identification card issued under this section.

4. The licensee is responsible for the use of identification cards by the licensee's employees and shall return an employee's card to the department upon termination of the employee's service. Identification cards remain the property of the department.

5. An application for an identification card shall include the submission of fingerprints of the

person seeking the identification card, which fingerprints may be submitted to the federal bureau of investigation through the state criminal history repository for the purpose of a national criminal history check. Fees associated with the processing of fingerprints shall be assessed to the employing licensee.

2003 Acts, ch 108, §26  
Subsection 5 amended

## CHAPTER 80B

### LAW ENFORCEMENT ACADEMY

#### 80B.3 Definitions.

When used in this chapter:

1. "Academy" means the Iowa law enforcement academy.

2. "Council" means the Iowa law enforcement academy council.

3. "Law enforcement officer" means an officer appointed by the director of the department of natural resources, a member of a police force or other agency or department of the state, county, city, or tribal government regularly employed as such and who is responsible for the prevention and detection of crime and the enforcement of the criminal laws of this state and all individuals, as determined by the council, who by the nature of their duties may be required to perform the duties of a peace officer.

2003 Acts, ch 87, §1  
Subsection 3 amended

#### 80B.11 Rules.

The director of the academy, subject to the approval of the council, shall promulgate rules in accordance with the provisions of this chapter and chapter 17A, giving due consideration to varying factors and special requirements of law enforcement agencies relative to the following:

1. Minimum entrance requirements, course of study, attendance requirements, and equipment and facilities required at approved law enforcement training schools. Minimum age requirements for entrance to approved law enforcement training schools shall be eighteen years of age. Minimum course of study requirements shall include a separate domestic abuse curriculum, which may include, but is not limited to, outside speakers from domestic abuse shelters and crime victim assistance organizations. Minimum course of study requirements shall also include a sexual assault curriculum.

2. Minimum basic training requirements law enforcement officers employed after July 1, 1968, must complete in order to remain eligible for continued employment and the time within which such basic training must be completed. Minimum

requirements shall mandate training devoted to the topic of domestic abuse and sexual assault. The council shall submit an annual report to the general assembly by January 15 of each year relating to the continuing education requirements devoted to the topic of domestic abuse, including the number of hours required, the substance of the classes offered, and other related matters.

3. Categories or classifications of advanced in-service training program and minimum courses of study and attendance requirements for such categories or classifications.

In-service training under this subsection shall include the requirement that by December 31, 1994, all law enforcement officers complete a course on investigation, identification, and reporting of public offenses based on the race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability of the victim. The director shall consult with the civil rights commission, the department of public safety, and the prosecuting attorneys training coordinator in developing the requirements for this course and may contract with outside providers for this course.

4. Within the existing curriculum, expanded training regarding racial and cultural awareness and dealing with gang-affected youth.

5. Minimum standards of physical, educational and moral fitness which shall govern the recruitment, selection and appointment of law enforcement officers.

6. Minimum standards of mental fitness which shall govern the initial recruitment, selection and appointment of law enforcement officers. The rules shall include, but are not limited to, providing a battery of psychological tests to determine cognitive skills, personality characteristics and suitability of an applicant for a law enforcement career. However, this battery of tests need only be given to applicants being considered in the final selection process for a law enforcement position. Notwithstanding any provision of chapter 400, an applicant shall not be hired if the employer

determines from the tests that the applicant does not possess sufficient cognitive skills, personality characteristics, or suitability for a law enforcement career. The director of the academy shall provide for the cognitive and psychological examinations and their administration to the law enforcement agencies or applicants, and shall identify and procure persons who can be hired to interpret the examinations.

7. Grounds for revocation or suspension of a law enforcement officer's certification.

8. Exemptions from particular provisions of this chapter in case of any state, county or city, if, in the opinion of the council, the standards of law enforcement training established and maintained by the governmental agency are as high or higher than those established pursuant to this chapter; or revocation in whole or in part of such exemption, if in its opinion the standards of law enforcement training established and maintained by the governmental agency are lower than those established pursuant to this chapter.

9. Minimum qualifications for instructors in telecommunicator training schools.

10. Minimum qualifications for instructors in law enforcement and jailer training schools.

11. Certification through examination for individuals who have successfully completed the federal bureau of investigation national academy, have corrected Snellen vision in both eyes of 20/20 or better, and were employed on or before January 1, 1996, as chief of police of a city in this state with a population of twenty thousand or more.

A certified course of instruction provided for under this section which occurs at a location other than at the central training facility of the Iowa law enforcement academy shall not be eliminated by the Iowa law enforcement academy.

2003 Acts, ch 87, §2  
Subsections 1 and 2 amended

#### **80B.11B Examination and attendance fees — training cost — appropriation.**

1. The full cost of providing cognitive and psychological examinations of law enforcement officer candidates may be charged by the Iowa law enforcement academy.

2. The Iowa law enforcement academy may also charge the department of natural resources or other agency or department of the state, a member of a police force of a city or county, or any political subdivision of the state not more than one-half of the cost of providing the basic training course which is designed to meet the minimum basic training requirements for a law enforcement officer. All other candidates to the law enforcement academy, including a candidate from a tribal government, shall pay the full costs of providing the basic training requirements for a law enforcement officer.

3. The Iowa law enforcement academy may also charge an attendance fee as determined by

the director of the academy and approved by the council for courses, schools, and seminars, other than the basic training course specified in subsection 2. Funds generated from attendance fees are appropriated to and shall be used at the direction of the academy to fulfill its responsibilities under this chapter.

2003 Acts, ch 87, §3  
Subsection 2 amended

#### **80B.11C Telecommunicator training standards.**

The director of the academy, subject to the approval of the council, in consultation with the Iowa state sheriffs' and deputies' association, the Iowa police executive forum, the Iowa association of chiefs of police and peace officers, the Iowa state police association, the Iowa association of professional fire fighters, the Iowa emergency medical services association, the joint council of Iowa fire service organizations, the Iowa department of public safety, the Iowa chapter of the association of public safety communications officials-international, inc., the Iowa chapter of the national emergency number association, the homeland security and emergency management division of the Iowa department of public defense, and the Iowa department of public health, shall adopt rules pursuant to chapter 17A establishing minimum standards for training of telecommunicators. For purposes of this section, "telecommunicator" means a person who receives requests for, or dispatches requests to, emergency response agencies which include, but are not limited to, law enforcement, fire, rescue, and emergency medical services agencies.

2003 Acts, ch 179, §157  
Terminology change applied

#### **80B.11D Training.**

1. An individual who is not a certified law enforcement officer may apply for attendance at a short course of study at an approved law enforcement training program if such individual is sponsored by a law enforcement agency. Such individual may be sponsored by a law enforcement agency that either intends to hire or has hired the individual as a law enforcement officer.

2. An individual who submits an application pursuant to subsection 1 shall, at a minimum, meet all minimum hiring standards as established by academy rules, including the successful completion of certain psychological and physical testing examinations. In addition, such individual shall be of good moral character as determined by a thorough background investigation by the hiring law enforcement agency. The academy shall conduct the requisite testing and background investigation for a fee if the law enforcement agency does not do so, and for such purposes, the academy shall be defined as a law enforcement agency and shall have the authority to conduct a background investigation including a fingerprint search of local, state, and national fingerprint files.

3. An individual who submits an application pursuant to subsection 1 shall, at a minimum, submit proof of successful completion of a two-year or four-year police science or criminal justice program at an accredited educational institution in this state approved by the academy.

4. An individual shall not be granted permission to attend an approved law enforcement training program pursuant to subsection 1 if such acceptance would result in the nonacceptance of another qualifying applicant who is a law enforcement officer.

5. This section applies only to individuals who apply for certification through a short course of study as established by rule.

6. An individual who has not been hired by a law enforcement agency must be hired by a law enforcement agency within eighteen months of completing the short course of study in order to obtain certification pursuant to this section.

2003 Acts, ch 67, §1  
NEW section

**80B.11E Academy training — application by individual — individual expense.**

1. Notwithstanding any other provision of law to the contrary, an individual who is not a certified law enforcement officer may apply for attendance at the law enforcement academy at their own expense if such individual is sponsored by a law enforcement agency that either intends to hire or has hired the individual as a law enforcement officer on the condition that the individual meets the minimum eligibility standards described in subsection 2.

2. An individual who submits an application pursuant to subsection 1 shall, at a minimum, meet all minimum hiring standards as established by academy rules, including the successful

completion of certain psychological and physical testing examinations. In addition, such individual shall be of good moral character as determined by a thorough background investigation by the academy for a fee. For such purposes, the academy shall have the authority to conduct a background investigation of the individual, including a fingerprint search of local, state, and national fingerprint files.

3. An individual shall not be granted permission to attend an academy training program if such acceptance would result in the nonacceptance of another qualifying applicant who is a law enforcement officer.

4. An individual who has not been hired by a law enforcement agency must be hired by a law enforcement agency within eighteen months of completing the appropriate coursework at the law enforcement academy in order to obtain certification pursuant to this section.

2003 Acts, ch 178, §16  
NEW section

**80B.18 Law enforcement officer — tribal government.**

A law enforcement officer who is a member of a police force of a tribal government and who becomes certified through the Iowa law enforcement academy shall be subject to the certification and revocation of certification rules and procedures as provided in this chapter. The certified law enforcement officer shall be subject to the jurisdiction of the courts of this state if an agreement exists between the tribal government and the state or between the tribal government and a county, which grants authority to the law enforcement officer to act in a law enforcement capacity off a settlement or reservation.

2003 Acts, ch 87, §4  
NEW section

## CHAPTER 80E

### DRUG ENFORCEMENT AND ABUSE PREVENTION

**80E.1 Drug policy coordinator.**

1. A drug policy coordinator shall be appointed by the governor, subject to confirmation by the senate, and shall serve at the pleasure of the governor. The governor shall fill a vacancy in the office in the same manner as the original appointment was made. The coordinator shall be selected primarily for administrative ability. The coordinator shall not be selected on the basis of political affiliation and shall not engage in political activity while holding the office. The salary of the coordinator shall be fixed by the governor.

2. The coordinator shall:

a. Direct the governor's office of drug control policy, and coordinate and monitor all statewide narcotics enforcement efforts, coordinate and

monitor all state and federal substance abuse treatment grants and programs, coordinate and monitor all statewide substance abuse prevention and education programs in communities and schools, and engage in such other related activities as required by law. The coordinator shall work in coordinating the efforts of the department of corrections, the department of education, the Iowa department of public health, the department of public safety, and the department of human services. The coordinator shall assist in the development and implementation of local and community strategies to fight substance abuse, including local law enforcement, education, and treatment activities.

b. Submit an annual report to the governor

and general assembly by November 1 of each year concerning the activities and programs of the coordinator and other departments related to drug enforcement, substance abuse treatment programs, and substance abuse prevention and education programs. The report shall include an assessment of needs with respect to programs related to substance abuse treatment and narcotics enforcement.

- c. Submit an advisory budget recommenda-

tion to the governor and general assembly concerning enforcement programs, treatment programs, and education programs related to drugs within the various departments. The coordinator shall work with these departments in developing the departmental budget requests to be submitted to the legislative services agency and the general assembly.

2003 Acts, ch 35, §45, 49  
Confirmation, see §2.32  
Terminology change applied

## CHAPTER 84A

### DEPARTMENT OF WORKFORCE DEVELOPMENT

Study to be conducted by September 1, 2004, and report issued by November 1, 2004, on the impact of transferring all state agency information technology employees to the department of administrative services and the impact of merging the data centers of the department of administrative services, the state department of transportation, and the department of workforce development into one data center; 2003 Acts, ch 145, §290

#### **84A.5 Department of workforce development — primary responsibilities.**

The department of workforce development, in consultation with the workforce development board and the regional advisory boards, has the primary responsibilities set out in this section.

1. The department of workforce development shall develop and implement a workforce development system which increases the skills of the Iowa workforce, fosters economic growth and the creation of new high skill and high wage jobs through job placement and training services, increases the competitiveness of Iowa businesses by promoting high performance workplaces, and encourages investment in workers.

The workforce development system shall strive to provide high quality services to its customers including workers, families, and businesses. The department of workforce development shall maintain a common intake, assessment, and customer tracking system and to the extent practical provide one-stop services to customers at workforce development centers and other service access points.

The system shall include an accountability system to measure program performance, identify accomplishments, and evaluate programs to ensure goals and standards are met. The accountability system shall use information obtained from the customer tracking system, the department of economic development, the department of education, and training providers to evaluate the effectiveness of programs. The department of economic development, the department of education, and training providers shall report information concerning the use of any state or federal training or retraining funds to the department of workforce development in a form as required by the department of workforce development. The accountabil-

ity system shall evaluate all of the following:

- a. The impact of services on wages earned by individuals.
- b. The effectiveness of training services providers in raising the skills of the Iowa workforce.
- c. The impact of placement and training services on Iowa's families, communities, and economy.

The department of workforce development shall make information from the customer tracking and accountability system available to the department of economic development, the department of education, and other appropriate public agencies for the purpose of assisting with the evaluation of programs administered by those departments and agencies and for planning and researching public policies relating to education and economic development.

2. The department of workforce development is responsible for administration of unemployment compensation benefits and collection of employer contributions under chapter 96, providing for the delivery of free public employment services established pursuant to chapter 96, other job placement and training programs established pursuant to section 84A.6, and the delivery of services located throughout the state.

3. The division of labor services is responsible for the administration of the laws of this state under chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 92, and 94A, and sections 30.7 and 85.68. The executive head of the division is the labor commissioner, appointed pursuant to section 91.2.

4. The division of workers' compensation is responsible for the administration of the laws of this state relating to workers' compensation under chapters 85, 85A, 85B, 86, and 87. The executive head of the division is the workers' compensation

commissioner, appointed pursuant to section 86.1.

5. The director of the department of workforce development shall form a coordinating committee composed of the director of the department of workforce development, the labor commissioner, the workers' compensation commissioner, and other administrators. The committee shall monitor federal compliance issues relating to coordination of functions among the divisions.

6. The department of workforce development shall administer the following programs:

a. The Iowa conservation corps established under section 84A.7.

b. The workforce investment program established under section 84A.8.

c. The statewide mentoring program established under section 84A.9.

d. The workforce development centers established under chapter 84B.

7. The department of workforce development shall work with the department of economic development to incorporate workforce development as a component of community-based economic development.

8. The department of workforce development, in consultation with the applicable regional advisory board, shall select service providers, subject to approval by the workforce development board for each service delivery area. A service provider in each service delivery area shall be identified to coordinate the services throughout the service delivery area. The department of workforce development shall select service providers that, to the extent possible, meet or have the ability to meet the following criteria:

a. The capacity to deliver services uniformly throughout the service delivery area.

b. The experience to provide workforce development services.

c. The capacity to cooperate with other public and private agencies and entities in the delivery of education, workforce training, retraining, and workforce development services throughout the service delivery area.

d. The demonstrated capacity to understand and comply with all applicable state and federal laws, rules, ordinances, regulations, and orders, including fiscal requirements.

9. The department of workforce development shall provide access to information and documents necessary for employers and payors of income, as defined in sections 252D.16 and 252G.1, to comply with child support reporting and payment requirements. Access to the information and documents shall be provided at the central location of the department of workforce development and at each workforce development center.

10. The director of the department of workforce development may adopt rules pursuant to chapter 17A to charge and collect fees for enhanced or value-added services provided by the

department of workforce development which are not required by law to be provided by the department and are not generally available from the department of workforce development. Fees shall not be charged to provide a free public labor exchange. Fees established by the director of the department of workforce development shall be based upon the costs of administering the service, with due regard to the anticipated time spent, and travel costs incurred, by personnel performing the service. The collection of fees authorized by this subsection shall be treated as repayment receipts as defined in section 8.2.

Immigration service centers, pilot program continuation; 2003 Acts, ch 176, §15

Section not amended; footnote revised

#### **84A.7 Iowa conservation corps.**

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "*Account*" means the Iowa conservation corps account.

b. "*Corps*" means the Iowa conservation corps.

2. *Iowa conservation corps established.* The Iowa conservation corps is established in this state to provide meaningful and productive public service jobs for youth, unemployed persons, persons with disabilities, disadvantaged persons, and elderly persons, and to provide participants with an opportunity to explore careers, gain work experience, and contribute to the general welfare of their communities and the state. The corps shall provide opportunities in the areas of natural resource and wildlife conservation, park maintenance and restoration, land management, energy savings, community improvement projects, tourism, economic development, and work benefiting human services programs. The department of workforce development shall administer the corps and shall adopt rules governing its operation, eligibility for participation, cash contributions, and implementation of an incentive program.

3. *Funding.* Corps projects shall be funded by appropriations to the Iowa conservation corps account and by cash, services, and material contributions made by other state agencies or local public and private agencies. Public and private entities who benefit from a corps project shall contribute at least thirty-five percent of the total project budget. The contributions may be in the form of cash, materials, or services. Materials and services shall be intended for the project and acceptable to the department of workforce development. Minimum levels of contributions shall be prescribed in rules adopted by the department of workforce development.

4. *Account created.* The Iowa conservation corps account is established within and administered by the department of workforce development. The account shall include all appropriations made to programs administered by the corps, and may also include moneys contributed by a pri-

vate individual or organization, or a public entity for the purpose of implementing corps programs and projects. The department of workforce development may establish an escrow account within the department and obligate moneys within that escrow account for tuition payments to be made beyond the term of any fiscal year. Interest earned on moneys in the Iowa conservation corps account shall be credited to the account.

5. *Participant eligibility.* Notwithstanding any contrary provision of chapter 8A, subchapter IV, and chapter 96, a person employed through an Iowa conservation corps program shall be exempt from merit system requirements and shall not be eligible to receive unemployment compensation benefits.

2003 Acts, ch 145, §157  
Subsection 5 amended

## CHAPTER 85

### WORKERS' COMPENSATION

#### 85.28 Burial expense.

When death ensues from the injury, the employer shall pay the reasonable expenses of burial of such employee, not to exceed seven thousand five hundred dollars, which shall be in addition to other compensation or any other benefit provided for in this chapter.

2003 Acts, ch 140, §1  
Section amended

#### 85.48 Partial commutation.

When partial commutation is ordered, the workers' compensation commissioner shall fix the lump sum to be paid at an amount which will equal the future payments for the period commuted, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. Provisions shall be made for the payment of weekly compensation not included in the commutation with all remaining payments to be paid over the same period of time as though the commutation had not been made by either eliminating weekly payments from the first or last part of the payment period or by a pro rata reduction in the weekly benefit amount over the entire payment period.

2003 Acts, ch 140, §2  
Section amended

#### 85.65A Payments to second injury fund — surcharge on employers.

1. For purposes of this section, unless the context otherwise requires:

a. *"Insured employers"* means employers who are commercially insured for purposes of workers' compensation coverage or who have been self-insured for less than twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

b. *"Self-insured employers"* means employers who have been self-insured for purposes of workers' compensation coverage for at least twenty-four months as of the first day of the fiscal year in which a surcharge is imposed pursuant to this section.

2. Prior to each fiscal year commencing on or

after July 1, 1999, the commissioner of insurance shall conduct an examination of the outstanding liabilities of the second injury fund and shall make a determination as to whether sufficient funds will be available in the second injury fund to pay the liabilities of the fund for each of the next two fiscal years. If the commissioner of insurance determines sufficient funds will be available, the commissioner shall not impose a surcharge on employers during the next succeeding fiscal year. If the commissioner determines sufficient funds will not be available, the commissioner shall impose by rule, pursuant to chapter 17A, a surcharge on employers during the next succeeding fiscal year for payment to the treasurer of state for the second injury fund pursuant to the requirements of this section.

3. If the commissioner of insurance determines that a surcharge on employers shall be imposed during any applicable fiscal year, the surcharge imposed shall comply with and be subject to all of the following requirements:

a. The surcharge shall apply to all workers' compensation insurance policies and self-insurance coverages of employers approved for self-insurance by the commissioner of insurance pursuant to section 87.4 or 87.11, and to the state of Iowa, its departments, divisions, agencies, commissions, and boards, or any political subdivision coverages whether insured or self-insured. The surcharge shall not apply to any reinsurance or retrocessional transaction under section 520.4 or 520.9.

b. In determining the surcharge for any applicable fiscal year, the commissioner of insurance shall provide that all insured and self-insured employers be assessed, in total, an amount the commissioner determines is sufficient, together with the moneys in the second injury fund, to meet the outstanding liabilities of the second injury fund.

c. The total assessment amount used in calculating the surcharge shall be allocated between self-insured employers and insured employers based on paid losses for the preceding calendar year. The portion of the total aggregate assess-

ment that shall be collected from self-insured employers shall be equal to that proportion of total paid losses during the preceding calendar year, which the total compensation payments of all self-insured employers bore to the total compensation payments made by all self-insured employers and insurers on behalf of all insured employers during the preceding calendar year. The portion of the total aggregate assessment that is not to be collected from self-insured employers shall be collected from insured employers.

d. The method of assessing self-insured employers a surcharge shall be based on paid losses. The method of assessing insured employers a surcharge shall be by insurers collecting assessments from insured employers through a surcharge based on premium.

e. Assessments collected through imposition of a surcharge pursuant to this section shall not constitute an element of loss for the purpose of establishing rates for workers' compensation insur-

ance but shall for the purpose of collection be treated as separate costs by insurers. The surcharge is collectible by an insurer and nonpayment of the surcharge shall be treated as nonpayment of premium and the insurer shall retain all cancellation rights inuring to it for nonpayment of premium. An insurance carrier, its agent, or a third-party administrator shall not be entitled to any portion of the surcharge as a fee or commission for its collection. The surcharge is not subject to any taxes, licenses, or fees. The surcharge is not deemed to be an assessment or tax, but shall be deemed an additional benefit paid for injuries compensable under this division.

4. The commissioner of insurance shall adopt rules, pursuant to chapter 17A, concerning the requirements of this section.

5. This section is repealed July 1, 2008.

2003 Acts, ch 140, §3, 6  
Subsection 5 amended

## CHAPTER 86

### DIVISION OF WORKERS' COMPENSATION

#### **86.2 Appointment of deputies and assistants.**

The commissioner may appoint:

1. Chief deputy workers' compensation commissioners for whose acts the commissioner is responsible, who are exempt from the merit system provisions of chapter 8A, subchapter IV, and who shall serve at the pleasure of the commissioner.

2. Deputy workers' compensation commissioners for whose acts the commissioner is responsible and who shall serve at the pleasure of the commissioner.

All chief deputies and deputies must be lawyers admitted to practice in this state.

The commissioner may appoint one or more chief deputy workers' compensation commissioners and one or more assistant workers' compensation commissioners. A chief deputy workers' compensation commissioner or an assistant workers' compensation commissioner shall perform such additional administrative responsibilities as are deemed reasonably necessary and assigned by the commissioner.

2003 Acts, ch 145, §158  
Subsection 1 amended

#### **86.12 Failure to report.**

The workers' compensation commissioner may require any employer to supply the information required by section 86.10 or to file a report required by section 86.11 or 86.13 or by agency rule, by written demand sent to the employer's last known address. Upon failure to supply such information or file such report within thirty days, the

employer may be ordered to appear and show cause why the employer should not be subject to assessment of one thousand dollars for each occurrence. Upon such hearing, the workers' compensation commissioner shall enter a finding of fact and may enter an order requiring such assessment to be paid into the second injury fund created by sections 85.63 to 85.69. In the event the assessment is not voluntarily paid within thirty days, the workers' compensation commissioner may file a certified copy of such finding and order with the clerk of the court for the district in which the employer maintains a place of business. If the employer maintains no place of business in this state, service shall be made as provided in chapter 85 for nonresident employers. In such case the finding and order may be filed in any court of competent jurisdiction within this state.

The workers' compensation commissioner may thereafter petition the court for entry of judgment upon such order, serving notice of such petition on the employer and any other person in default. If the court finds the order valid, the court shall enter judgment against the person or persons in default for the amount due under the order. No fees shall be required for the filing of the order or for the petition for judgment, or for the entry of judgment or for any enforcement procedure thereupon. No supersedeas shall be granted by any court to a judgment entered under this section.

When a report is required under section 86.11 or 86.13 or by agency rule, and the employer's insurance carrier possesses the information necessary

to file the report, the insurance carrier shall be responsible for filing the report in the same manner and to the same extent as an employer under this section.

2003 Acts, 1st Ex, ch 1, §122, 124, 133  
2003 amendments to this section apply to injuries occurring on or after July 1, 2003; 2003 Acts, 1st Ex, ch 1, §124  
Section amended

### **86.13A Compliance monitoring and enforcement.**

The workers' compensation commissioner shall monitor the rate of compliance of each employer and each insurer with the requirement to commence benefit payments within the time specified in section 85.30. The commissioner shall determine the percentage of reported injuries where the statutory standard was met and the average number of days that commencement of voluntary benefits was delayed for each employer and each insurer individually, and for all employers and all insurers as separate groups.

If during any fiscal year commencing after June 30, 2005, the general business practices of an employer or insurer result in the delay of the commencement of voluntary weekly compensation payments after the date specified in section 85.30 more frequently and for a longer number of days than the average number of days for the entire group of employers or insurers, the commissioner may impose an assessment on the employer or insurer payable to the second injury fund created in section 85.66. The amount of the assessment shall be ten dollars, multiplied by the average number of days that weekly compensation payments were delayed after the date specified in section 85.30, and multiplied by the number of injuries the employer or insurer reported during the fiscal year. Notwithstanding the foregoing, an assessment shall not be imposed if the employer or insurer commenced voluntary weekly compensation benefits within the time specified in section 85.30 for more than seventy-five percent of the injuries reported by the employer or insurer.

The commissioner may waive or reduce an assessment under this section if an employer or insurer demonstrates to the commissioner that atypical events during the fiscal year, including but not limited to a small number of cases, made

the statistical data for that employer or insurer unrepresentative of the actual payout practices of the employer or insurer for that year.

2003 Acts, 1st Ex, ch 1, §123, 124, 133  
Section applies to injuries occurring on or after July 1, 2003; 2003 Acts, 1st Ex, ch 1, §124  
NEW section

### **86.42 Judgment by district court on award.**

Any party in interest may present a file-stamped copy of an order or decision of the commissioner, from which a timely petition for judicial review has not been filed or if judicial review has been filed, which has not had execution or enforcement stayed as provided in section 17A.19, subsection 5, or an order or decision of a deputy commissioner from which a timely appeal has not been taken within the agency and which has become final by the passage of time as provided by rule and section 17A.15, or an agreement for settlement approved by the commissioner, and all papers in connection therewith, to the district court where judicial review of the agency action may be commenced. The court shall render a decree or judgment and cause the clerk to notify the parties. The decree or judgment, in the absence of a petition for judicial review or if judicial review has been commenced, in the absence of a stay of execution or enforcement of the decision or order of the workers' compensation commissioner, or in the absence of an act of any party which prevents a decision of a deputy workers' compensation commissioner from becoming final, has the same effect and in all proceedings in relation thereto is the same as though rendered in a suit duly heard and determined by the court.

2003 Acts, ch 140, §4  
Section amended

### **86.43 Judgment — modification.**

Upon the presentation to the court of a file-stamped copy of a decision of the workers' compensation commissioner, ending, diminishing, or increasing the compensation under the provisions of this chapter, the court shall revoke or modify the decree or judgment to conform to such decision.

2003 Acts, ch 140, §5  
Section amended

## **CHAPTER 88**

### **OCCUPATIONAL SAFETY AND HEALTH**

#### **88.2 Administration — personnel — contracts — grants.**

1. The labor commissioner, appointed pursuant to section 91.2, and the division of labor services of the department of workforce development created in section 84A.1 shall administer this

chapter.

2. The necessary legal authority and qualified personnel shall be provided for the administration and enforcement of this chapter and such standards adopted pursuant to this chapter.

3. Personnel administering the chapter shall

be employed pursuant to chapter 8A, subchapter IV.

4. Subject to the approval of the director of the department of workforce development, the labor commissioner may enter into contracts with any state agency, with or without reimbursement, for the purpose of obtaining the services, facilities, and personnel of the agency, and with the consent of any state agency or any political subdivision of the state, accept and use the services, facilities, and personnel of the agency or political subdivision, and employ experts and consultants or organizations, in order to expeditiously, efficiently, and

economically effectuate the purposes of this chapter. The agreements under this subsection are subject to approval of the executive council if approval is required by law.

5. The commissioner, the governor, and the director of management may obtain and accept federal grants to the state to be used in connection with the funds appropriated for the administration of this chapter and federal funds available to the division.

2003 Acts, ch 145, §159  
Subsection 3 amended

## CHAPTER 88A

### SAFETY INSPECTION OF AMUSEMENT RIDES

#### 88A.6 Personnel.

The commissioner may employ inspectors and any other personnel deemed necessary to carry out the provisions of this chapter, subject to the

provisions of chapter 8A, subchapter IV.

2003 Acts, ch 145, §160  
Section amended

## CHAPTER 89

### BOILERS AND UNFIRED STEAM PRESSURE VESSELS

#### 89.1 Authority.

The labor commissioner shall enforce the provisions of this chapter and may employ qualified personnel under the provisions of chapter 8A, subchapter IV, to administer the provisions of this chapter.

The provisions of this chapter shall apply to all boilers and unfired steam pressure vessels in this state, except as otherwise provided in this chapter.

2003 Acts, ch 145, §161  
Unnumbered paragraph 1 amended

## CHAPTER 89A

### ELEVATORS

#### 89A.4 Commissioner's duties and personnel.

The commissioner shall enforce the provisions of this chapter. The commissioner shall employ

personnel for the administration of this chapter pursuant to chapter 8A, subchapter IV.

2003 Acts, ch 145, §162  
Section amended

## CHAPTER 91

### LABOR SERVICES DIVISION

**91.14 Reports and records preserved — when destroyed.** Repealed by 90 Acts, ch 1136, § 16. See chapter 305.

Repeal entry revised

## CHAPTER 91A

### WAGE PAYMENT COLLECTION

#### 91A.9 General powers and duties of the commissioner.

1. The commissioner shall administer and enforce the provisions of this chapter. The commissioner may hold hearings and investigate charges of violations of this chapter.

2. The commissioner may, consistent with due process of law, enter any place of employment to inspect records concerning wages and payrolls, to question the employer and employees, and to investigate such facts, conditions or matters as are deemed appropriate in determining whether any

person has violated the provisions of this chapter. However, such entry by the commissioner shall only be in response to a written complaint.

3. The commissioner may employ such qualified personnel as are necessary for the enforcement of this chapter. Such personnel shall be employed pursuant to chapter 8A, subchapter IV.

4. The commissioner shall promulgate, pursuant to chapter 17A, any rules necessary to carry out the provisions of this chapter.

2003 Acts, ch 145, §163  
Subsection 3 amended

## CHAPTER 91C

### CONSTRUCTION CONTRACTORS

#### 91C.7 Contracts — contractor's bond.

1. A contractor who is not registered with the labor commissioner as required by this chapter shall not be awarded a contract to perform work for the state or an agency of the state.

2. An out-of-state contractor, before commencing a contract in excess of five thousand dollars in value in Iowa, shall file a bond with the division of labor services of the department of workforce development. The surety bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until canceled by the surety with not less than thirty days' written notice to the contractor and to the division of labor services of the department of workforce development indicating the surety's desire to cancel the bond. The surety company shall not be liable under the bond for any contract commenced after the cancellation of the bond. The bond shall be in the sum of the greater of the following:

- a. One thousand dollars.
- b. Five percent of the contract price.

An out-of-state contractor may file a blanket bond in an amount at least equal to fifty thousand dollars for the registration period established under section 91C.4 in lieu of filing an individual bond for each contract. The division of labor services of the department of workforce development may increase the bond amount after a hearing.

3. Release of the bond shall be conditioned upon the payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and related fees, which may accrue to the state of Iowa. If at any time during the term of the bond, the department of revenue or the department of workforce

development determines that the amount of the bond is not sufficient to cover the tax liabilities accruing to the state of Iowa, the labor commissioner shall require the bond to be increased by an amount the labor commissioner deems sufficient to cover the tax liabilities accrued and accruing.

4. The department of revenue and the department of workforce development shall adopt rules for the collection of the forfeiture. Notice shall be provided to the surety and to the contractor. Notice to the contractor shall be mailed to the contractor's last known address and to the contractor's registered agent for service of process, if any, within the state. The contractor or surety shall have the opportunity to apply to the director of revenue for a hearing within thirty days after the giving of such notice. Upon the failure to timely request a hearing, the bond shall be forfeited. If, after the hearing upon timely request, the department of revenue or the department of workforce development finds that the contractor has failed to pay the total of all taxes payable, the department of revenue or the department of workforce development shall order the bond forfeited. The amount of the forfeiture shall be the amount of taxes payable or the amount of the bond, whichever is less. For purposes of this section "taxes payable" means all tax, penalties, interest, and fees that the department of revenue has previously determined to be due to the state by assessment or in an appeal of an assessment, including contributions to the unemployment compensation insurance system.

5. If it is determined that this section may cause denial of federal funds which would otherwise be available, or is otherwise inconsistent with requirements of federal law, this section shall

be suspended, but only to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

6. The bond required by this section may be attached by the commissioner for collection of fees and penalties due to the division.

2003 Acts, ch 145, §286  
Terminology change applied

#### **91C.8 Investigations — enforcement — administrative penalties.**

1. The labor commissioner and inspectors of the division of labor services of the department of workforce development have jurisdiction for investigation and enforcement in cases where contractors may be in violation of the requirements of this chapter or rules adopted pursuant to this chapter.

2. If, upon investigation, the labor commissioner or the commissioner's authorized representative believes that a contractor has violated any of the following, the commissioner shall with reasonable promptness issue a citation to the contractor:

a. The requirement that a contractor be registered.

b. The requirement that the contractor's registration information be substantially complete and accurate.

c. The requirement that an out-of-state contractor file a bond with the division of labor services.

3. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the statute alleged to have been violated.

4. If a citation is issued, the commissioner shall, within seven days, notify the contractor by service in the same manner as an original notice or by certified mail of the administrative penalty, if any, proposed to be assessed and that the contractor has fifteen working days within which to notify the commissioner that the contractor wishes to contest the citation or proposed assessment of penalty.

5. The administrative penalties which may be imposed under this section shall be not more than

five hundred dollars in the case of a first violation and not more than five thousand dollars for each violation in the case of a second or subsequent violation. All administrative penalties collected pursuant to this chapter shall be deposited in the general fund of the state.

6. If, within fifteen working days from the receipt of the notice, the contractor fails to notify the commissioner that the contractor intends to contest the citation or proposed assessment of penalty, the citation and the assessment, as proposed, shall be deemed a final order of the employment appeal board and not subject to review by any court or agency.

7. If the contractor notifies the commissioner that the contractor intends to contest the citation or proposed assessment of penalty, the commissioner shall immediately advise the employment appeal board established by section 10A.601. The employment appeal board shall review the action of the commissioner and shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the commissioner's citation or proposed penalty or directing other appropriate relief, and the order shall become final sixty days after its issuance.

8. The labor commissioner shall notify the department of revenue upon final agency action regarding the citation and assessment of penalty against a registered contractor.

9. Judicial review of any order of the employment appeal board issued pursuant to this section may be sought in accordance with the terms of chapter 17A. If no petition for judicial review is filed within sixty days after service of the order of the employment appeal board, the appeal board's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the commissioner after the expiration of the sixty-day period. In any such case, the clerk of court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of the decree to the employment appeal board and the contractor named in the petition.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 96

### EMPLOYMENT SECURITY — UNEMPLOYMENT COMPENSATION

#### **96.3 Payment — determination — duration — child support intercept.**

1. *Payment.* Twenty-four months after the date when contributions first accrue under this chapter, benefits shall become payable from the fund; provided, that wages earned for services defined in section 96.19, subsection 18, paragraph "g" (3), irrespective of when performed, shall not

be included for purposes of determining eligibility, under section 96.4 or full-time weekly wages, under subsection 4 of this section, for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable under subsection 5 of this section on the basis of such wages. All benefits shall be paid

through employment offices in accordance with such regulations as the department of workforce development may prescribe.

2. *Total unemployment.* Each eligible individual who is totally unemployed in any week shall be paid with respect to such week benefits in an amount which shall be equal to the individual's weekly benefit amount.

3. *Partial unemployment.* An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

4. *Determination of benefits.* With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage:
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "dependent" means dependent as defined in section 422.12, subsection 1, paragraph "c", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "Nonworking spouse" means a spouse who does not earn more

than one hundred twenty dollars in gross wages in one week.

5. *Duration of benefits.* The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The director shall maintain a separate account for each individual who earns wages in insured work. The director shall compute wage credits for each individual by crediting the individual's account with one-third of the wages for insured work paid to the individual during the individual's base period. However, the director shall recompute wage credits for an individual who is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off indicator" is in effect and if the individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

6. *Part-time workers.*

a. As used in this subsection the term "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

b. The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits.

7. *Recovery of overpayment of benefits.* If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by

having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

8. *Back pay.* If an individual receives benefits for a period of unemployment and subsequently receives a payment for the same period from the individual's employer in the form of or in lieu of back pay, the benefits shall be recovered. The department, in its discretion, may reach an agreement with the individual and the employer to allow the employer to deduct the amount of the benefits from the back pay and remit a sum equal to that amount to the unemployment compensation fund and the balance to the individual, or may recover the amount of the benefits either by having a sum equal to that amount deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to that amount. If an agreement is reached to allow the employer to deduct the amount of benefits from the back pay and remit that amount to the fund, the department shall not charge that amount to the employer's account under section 96.7.

9. *Child support intercept.*

a. An individual filing a claim for benefits under section 96.6, subsection 1 shall, at the time of filing, disclose whether the individual owes a child support obligation which is being enforced by the child support recovery unit established in section 252B.2. If an individual discloses that such a child support obligation is owed and the individual is determined to be eligible for benefits under this chapter, the department shall notify the child support recovery unit of the individual's disclosure and deduct and withhold from benefits payable to the individual the amount specified by the individual.

b. However, if the child support recovery unit and an individual owing a child support obligation reach an agreement to have specified amounts deducted and withheld from the individual's benefits and the child support recovery unit submits a copy of the agreement to the department, the department shall deduct and withhold the specified amounts.

c. However, if the department is notified of income withholding by the child support recovery unit under chapter 252D or section 598.22 or 598.23 or if income is garnished by the child support recovery unit under chapter 642 and an individual's benefits are condemned to the satisfaction of the child support obligation being enforced by the child support recovery unit, the department

shall deduct and withhold from the individual's benefits that amount required through legal process.

Notwithstanding section 642.2, subsections 2, 3, 6, and 7, which restrict garnishments under chapter 642 to wages of public employees, the department may be garnished under chapter 642 by the child support recovery unit established in section 252B.2, pursuant to a judgment for child support against an individual eligible for benefits under this chapter.

Notwithstanding section 96.15, benefits under this chapter are not exempt from income withholding, garnishment, attachment, or execution if withheld for or garnished by the child support recovery unit, established in section 252B.2, or if an income withholding order or notice of the income withholding order under section 598.22 or 598.23 is being enforced by the child support recovery unit to satisfy the child support obligation of an individual who is eligible for benefits under this chapter.

d. An amount deducted and withheld under paragraph "a", "b", or "c" shall be paid by the department to the child support recovery unit, and shall be treated as if it were paid to the individual as benefits under this chapter and as if it were paid by the individual to the child support recovery unit in satisfaction of the individual's child support obligations.

e. If an agreement for reimbursement has been made, the department shall be reimbursed by the child support recovery unit for the administrative costs incurred by the department under this section which are attributable to the enforcement of child support obligations by the child support recovery unit.

10. *Voluntary income tax withholding.* All payments of benefits made after December 31, 1996, are subject to the following:

a. An individual filing a new application for benefits shall, at the time of filing the application, be advised of the following:

(1) Benefits paid under this chapter are subject to federal and state income tax.

(2) Legal requirements exist pertaining to estimated tax payments.

(3) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified in the Internal Revenue Code as defined in section 422.3.

(4) The individual may elect to have Iowa state income tax deducted and withheld from the individual's payment of benefits at the rate of five percent.

(5) The individual shall be permitted to change the individual's previously elected withholding status.

b. Amounts deducted and withheld from benefits shall remain in the unemployment compensation fund until transferred to the appropriate tax-

ing authority as a payment of income tax.

c. The director shall follow all procedures specified by the United States department of labor, the federal internal revenue service, and the department of revenue pertaining to the deducting and withholding of income tax.

d. Amounts shall be deducted and withheld under this subsection only after amounts are deducted and withheld for any overpayment of benefits, child support obligations, and any other amounts authorized to be deducted and withheld under federal or state law.

11. *Overissuance of food stamp benefits.* The department shall collect any overissuance of food stamp benefits by offsetting the amount of the overissuance from the benefits payable under this chapter to the individual. This subsection shall only apply if the department is reimbursed under an agreement with the department of human services for administrative costs incurred in recouping the overissuance. The provisions of section 96.15 do not apply to this subsection.

2003 Acts, ch 145, §286  
Terminology change applied

### **96.7 Employer contributions and reimbursements.**

1. *Payment.* Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. *Contribution rates based on benefit experience.*

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work

with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The account of an employer shall not be charged with benefits paid to an individual for unemployment that is directly caused by a major natural disaster declared by the president of the United States, pursuant to the federal Disaster Relief Act of 1974, if the individual would have been eligible for federal disaster unemployment assistance benefits with respect to that unemployment but for the individual's receipt of regular benefits.

(3) The amount of regular benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based on employment with the employer during that quarter. The amount of extended benefits charged against the account of an employer for a calendar quarter of the base period shall not exceed an additional fifty percent of the amount of the individual's wage credits based on employment with the employer during that quarter. However, the amount of extended benefits charged against the account of a governmental entity which is either a reimbursable or contributory employer, for a calendar quarter of the base period shall not exceed an additional one hundred percent of the amount of the individual's wage credits based on employment with the governmental entity during that quarter.

(4) The department shall adopt rules prescribing the manner in which benefits shall be charged against the accounts of several employers for which an individual performed employment during the same calendar quarter.

(5) This chapter shall not be construed to grant an employer or an individual in the employer's service, prior claim or right to the amount paid by the employer into the unemployment compensation fund either on the employer's own behalf or on behalf of the individual.

(6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been

notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

b. If an enterprise or business, or a clearly segregable and identifiable part of an enterprise or business, for which contributions have been paid is sold or transferred to a subsequent employing unit, or if one or more employing units have been reorganized or merged into a single employing unit, and the successor employer, having qualified as an employer as defined in section 96.19, subsection 16, paragraph "b", continues to operate the enterprise or business, the successor employer shall assume the position of the predecessor employer or employers with respect to the predecessors' payrolls, contributions, accounts, and contribution rates to the same extent as if no change had taken place in the ownership or control of the enterprise or business. However, the successor employer shall not assume the position of the predecessor employer or employers with respect to the predecessor employer's or employers' payrolls, contributions, accounts, and contribution rates which are attributable to that part of the enterprise or business transferred, unless the successor employer applies to the department within ninety days from the date of the partial transfer, and the succession is approved by the predecessor employer or employers and the department.

The predecessor employer, prior to entering into a contract with a successor employer relating to the sale or transfer of the enterprise or business, or a clearly segregable and identifiable part of the enterprise or business, shall disclose to the successor employer the predecessor employer's record of charges of benefits payments and any layoffs or incidences since the last record that would affect the experience record. A predecessor employer who fails to disclose or willfully discloses incorrect information to a successor employer regarding the predecessor employer's record of charges of benefits payments is liable to the successor employer for any actual damages and attorney fees incurred by the successor employer as a result of the predecessor employer's failure to disclose or disclosure of incorrect information. The department shall include notice of the requirement of disclosure in the department's quarterly notification given to each employer pursuant to paragraph "a", subparagraph (6).

The contribution rate to be assigned to the successor employer for the period beginning not earlier than the date of the succession and ending not later than the beginning of the next following rate year, shall be the contribution rate of the predecessor employer with respect to the period immediately preceding the date of the succession, pro-

vided the successor employer was not, prior to the succession, a subject employer, and only one predecessor employer, or only predecessor employers with identical rates, are involved. If the predecessor employers' rates are not identical and the successor employer is not a subject employer prior to the succession, the department shall assign the successor employer a rate for the remainder of the rate year by combining the experience of the predecessor employers. If the successor employer is a subject employer prior to the succession, the successor employer may elect to retain the employer's own rate for the remainder of the rate year, or the successor employer may apply to the department to have the employer's rate redetermined by combining the employer's experience with the experience of the predecessor employer or employers. However, if the successor employer is a subject employer prior to the succession and has had a partial transfer of the experience of the predecessor employer or employers approved, then the department shall recompute the successor employer's rate for the remainder of the rate year.

c. (1) A nonconstruction contributory employer newly subject to this chapter shall pay contributions at the rate specified in the twelfth benefit ratio rank but not less than one percent until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters immediately preceding the computation date.

(2) A construction contributory employer, as defined under rules adopted by the department, which is newly subject to this chapter shall pay contributions at the rate specified in the twenty-first benefit ratio rank until the end of the calendar year in which the employer's account has been chargeable with benefits for twelve consecutive calendar quarters.

(3) Thereafter, the employer's contribution rate shall be determined in accordance with paragraph "d", except that the employer's average annual taxable payroll and benefit ratio may be computed, as determined by the department, for less than five periods of four consecutive calendar quarters immediately preceding the computation date.

d. The department shall determine the contribution rate table to be in effect for the rate year following the computation date, by determining the ratio of the current reserve fund ratio to the highest benefit cost ratio on the computation date. On or before the fifth day of September the department shall make available to employers the contribution rate table to be in effect for the next rate year.

(1) The current reserve fund ratio is computed by dividing the total funds available for payment of benefits, on the computation date, by the total wages paid in covered employment excluding reimbursable employment wages during the first four calendar quarters of the five calendar quarters immediately preceding the computation date.

(2) The highest benefit cost ratio is the highest of the resulting ratios computed by dividing the total benefits paid, excluding reimbursable benefits paid, during each consecutive twelve-month period, during the ten-year period ending on the computation date, by the total wages, excluding reimbursable employment wages, paid in the four calendar quarters ending nearest and prior to the last day of such twelve-month period; however, the highest benefit cost ratio shall not be less than .02.

If the current reserve fund ratio, divided by the highest benefit cost ratio:

Equals or exceeds	But is less than	The contribution rate table in effect shall be
—	0.3	1
0.3	0.5	2
0.5	0.7	3
0.7	0.85	4
0.85	1.0	5
1.0	1.15	6
1.15	1.30	7
1.30	—	8

“Benefit ratio” means a number computed to six decimal places on July 1 of each year obtained by

dividing the average of all benefits charged to an employer during the five periods of four consecutive calendar quarters immediately preceding the computation date by the employer’s average annual taxable payroll.

Each employer qualified for an experience rating shall be assigned a contribution rate for each rate year that corresponds to the employer’s benefit ratio rank in the contribution rate table effective for the rate year from the following contribution rate tables. Each employer’s benefit ratio rank shall be computed by listing all the employers by increasing benefit ratios, from the lowest benefit ratio to the highest benefit ratio and grouping the employers so listed into twenty-one separate ranks containing as nearly as possible four and seventy-six hundredths percent of the total taxable wages, excluding reimbursable employment wages, paid in covered employment during the four completed calendar quarters immediately preceding the computation date. If an employer’s taxable wages qualify the employer for two separate benefit ratio ranks the employer shall be afforded the benefit ratio rank assigned the lower contribution rate. Employers with identical benefit ratios shall be assigned to the same benefit ratio rank.

Benefit Ratio Rank	Approximate Cumulative Taxable Payroll Limit	Contribution Rate Tables							
		1	2	3	4	5	6	7	8
1	4.8%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2	9.5%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3	14.3%	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0
4	19.0%	0.4	0.3	0.3	0.2	0.1	0.1	0.1	0.1
5	23.8%	0.6	0.5	0.4	0.3	0.3	0.2	0.1	0.1
6	28.6%	0.9	0.8	0.6	0.5	0.4	0.3	0.2	0.1
7	33.3%	1.2	1.0	0.8	0.6	0.5	0.4	0.3	0.2
8	38.1%	1.5	1.3	1.0	0.8	0.6	0.5	0.3	0.2
9	42.8%	1.9	1.5	1.2	0.9	0.7	0.6	0.4	0.3
10	47.6%	2.1	1.8	1.4	1.1	0.8	0.6	0.5	0.3
11	52.4%	2.5	2.0	1.6	1.3	1.0	0.7	0.5	0.3
12	57.1%	3.0	2.4	1.9	1.5	1.1	0.9	0.6	0.4
13	61.9%	3.6	2.9	2.4	1.8	1.4	1.1	0.8	0.5
14	66.6%	4.4	3.6	2.9	2.2	1.7	1.3	1.0	0.6
15	71.4%	5.3	4.3	3.5	2.7	2.0	1.6	1.1	0.7
16	76.2%	6.3	5.2	4.1	3.2	2.4	1.9	1.4	0.9
17	80.9%	7.0	6.4	5.2	4.0	3.0	2.3	1.7	1.1
18	85.7%	7.5	7.5	7.0	5.4	4.1	3.1	2.3	1.5
19	90.4%	8.0	8.0	8.0	7.3	5.6	4.2	3.1	2.0
20	95.2%	8.5	8.5	8.5	8.0	7.6	5.8	4.3	2.8
21	100.0%	9.0	9.0	9.0	9.0	8.5	8.0	7.5	7.0

e. The department shall fix the contribution rate for each employer and notify the employer of the rate by regular mail to the last known address

of the employer. An employer may appeal to the department for a revision of the contribution rate within thirty days from the date of the notice to the

employer. After providing an opportunity for a hearing, the department may affirm, set aside, or modify its former determination and may grant the employer a new contribution rate. The department shall notify the employer of its decision by regular mail. Judicial review of action of the department may be sought pursuant to chapter 17A.

If an employer's account has been charged with benefits as the result of a decision allowing benefits and the decision is reversed, the employer may appeal, within thirty days from the date of the next contribution rate notice, for a recomputation of the rate. If contributions become due at a disputed contribution rate prior to the employer receiving a decision reversing benefits, the employer shall pay the contributions at the disputed rate but shall be eligible for a refund pursuant to section 96.14, subsection 5. If a base period employer's account has been charged with benefits paid to an employee at a time when the employee was employed by the base period employer in the same employment as in the base period, the employer may appeal, within thirty days from the date of the first notice of the employer's contribution rate which is based on the charges, for a recomputation of the rate.

*f.* If an employer has not filed a contribution and payroll quarterly report, as required pursuant to section 96.11, subsection 6, for a calendar quarter which precedes the computation date and upon which the employer's rate of contribution is computed, the employer's average annual taxable payroll shall be computed by considering the delinquent quarterly reports as containing zero taxable wages.

If a delinquent quarterly report is received by September 30 following the computation date the contribution rate shall be recomputed by using the taxable wages in all the appropriate quarterly reports on file to determine the average annual taxable payroll.

If a delinquent quarterly report is received after September 30 following the computation date the contribution rate shall not be recomputed, unless the rate is appealed in writing to the department under paragraph "e" and the delinquent quarterly report is also submitted not later than thirty days after the department notifies the employer of the rate under paragraph "e".

### 3. *Determination and assessment of contributions.*

*a.* As soon as practicable and in any event within two years after an employer has filed reports, as required pursuant to section 96.11, subsection 6, the department shall examine the reports and determine the correct amount of contributions due, and the amount so determined by the department shall be the contributions payable. If the contributions found due are greater than the amount paid, the department shall send a notice by certified mail to the employer with respect to the additional contributions and interest

assessed. A lien shall attach as provided in section 96.14, subsection 3, if the assessment is not paid or appealed within thirty days of the date of the notice of assessment.

*b.* If the department discovers from the examination of the reports required pursuant to section 96.11, subsection 6, or in some other manner that wages, or any portion of wages, payable for employment, have not been listed in the reports, or that reports were not filed when due, or that reports have been filed showing contributions due but contributions in fact have not been paid, the department shall at any time within five years after the time the reports were due, determine the correct amount of contributions payable, together with interest and any applicable penalty as provided in this chapter. The department shall send a notice by certified mail to the employer of the amount assessed and a lien shall attach as provided in paragraph "a".

*c.* The certificate of the department to the effect that contributions have not been paid, that reports have not been filed, or that information has not been furnished as required under the provisions of this chapter, is prima facie evidence of the failure to pay contributions, file reports, or furnish information.

*4. Employer liability determination.* The department shall initially determine all questions relating to the liability of an employing unit or employer, including the amount of contribution, the contribution rate, and successorship. A copy of the initial determination shall be sent by regular mail to the last address, according to the records of the department, of each affected employing unit or employer.

The affected employing unit or employer may appeal in writing to the department from the initial determination. An appeal shall not be entertained for any reason by the department unless the appeal is filed with the department within thirty days from the date on which the initial determination is mailed. If an appeal is not so filed, the initial determination shall with the expiration of the appeal period become final and conclusive in all respects and for all purposes.

A hearing on an appeal shall be conducted according to rules adopted by the department. A copy of the decision of the administrative law judge shall be sent by regular mail to the last address, according to the records of the department, of each affected employing unit or employer.

The department's decision on the appeal shall be final and conclusive as to the liability of the employing unit or employer unless the employing unit or employer files an appeal for judicial review within thirty days after the date of mailing of the decision as provided in subsection 5.

*5. Judicial review.* Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of the county in which the employer resides, or in which the employer's princi-

pal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in a county in which the wages payable for employment were earned or paid or in Polk county, within thirty days after the date of the notice to the employer of the department's final determination as provided for in subsection 2, 3, or 4.

The petitioner shall file with the clerk of the district court a bond for the use of the respondent, with sureties approved by the clerk, with any penalty to be fixed and approved by the clerk. The bond shall not be less than fifty dollars and shall be conditioned on the petitioner's performance of the orders of the court. In all other respects, the judicial review shall be in accordance with chapter 17A.

6. *Jeopardy assessments.* If the department believes that the collection of contributions payable or benefits reimbursable will be jeopardized by delay, the department may immediately make an assessment of the estimated amount of contributions due or benefits reimbursable, together with interest and applicable penalty, and demand payment from the employer. If the payment is not made, the department may immediately file a lien against the employer which may be followed by the issuance of a distress warrant.

The department shall be permitted to accept a bond from the employer to satisfy collection until the amount of contributions due is determined. The bond shall be in an amount deemed necessary, but not more than double the amount of the contributions involved, with securities satisfactory to the department.

7. *Financing benefits paid to employees of governmental entities.*

a. A governmental entity which is an employer under this chapter shall pay benefits in a manner provided for a reimbursable employer unless the governmental entity elects to make contributions as a contributory employer. The election shall be effective for a minimum of one calendar year and may be changed if an election is made to become a reimbursable employer prior to December 1 for a minimum of the following calendar year.

However, if on the effective date of the election the governmental entity has a negative balance in its contributory account, the governmental entity shall pay to the fund within a time period determined by the department the amount of the negative balance and shall immediately become liable to reimburse the unemployment compensation fund for benefits paid in lieu of contributions. Regular or extended benefits paid after the effective date of the election, including those based on wages paid while the governmental entity was a contributory employer, shall be billed to the governmental entity as a reimbursable employer.

b. A governmental entity electing to make contributions as a contributory employer, with at least eight consecutive calendar quarters immedi-

ately preceding the computation date throughout which the employer's account has been chargeable with benefits, shall be assigned a contribution rate under this paragraph. Contribution rates shall be assigned by listing all governmental contributory employers by decreasing percentages of excess from the highest positive percentage of excess to the highest negative percentage of excess. The employers so listed shall be grouped into seven separate percentage of excess ranks each containing as nearly as possible one-seventh of the total taxable wages of governmental entities eligible to be assigned a rate under this paragraph.

As used in this subsection, "*percentage of excess*" means a number computed to six decimal places on July 1 of each year obtained by dividing the excess of all contributions attributable to an employer over the sum of all benefits charged to an employer by the employer's average annual payroll. An employer's percentage of excess is a positive number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date exceeds the total benefits charged to such account for the same period. An employer's percentage of excess is a negative number when the total of all contributions paid to an employer's account for all past periods to and including those for the quarter immediately preceding the rate computation date is less than the total benefits charged to such account for the same period.

As used in this subsection, "*average annual taxable payroll*" means the average of the total amount of taxable wages paid by an employer for insured work during the three periods of four consecutive calendar quarters immediately preceding the computation date. However, for an employer which qualifies on any computation date for a computed rate on the basis of less than twelve consecutive calendar quarters of chargeability immediately preceding the computation date, "*average annual taxable payroll*" means the average of the employer's total amount of taxable wages for the two periods of four consecutive calendar quarters immediately preceding the computation date.

The department shall annually calculate a base rate for each calendar year. The base rate is equal to the sum of the benefits charged to governmental contributory employers in the calendar year immediately preceding the computation date plus or minus the difference between the total benefits and contributions paid by governmental contributory employers since January 1, 1980, which sum is divided by the total taxable wages reported by governmental contributory employers during the calendar year immediately preceding the computation date, rounded to the next highest one-tenth of one percent. Excess contributions from the years 1978 and 1979 shall be used to offset benefits paid in any calendar year where total benefits exceed total contributions of government-

tal contributory employers. The contribution rate as a percentage of taxable wages of the employer shall be assigned as follows:

If the percentage of excess rank is:	The contribution rate shall be:	Approximate cumulative taxable payroll
1	Base Rate – 0.9	14.3
2	Base Rate – 0.6	28.6
3	Base Rate – 0.3	42.9
4	Base Rate	57.2
5	Base Rate + 0.3	71.5
6	Base Rate + 0.6	85.8
7	Base Rate + 0.9	100.0

If a governmental contributory employer is grouped into two separate percentage of excess ranks, the employer shall be assigned the lower contribution rate of the two percentage of excess ranks. Notwithstanding the provisions of this paragraph, a governmental contributory employer shall not be assigned a contribution rate less than one-tenth of one percent of taxable wages unless the employer has a positive percentage of excess greater than five percent.

Governmental entities electing to be contributory employers which are not eligible to be assigned a contribution rate under this paragraph shall be assigned the base rate as a contribution rate for the calendar year.

c. For the purposes of this subsection, “*governmental reimbursable employer*” means an employer which makes payments to the department for the unemployment compensation fund in an amount equal to the regular and extended benefits paid, which are based on wages paid for service in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual’s wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the department shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall be made in accordance with subsection 8, paragraph “b”, subparagraphs (2) through (5).

d. A state agency, board, commission, or department, except a state board of regents institution, shall, after approval of the billing for a governmental reimbursable employer as provided in subsection 8, paragraph “b”, submit the billing to the director of the department of administrative services. The director of the department of administrative services shall pay the approved billing out of any funds in the state treasury not other-

wise appropriated. A state agency, board, commission, or department shall reimburse the director of the department of administrative services out of any revolving, special, trust, or federal fund from which all or a portion of the billing can be paid, for payments made by the director of the department of administrative services on behalf of the agency, board, commission, or department.

e. If the entire enterprise or business of a reimbursable governmental entity is sold or otherwise transferred to a subsequent employing unit and the acquiring employing unit continues to operate the enterprise or business, the acquiring employing unit shall assume the position of the reimbursable governmental entity with respect to the reimbursable governmental entity’s liability to pay the department for reimbursable benefits based on the governmental entity’s payroll to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the acquiring employing unit’s own payroll prior to or after the acquisition of the governmental entity’s enterprise or business.

f. If a reimbursable instrumentality of the state or of a political subdivision is discontinued other than by sale or transfer to a subsequent employing unit as described in paragraph “e”, the state or the political subdivision, respectively, shall reimburse the department for benefits paid to former employees of the instrumentality after the instrumentality is discontinued.

8. *Financing benefits paid to employees of nonprofit organizations.*

a. A nonprofit organization which is, or becomes, subject to this chapter, shall pay contributions under subsections 1 and 2, unless the nonprofit organization elects, in accordance with this paragraph, to reimburse the unemployment compensation fund for benefits paid in an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, which are based on wages paid for service in the employ of the nonprofit organization during the effective period of the election.

(1) A nonprofit organization may elect to become a reimbursable employer for a period of not less than two calendar years by filing with the department a written notice of its election not later than thirty days prior to the beginning of the calendar year for which the election is to be effective.

(2) A nonprofit organization which makes an election in accordance with subparagraph (1) shall continue to be a reimbursable employer until the nonprofit organization files with the department a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which the termination is to be effective.

(3) The department may for good cause extend the period within which a notice of election or termination of election must be filed and may permit an election or termination of election to be retroactive.

(4) The department, in accordance with rules, shall notify each nonprofit organization of any determination made by the department of the status of the nonprofit organization as an employer and of the effective date of any election or termination of election. A determination is subject to appeal and review in accordance with subsections 4 and 5.

b. Reimbursements for benefits paid in lieu of contributions shall be made in accordance with the following:

(1) At the end of each calendar quarter, the department shall bill each nonprofit organization which has elected to reimburse the unemployment compensation fund for benefits paid in an amount equal to the full amount of regular benefits and one-half of the amount of extended benefits paid during the quarter which are based on wages paid for service in the employ of the organization. Benefits paid to an individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter.

(2) The nonprofit organization shall pay the bill not later than thirty days after the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, unless the nonprofit organization has filed an application for redetermination in accordance with subparagraph (4).

(3) Reimbursements made by a nonprofit organization shall not be deducted, in whole or in part, from the wages of individuals in the employ of the nonprofit organization.

(4) The amount due specified in a bill from the department is conclusive unless, not later than fifteen days following the date the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an application for redetermination with the department setting forth the grounds for the application. The department shall promptly review the amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, not later than thirty days after the redetermination was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an appeal to the district court pursuant to subsection 5.

(5) The provisions for collection of contributions under section 96.14 are applicable to re-

imbursements for benefits paid in lieu of contributions.

(6) If the entire enterprise or business of a reimbursable nonprofit organization is sold or otherwise transferred to a subsequent employing unit and the acquiring employing unit continues to operate the enterprise or business, the acquiring employing unit shall assume the position of the reimbursable nonprofit organization with respect to the nonprofit organization's liability to pay the department for reimbursable benefits based on the nonprofit organization's payroll to the same extent as if no change in the ownership or control of the enterprise or business had occurred, whether or not the acquiring employing unit elected or elects, or was or is eligible to elect, to become a reimbursable employer with respect to the acquiring employing unit's own payroll prior to or after the acquisition of the nonprofit organization's enterprise or business.

9. *Indian tribes.*

a. For purposes of this chapter, employment by an Indian tribe shall be covered in the same manner and terms as provided for governmental entities and the same exclusions that are applicable for governmental entities shall also apply.

b. In financing benefits paid to employees of an Indian tribe under this chapter, a contribution rate shall be determined and contributions shall be assessed and collected from an Indian tribe in the same manner provided in this chapter for contributory employers, except that an Indian tribe shall have the option of electing to become a governmental reimbursable employer. An Indian tribe shall have the option to make a separate election as provided in this paragraph for itself and for each subdivision, subsidiary, or business enterprise wholly owned by the Indian tribe. The reimbursable status of an Indian tribe shall be in the same manner, to the same extent, and on the same terms as are applicable to all governmental reimbursable employers under this chapter.

c. If the department determines that an Indian tribe has failed to make any payment required pursuant to this chapter after providing the Indian tribe with ninety days' notice of this failure, the department may issue a determination that ceases coverage of all employment by that Indian tribe until such time as all payments are received by the department.

10. *Group accounts.* Two or more nonprofit organizations or two or more governmental entities which have become reimbursable employers in accordance with subsection 7 or subsection 8, paragraph "a", may file a joint application to the department for the establishment of a group account for the purpose of sharing the cost of benefits paid which are attributable to service in the employ of the employers. The application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection. Upon approval of the application, the depart-

ment shall establish a group account for the employers effective as of the beginning of the calendar quarter in which the department receives the application and shall notify the group's agent of the effective date of the account. The account shall remain in effect for not less than one year until terminated at the discretion of the department or upon application by the group. Upon establishment of the account, each employer member of the group shall be liable for benefit reimbursements in lieu of contributions with respect to each calendar quarter in an amount which bears the same ratio to the total benefits paid in the quarter which are attributable to service performed in the employ of all members of the group, as the total wages paid for service performed in the employ of the member in the quarter bear to the total wages paid for service performed in the employ of all members of the group in the quarter. The department shall adopt rules with respect to applications for establishment, maintenance, and termination of group accounts, for addition of new members to, and withdrawal of active members from group accounts, and for the determination of the amounts which are payable by members of the group and the time and manner of the payments.

11. *Temporary emergency surcharge.* If on the first day of the third month in any calendar quarter, the department has an outstanding balance of interest accrued on advance moneys received from the federal government for the payment of unemployment compensation benefits, or is projected to have an outstanding balance of accruing federal interest for that calendar quarter, the department shall collect a uniform temporary emergency surcharge for that calendar quarter, retroactive to the beginning of that calendar quarter. The surcharge shall be a percentage of employer contribution rates and shall be set at a uniform percentage, for all employers subject to the surcharge, necessary to pay the interest accrued on the moneys advanced to the department by the federal government, and to pay any additional federal interest which will accrue for the remainder of that calendar quarter. The surcharge shall apply to all employers except governmental entities, nonprofit organizations, and employers assigned a zero contribution rate. The department shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner. The surcharge shall not affect the computation of regular contributions under this chapter.

A special fund to be known as the temporary emergency surcharge fund is created in the state treasury. The special fund is separate and distinct from the unemployment compensation fund. All contributions collected from the temporary emergency surcharge shall be deposited in the special fund. The special fund shall be used only to pay in-

terest accruing on advance moneys received from the federal government for the payment of unemployment compensation benefits. Interest earned upon moneys in the special fund shall be deposited in and credited to the special fund.

If the department determines on June 1 that no outstanding balance of interest due has accrued on advanced moneys received from the federal government for the payment of unemployment compensation benefits, and that no outstanding balance is projected to accrue for the remainder of the calendar year, the department shall notify the treasurer of state of its determination. The treasurer of state shall immediately transfer all moneys, including accrued interest, in the temporary emergency surcharge fund to the unemployment compensation fund for the payment of benefits.

12. *Administrative contribution surcharge — fund.*

a. An employer other than a governmental entity or a nonprofit organization, subject to this chapter, shall pay an administrative contribution surcharge equal in amount to one-tenth of one percent of federal taxable wages, as defined in section 96.19, subsection 37, paragraph "b", subject to the surcharge formula to be developed by the department under this paragraph. The department shall develop a surcharge formula that provides a target revenue level of no greater than six million five hundred twenty-five thousand dollars for calendar years 2003, 2004, and 2005 and a target revenue level of no greater than three million two hundred sixty-two thousand five hundred dollars for calendar year 2006 and each subsequent calendar year. The department shall reduce the administrative contribution surcharge established for any calendar year proportionate to any federal government funding that provides an increased allocation of moneys for workforce development offices, under the federal employment services financing reform legislation. Any administrative contribution surcharge revenue that is collected in calendar year 2003, 2004, or 2005 in excess of six million five hundred twenty-five thousand dollars or in calendar year 2006 or a subsequent calendar year in excess of three million two hundred sixty-two thousand five hundred dollars shall be deducted from the amount to be collected in the subsequent calendar year 2003 before the department establishes the administrative contribution surcharge. The department shall recompute the amount as a percentage of taxable wages, as defined in section 96.19, subsection 37, and shall add the percentage surcharge to the employer's contribution rate determined under this section. The percentage surcharge shall be capped at a maximum of seven dollars per employee. The department shall adopt rules prescribing the manner in which the surcharge will be collected. Interest shall accrue on all unpaid surcharges under this subsection at the same rate as on regular contributions and shall be collectible in the same manner. Interest accrued

and collected under this paragraph and interest earned and credited to the fund under paragraph “b” shall be used by the department only for the purposes set forth in paragraph “c”.

b. A special fund to be known as the administrative contribution surcharge fund is created in the state treasury. The fund is separate and distinct from the unemployment compensation fund. All contributions collected from the administrative contribution surcharge shall be deposited in the fund. Interest earned upon moneys in the fund shall be deposited in and credited to the fund.

c. Moneys in the fund shall be used by the department only upon appropriation by the general assembly and only for personnel and nonpersonnel costs of rural and satellite departmental offices in population centers of less than twenty thousand. To the extent possible, the department shall colocate the rural and satellite departmental offices funded by the surcharge provided for in this subsection at available community college facilities throughout the state. If colocation at community college facilities is not feasible, the department shall attempt, to the extent possible, to colocate offices in the facilities of other government entities. Moneys in the fund shall not be used for purposes other than those identified in this paragraph or identified in the appropriation of the moneys in the fund by the general assembly.

(1) Moneys in the fund may be used to provide any of the following services to businesses:

(a) Use of a business representative to build one-on-one relationships with businesses. A business representative may provide any of the following:

(i) Workforce consulting in the form of customized strategies to attract, retain, and upgrade the skills of an employer’s workforce.

(ii) General and customized recruitment.

(iii) Workplace skill testing and analysis in the form of skill level, aptitude, and ability assessment.

(iv) Employer specific job descriptions, employee handbooks, applications, and other relevant personnel forms.

(b) Labor market surveys and analyses which may include the compilation and dissemination of occupational and wage information.

(c) Contact information and referral services related to any of the following issues:

(i) Workers’ compensation.

(ii) Wage and worker rights.

(iii) Registration.

(iv) The federal Occupational Safety and Health Act of 1970 and occupational safety and health standards.

(v) Boiler and elevator regulations.

(vi) Contractor registration.

(vii) Immigration services.

(viii) Unemployment contributions.

(d) A statewide computer networking process

for employers and individuals regarding available positions and qualified applicants.

(e) Crosstraining services for workforce development staff.

(2) Moneys in the fund may be used to provide any of the following services to individuals:

(a) Outreach, intake, and orientation services related to any of the following:

(i) Job search and interviewing assistance.

(ii) Initial assessment of skill levels, aptitudes, abilities, and support service needs.

(iii) Proficiency testing.

(iv) Resume development and preparation.

(v) Referral to training and customized skill upgrading.

(vi) Career counseling including assessment and analysis.

(b) Contact information and referral for supportive services including but not limited to transportation, housing, and child care.

(c) Labor market surveys and analyses.

(d) Job development and placement services.

(e) Resource centers that provide individuals with computer access for electronic job search, resume development, career exploration, and keyboard and software training. A resource center may also be equipped with employment, training, and career information including but not limited to employment opportunities available with local employers.

(f) Information and assistance with filing for unemployment compensation benefits.

(3) Moneys in the fund shall not be used for any of the following purposes:

(a) Services that are not included in subparagraphs (1) and (2).

(b) Unemployment tax system renovation and computer upgrades.

(c) Specific consultation services relating to the federal Occupational Safety and Health Act of 1970 and occupational safety and health standards.

(d) Services which are currently provided by other state agencies.

(e) Workforce development regional advisory board member expenses.

(f) Supportive services including but not limited to transportation, housing, and child care.

d. This subsection is repealed July 1, 2006, and the repeal is applicable to contribution rates for calendar year 2007 and subsequent calendar years.

2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 1, §127 – 129  
Terminology change applied  
Subsection 12, paragraphs a and d amended

## 96.9 Unemployment compensation fund.

1. *Establishment and control.* There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the department exclu-

sively for the purposes of this chapter. This fund shall consist of:

- a. All contributions collected under this chapter,
- b. Interest earned upon any moneys in the fund,
- c. Any property or securities acquired through the use of moneys belonging to the fund,
- d. All earnings of such property or securities, and
- e. All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act [42 U.S.C. § 501 to 503, 1103 to 1105, 1321 to 1324]. All moneys in the unemployment compensation fund shall be mingled and undivided.

2. *Accounts and deposits.* The state treasurer shall be ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the department. The director of the department of administrative services shall issue warrants upon the fund pursuant to the order of the department and such warrants shall be paid from the fund by the treasurer. The treasurer shall maintain within the fund three separate accounts:

- a. A clearing account.
- b. An unemployment trust fund account.
- c. A benefit account.

All moneys payable to the unemployment compensation fund and all interest and penalties on delinquent contributions and reports shall, upon receipt thereof by the department, be forwarded to the treasurer who shall immediately deposit them in the clearing account, but the interest and penalties on delinquent contributions and reports shall not be deemed to be a part of the fund. Refunds of contributions payable pursuant to section 96.14 shall be paid by the treasurer from the clearing account upon warrants issued by the director of the department of administrative services under the direction of the department. After clearance thereof, all other moneys in the clearing account, except interest and penalties on delinquent contributions and reports, shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Interest and penalties on delinquent contributions and reports collected from employers shall be transferred from the clearing account to the special employment security contingency fund. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund for the payment of benefits. Except as herein otherwise provided, moneys in the clearing and benefit account may be

deposited by the treasurer, under the direction of the department, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of the treasurer's duties as custodian of the fund in an amount fixed by the governor and in form and manner prescribed by law. Premiums for said bond shall be paid from the administration fund.

Interest paid upon the moneys deposited with the secretary of the treasury of the United States shall be credited to the unemployment compensation fund.

3. *Withdrawals.* Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to section 903 of the Social Security Act may, subject to the conditions prescribed in subsection 4 of this section, be used for the payment of expenses incurred for the administration of this chapter. The department shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the account of this state therein, as the department deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account, and shall disburse such moneys upon warrants drawn by the director of the department of administrative services pursuant to the order of the department for the payment of benefits solely from such benefit account. Expenditures of such moneys from the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the director of the department of administrative services for the payment of benefits and refunds shall bear the signature of the director of the department of administrative services. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the department, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subsection 2 of this section.

4. *Money credited under section 903 of the Social Security Act.*

a. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to

section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to subsection 3 of this section for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which (1) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (2) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (3) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to this chapter and charged against the amounts transferred to the account of this state during the same twelve-month period. For purposes of this subsection, amounts used by this state for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into. The use of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States secretary of labor.

b. Money requisitioned as provided herein for the payment of expenses of administration shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The treasurer of state shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

5. *Administration expenses excluded.* Any amount credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act which has been appropriated for expenses of administration pursuant to subsection 4 of this section, whether or not withdrawn from such account, shall not be deemed assets of the unemployment compensation fund for the purpose of computing contribution rates under section 96.7, subsection 3, of this chapter.

6. *Management of funds in the event of discon-*

*tinuance of unemployment trust fund.* The provisions of subsections 1, 2, and 3 to the extent that they relate to the unemployment trust fund shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the director, treasurer of state, and governor, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities; such securities as are authorized by the laws of the state of Iowa for the investment of trust funds. The treasurer shall dispose of securities and other properties belonging to the unemployment compensation fund only under the direction of the director, treasurer of state, and governor.

7. *Cancellation of warrants.* The director of the department of administrative services, as of January 1, April 1, July 1, and October 1 of each year, shall stop payment on all warrants for the payment of benefits which have been outstanding and unredeemed by the state treasurer for six months or longer. Should the original warrants subsequently be presented for payment, warrants in lieu thereof shall be issued by the director of the department of administrative services at the discretion of and certification by the department.

8. *Unemployment compensation reserve fund.*

a. A special fund to be known as the unemployment compensation reserve fund is created in the state treasury. The reserve fund is separate and distinct from the unemployment compensation fund. All moneys collected as reserve contributions, as defined in paragraph "b", shall be deposited in the reserve fund. The moneys in the reserve fund may be used for the payment of unemployment benefits and shall remain available for expenditure in accordance with the provisions of this subsection. The treasurer of state shall be the custodian of the reserve fund and shall disburse the moneys in the reserve fund in accordance with this subsection and the directions of the director of the department of workforce development.

b. If the balance in the reserve fund on July 1 of the preceding calendar year for calendar year 2004 and each year thereafter is less than one hundred fifty million dollars, a percentage of con-

tributions, as determined by the director, shall be deemed to be reserve contributions for the following calendar year. If the percentage of contributions, termed the reserve contribution tax rate, is not zero percent as determined pursuant to this subsection, the combined tax rate of contributions to the unemployment compensation fund and to the unemployment compensation reserve fund shall be divided so that a minimum of fifty percent of the combined tax rate equals the unemployment contribution tax rate and a maximum of fifty percent of the combined tax rate equals the reserve contribution tax rate except for employers who are assigned a combined tax rate of five and four-tenths. For those employers, the reserve contribution tax rate shall equal zero and their combined tax rate shall equal their unemployment contribution rate. When the reserve contribution tax rate is determined to be zero percent, the unemployment contribution rate for all employers shall equal one hundred percent of the combined tax rate. The reserve contributions collected in any calendar year shall not exceed fifty million dollars. The provisions for collection of contributions under section 96.14 are applicable to the collection of reserve contributions. Reserve contributions shall not be deducted in whole or in part by any employer from the wages of individuals in its employ. All moneys collected as reserve contributions shall not become part of the unemployment compensation fund but shall be deposited in the reserve fund created in this subsection.

c. Moneys in the reserve fund shall only be used to pay unemployment benefits to the extent moneys in the unemployment compensation fund are insufficient to pay benefits during a calendar quarter.

d. The interest earned on the moneys in the reserve fund shall be deposited in and credited to the reserve fund.

e. Moneys from interest earned on the unemployment compensation reserve fund shall be used by the department only upon appropriation by the general assembly and only for purposes contained in section 96.7, subsection 12, for department of workforce development rural satellite offices, and for administrative costs to collect the reserve contributions.

2003 Acts, ch 145, §286; 2003 Acts, ch 179, §32, 47  
Terminology change applied  
NEW subsection 8

### 96.11 Duties, powers, rules — privilege.

1. *Duties and powers of director.* It shall be the duty of the director to administer this chapter; and the director shall have power and authority to adopt, amend, or rescind pursuant to chapter 17A such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the director deems necessary or suitable to that end. Not later than the fifteenth day of December of

each year, the director shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the director deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the director believes that a change in contribution or benefits rates will become necessary to protect the solvency of the fund, the director shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

2. *General and special rules.* Each employer shall post and maintain printed statements of all rules of the department in places readily accessible to individuals in the employer's service, and shall make available to each such individual at the time the individual becomes unemployed a printed statement of such rules relating to the filing of claims for benefits. Such printed statements shall be supplied by the department to each employer without cost to the employer.

3. *Publications.* The director shall cause to be printed for distribution to the public the text of this chapter, the department's general rules, its annual reports to the governor, and any other material the director deems relevant and suitable and shall furnish the same to any person upon application therefor.

The department shall prepare and distribute to the public as labor force data, only that data adjusted according to the current population survey and other nonlabor force statistics which the department determines are of interest to the public.

4. *Bonds.* The director may bond any employee handling moneys or signing checks.

5. *Employment stabilization.* The director, with the advice and aid of the appropriate bureaus of the department, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

6. *Records, reports, and confidentiality.*

a. An employing unit shall keep true and accurate work records, containing information required by the department. The records shall be open to inspection and copying by an authorized representative of the department at any reasonable time and as often as necessary. An authorized representative of the department may require from an employing unit a sworn or unsworn re-

port, with respect to individuals employed by the employing unit, which the department deems necessary for the effective administration of this chapter.

b. (1) The department shall hold confidential the information obtained from an employing unit or individual in the course of administering this chapter and the initial determination made by a representative of the department under section 96.6, subsection 2, as to the benefit rights of an individual. The department shall not disclose or open this information for public inspection in a manner that reveals the identity of the employing unit or the individual, except as provided in subparagraph (3) or paragraph "c".

(2) A report or statement, whether written or verbal, made by a person to a representative of the department or to another person administering this law is a privileged communication. A person is not liable for slander or libel on account of the report or statement unless the report or statement is made with malice.

(3) Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual shall not be used in any action or proceeding, except in a contested case proceeding or judicial review under chapter 17A. However, the department shall make information, which is obtained from an employing unit or individual in the course of administering this chapter and which relates to the employment and wage history of the individual, available to a county attorney for the county attorney's use in the performance of duties under section 331.756, subsection 5. Information in the department's possession which may affect a claim for benefits or a change in an employer's rating account shall be made available to the interested parties. The information may be used by the interested parties in a proceeding under this chapter to the extent necessary for the proper presentation or defense of a claim.

c. Subject to conditions as the department by rule prescribes, information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual may be made available for purposes consistent with the purposes of this chapter to any of the following:

(1) An agency of this or any other state or a federal agency responsible for the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

(2) The internal revenue service of the United States department of the treasury.

(3) The Iowa department of revenue.

(4) The social security administration of the United States department of health and human

services.

(5) An agency of this or any other state or a federal agency responsible for the administration of public works or the administration of public assistance to unemployed individuals.

(6) Colleges, universities, and public agencies of this state for use in connection with research of a public nature, provided the department does not reveal the identity of an employing unit or individual.

(7) An employee of the department, a member of the general assembly, or a member of the United States Congress in connection with the employee's or member's official duties.

(8) The United States department of housing and urban development and representatives of a public housing agency.

d. Upon request of an agency of this or another state or of the federal government which administers or operates a program of public assistance or child support enforcement under either the law of this or another state or federal law, or which is charged with a duty or responsibility under the program, and if the agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this subsection, then the department shall provide to the requesting agency, with respect to any named individual without regard to paragraph "g", any of the following information:

(1) Whether the individual is receiving or has received benefits, or has made an application for benefits under this chapter.

(2) The period, if any, for which benefits were payable and the weekly benefit amount.

(3) The individual's most recent address.

(4) Whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and the rate of pay.

(5) The individual's wage information.

e. The department may require an agency which is provided information under this subsection to reimburse the department for the costs of furnishing the information.

f. An employee of the department, an administrative law judge, or a member of the appeal board who violates this subsection is guilty, upon conviction, of a serious misdemeanor.

g. Information subject to the confidentiality of this subsection shall not be directly released to any authorized agency unless an attempt is made to provide written notification to the individual involved. Information released in accordance with criminal investigations by a law enforcement agency of this state, another state, or the federal government is exempt from this requirement.

h. The department and its employees shall not be liable for any acts or omissions resulting from the release of information to any person pursuant to this subsection.

7. *Oaths and witnesses.* In the discharge of the duties imposed by this chapter, the chairperson of the appeal board and any duly authorized representative of the department shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

8. *Subpoenas.* In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department, or any member or duly authorized representative thereof, shall have jurisdiction to issue to such person an order requiring such person to appear before the department or any member or duly authorized representative thereof to produce evidence if so ordered or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof.

9. *Protection against self-incrimination.* No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department, or the appeal board, or in obedience to a subpoena in any cause or proceeding provided for in this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty for forfeiture; but no individual shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

10. *State-federal cooperation.* In the administration of this chapter, the department shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

In the administration of the provisions of section 96.29 which are enacted to conform with the

requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the department shall take such action as may be necessary to insure that the provisions are so interpreted and applied as to meet the requirements of such federal Act as interpreted by the United States department of labor, and to secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal Act.

The department shall make such reports, in such form and containing such information as the United States department of labor may from time to time require, and shall comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the United States department of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in administration of this chapter.

The department may make its records relating to the administration of this chapter available to the railroad retirement board, and may furnish the railroad retirement board such copies thereof as the railroad retirement board deems necessary for its purposes. The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law. The railroad retirement board or any other agency requiring such services and reports from the department shall pay the department such compensation therefor as the department determines to be fair and reasonable.

11. *Destruction of records.* The department may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the department and are deemed by the director and the state records commission to be no longer necessary to the proper administration of this chapter. Wage records of the individual worker or transcripts therefrom may be destroyed or disposed of, if approved by the state records commission, two years after the expiration of the period covered by such wage records or upon proof of the death of the worker. Such destruction or disposition shall be made only by order of the director in consultation with the state records commission. Any moneys received from the disposition of such records shall be deposited to the credit of the employment security administration fund, subject to rules promulgated by the department.

12. *Unemployment benefits contested case hearing records.* Notwithstanding the provisions of section 17A.12 to the contrary, the recording of oral proceedings of a hearing conducted before an administrative law judge pursuant to section 96.6, subsection 3, in which the decision of the

administrative law judge is not appealed to the employment appeal board, shall be filed with and maintained by the department for at least two years from the date of decision.

13. *Purging uncollectible overpayments.* Notwithstanding any other provision of this chapter, the department shall review all outstanding overpayments of benefit payments annually. The department may determine as uncollectible and purge from its records any remaining unpaid balances of outstanding overpayments which are ten years or older from the date of the overpayment decision.

14. *Access to available jobs list.* The department shall make available for consultation by the public, at each of the department's offices, a list of current job openings listed with the department, provided that the list shall comply with the confidentiality requirements of subsection 6, or those mandated by the federal government.

15. *Special contractor numbers.* For purposes of contractor registration under chapter 91C, the department shall provide for the issuance of special contractor numbers to contractors for whom employer accounts are not required under this chapter. A contractor who is not in compliance with the requirements of this chapter shall not be issued a special contractor number.

16. *Reimbursement of setoff costs.* The department shall include in the amount set off in accordance with section 8A.504, for the collection of an overpayment created pursuant to section 96.3, subsection 7, or section 96.16, subsection 4, an additional amount for the reimbursement of setoff costs incurred by the department of administrative services.

2003 Acts, ch 145, §164, 286  
Terminology change applied  
Subsection 16 amended

**96.14 Priority — refunds.**

1. *Interest.* Any employer who shall fail to pay any contribution and at the time required by this chapter and the rules of the department shall pay to the department in addition to such contribution, interest thereon at the rate of one percent per month and one-thirtieth of one percent for each day or fraction thereof computed from the date upon which said contribution should have been paid.

2. *Penalties.* Any employer who shall fail to file a report of wages paid to each of the employer's employees for any period in the manner and within the time required by this chapter and the rules of the department or any employer who the department finds has filed an insufficient report and fails to file a sufficient report within thirty days after a written request from the department to do so shall pay a penalty to the department.

The penalty shall become effective with the first day the report is delinquent or, where a report is insufficient, with the thirty-first day following the

written request for a sufficient report.

Penalty for failing to file a sufficient report shall be in addition to any penalty incurred for a delinquent report where the delinquent report is also insufficient.

The amount of the penalty for delinquent and insufficient reports shall be computed based on total wages in the period for which the report was due and shall be computed as follows:

Days Delinquent or Insufficient	Penalty Rate
1 – 60	0.1%
61 – 120	0.2%
121 – 180	0.3%
181 – 240	0.4%
241 or over	0.5%

A penalty shall not be less than ten dollars for the first delinquent report or the first insufficient report not made sufficient within thirty days after a request to do so. The penalty shall not be less than twenty-five dollars for the second delinquent or insufficient report, and not less than fifty dollars for each delinquent or insufficient report thereafter, until four consecutive calendar quarters of reports are timely and sufficiently filed. Interest, penalties, and cost shall be collected by the department in the same manner as provided by this chapter for contributions.

If the department finds that any employer has willfully failed to pay any contribution or part thereof when required by this chapter and the rules of the department, with intent to defraud the department, then such employer shall in addition to such contribution or part thereof, pay a contribution equal to fifty percent of the amount of such contribution or part thereof, as the case may be.

The department may cancel any interest or penalties if it is shown to the satisfaction of the department that the failure to pay a required contribution or to file a required report was not the result of negligence, fraud, or intentional disregard of the law or the rules of the department.

3. *Lien of contributions — collection.* Whenever any employer liable to pay contributions refuses or neglects to pay the same, the amount, including any interest, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said employer. An assessment of the unpaid contributions, interest and penalty shall be applied as provided in section 96.7, subsection 3, paragraphs "a" and "b", and the lien shall attach as of the date the assessment is mailed or personally served upon the employer and shall continue for ten years, or until the liability for the amount is satisfied, unless sooner released or otherwise discharged. The lien may, within ten years from the date the lien attaches, be extended for up to an

additional ten years by filing a notice during the ninth year with the appropriate county official of any county. However, the department may release any lien, when after diligent investigation and effort it determines that the amount due is not collectible.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the department shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in the recorder's office an index to show the following data, under the names of employers, arranged alphabetically:

- a. The name of the employer.
- b. The name "State of Iowa" as claimant.
- c. Time notice of lien was received.
- d. Date of notice.
- e. Amount of lien then due.
- f. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and shall index the notice in the index and shall record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of the indexing of the lien.

The department shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of contributions as to which the department has filed notice with a county recorder, the department shall forthwith file with said recorder a satisfaction of said contributions and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate said fact on the index aforesaid.

The department shall, substantially as provided in this chapter and chapter 626, proceed to collect all contributions as soon as practicable after they become delinquent, except that no property of the employer is exempt from payment of the contributions.

If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the department and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the department shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the

exclusion of any other remedy provided by law.

The courts of this state shall recognize and enforce liabilities for unemployment contributions, penalties, interest and benefit overpayments imposed by other states which extend a like comity to this state. The department may sue in the courts of any other jurisdiction which extends such comity to collect unemployment contributions, penalties, interest and benefit overpayments due this state. The officials of other states which, by statute or otherwise, extend a like comity to this state may sue in the district court to collect for such contributions, penalties, interest and benefit overpayments. In any such case the director, as agent for and on behalf of any other state, may institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, interest and benefit overpayments due under this chapter. A certificate by the secretary of any such state attesting the authority of such official to collect the contributions, penalties, interest and benefit overpayments, is conclusive evidence of such authority. The requesting state shall pay the court costs.

If a political subdivision or a political subdivision instrumentality becomes delinquent in the payment of contributions, any payments owed as a government employer, penalty, interest and costs for more than two calendar quarters, the amount of such delinquency shall be deducted from any further moneys due the employer by the state. Such deduction shall be made by the director of the department of administrative services upon certification of the amount due. A copy of the certification will be mailed to the employer.

If an amount due from a governmental entity of this state remains due and unpaid for a period of one hundred twenty days after the due date, the director shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of the department of administrative services, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the director from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the director for the fund. However, the director shall notify the delinquent entity of the director's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

4. *Priorities under legal dissolutions or distributions.* In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due

shall be paid in full prior to all other claims except taxes and claims for wages preferred as provided by statute. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 "a" of that Act [11 U.S.C. § 104 "b", as amended].

5. *Refunds, compromises and settlements.* If the department finds that an employer has paid contributions, interest on contributions, or penalties, which have been erroneously paid or if the employer has overpaid contributions because the employer's contribution rate was subsequently reduced pursuant to section 96.7, subsection 2, paragraph "e", solely due to benefits initially charged against but later removed from an employer's account, and the employer has filed an application for refund, the department shall refund the erroneous payment or overpayment. Refunds so made shall be charged to the fund to which the collections have been credited, and shall be paid to the employer without interest. A claim for refund shall be made within three years from the date of payment. For like cause, refunds, compromises, and settlements may be made by the department on its own initiative within three years of the date of the payment or assessment. If the department finds that the contribution that has been assessed against an employer is of doubtful collectibility or may not be collected in full, the department may institute a proceeding in the district court in the county in which the employer against which the tax is levied is located, requesting authority to compromise the contribution. Notice of the filing of an application shall be given to the interested parties as the court may prescribe. The court upon hearing may authorize the department to compromise and settle its claim for the contribution and shall fix the amount to be received by the department in full settlement of the claim and shall authorize the release of the department's lien for the contribution.

6. *Nonresident employing units.* Any employing unit which is a nonresident of the state of Iowa and for which services are performed in insured work within the state of Iowa and any resident employer for which such services are performed and who thereafter leaves the state of Iowa by having such services performed within the state of Iowa shall be deemed:

a. To agree that such employing unit shall be subject to the jurisdiction of the district court of the state of Iowa over all civil actions and proceedings against such employing unit for all purposes of this chapter, and

b. To appoint the secretary of state of this state as its lawful attorney upon whom may be served all original notices of suit and other legal processes pertaining to such actions and proceedings, and

c. To agree that any original notice of suit or any other legal process so served upon such nonresident employing unit shall be of the same legal force and validity as if personally served on it in this state.

7. *Original notice — form.* The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that the part of the notice pertaining to the return day shall be in substantially the following form:

And unless you appear and defend in the district court of Iowa in and for . . . . . county at the courthouse in . . . . ., Iowa, before noon of the sixtieth day following the filing of this notice with the secretary of state of this state, you will be adjudged in default, your default entered of record, and judgment rendered against you for the relief sought in plaintiff's petition.

8. *Manner of service.* Plaintiff in any such action shall cause the original notice of suit to be served as follows:

a. By filing a copy of said original notice of suit with said secretary of state, together with a fee of four dollars, and

b. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the defendant at the defendant's last known residence or place of abode, a notification of the said filing with the secretary of state.

9. *Notification to nonresident — form.* The notification, provided for in subsection 7, shall be in substantially the following form, to wit:

To . . . . . (Here insert the name of each defendant and the defendant's residence or last known place of abode as definitely as known.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the . . . . . day of . . . . . (month), . . . . (year), with the secretary of state of the state of Iowa.

Dated at . . . . ., Iowa, this . . . . . day of . . . . . (month), . . . . (year).

.....  
Plaintiff.  
By .....  
Attorney for Plaintiff.

10. *Optional notification.* In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

11. *Proof of service.* Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

12. *Actual service within this state.* The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

13. *Venue of actions.* Actions against nonresidents as contemplated by this law may be brought in Polk county, or in the county in which such services were performed.

14. *Continuances.* The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford the defendant reasonable opportunity to defend said action.

15. *Duty of secretary of state.* The secretary of state shall keep a record of all notices of suit filed with the secretary, shall not permit said filed notices to be taken from the secretary's office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified

copy of the notice in which the person is a defendant.

16. *Injunction upon nonpayment.* Any employer or employing unit refusing or failing to make and file required reports or to pay any contributions, interest or penalty under the provisions of this chapter, after ten days' written notice sent by the department to the employer's or employing unit's last known address by certified mail, may be enjoined from operating any business in the state while in violation of this chapter upon the complaint of the department in the district court of a county in which the employer or employing unit has or had a place of business within the state, and any temporary injunction enjoining the continuance of such business may be granted without notice and without a bond being required from the department. Such injunction may enjoin any employer or employing unit from operating a business unit until the delinquent contributions, interest or penalties shall have been made and filed or paid; or the employer shall have furnished a good and sufficient bond conditioned upon the payment of such delinquencies in such an amount and containing such terms as may be determined by the court; or the employer has entered into a plan for the liquidation of such delinquencies as the court may approve, provided that such injunction may be reinstated upon the employer's failure to comply with the terms of said plan.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 97

### OLD-AGE AND SURVIVORS' INSURANCE SYSTEM

#### **97.51 Special fund created — refunds.**

There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the "*Iowa Old-Age and Survivors' Insurance Liquidation Fund*", this fund to consist of all unexpended moneys collected under the provisions of chapter 97, Code 1950, as amended, together with all interest thereon, and also to include all securities and other assets acquired by and through the use of the moneys belonging to the Iowa old-age and survivors' insurance trust fund, and any other moneys that may be paid into this fund. There is hereby transferred to the Iowa old-age and survivors' insurance liquidation fund all funds and assets of the old-age and survivors' insurance trust fund created by the provisions of section 97.5, Code 1950. There shall also be deposited in the Iowa old-age and survivors' insurance liquidation fund all receipts after June 30,

1953, as a result of the collection of taxes or other moneys, as provided by section 97.8, Code 1950.

1. The treasurer of state is the custodian and trustee of this fund and shall administer the fund in accordance with the directions of the Iowa public employees' retirement system created in section 97B.1. It is the duty of the trustee:

a. To hold said trust funds.

b. Under the direction of the department\*\* and as designated by the department,\*\* invest such portion of said trust funds as are not needed for current payment of benefits, in interest-bearing securities issued by the United States, or interest-bearing bonds issued by the state of Iowa, or bonds issued by counties, school districts or general obligations or limited levy bonds issued by municipal corporations in this state as authorized by law; also to sell and dispose of same when needed for the payment of benefits.

c. To disburse the trust funds upon warrants drawn by the director of the department of administrative services pursuant to the order of the Iowa public employees' retirement system created in section 97B.1.

2. All moneys which are paid or deposited into this fund are hereby appropriated and made available to the department\*\* to be used only for the purposes herein provided:

a. To be used by the department\*\* for the payment of claims for benefits.

b. To be used by the department\*\* for the payment in accordance with any agreement with the federal social security administration of amounts required to obtain retroactive federal social security coverage of Iowa public employees, dating from January 1, 1951, and for the payment of refunds which were authorized by the provisions of section 97.7, Code 1950, and for the payment of such other refunds to employees as may be authorized by the general assembly, and such other purposes as may be authorized by the general assembly.

3. The Iowa public employees' retirement system created in section 97B.1 shall administer the Iowa old-age and survivors' insurance liquidation fund and shall also administer all other provisions of this chapter.

4. Any public employee subject to coverage under the provisions of chapter 97, Code 1950, as amended, in public service as of June 30, 1953, and who has not applied for and qualified for benefit payments under the provisions of chapter 97, Code 1950, as amended, who had contributed to the Iowa old-age and survivors' insurance fund prior to the repeal of said chapter 97, as amended, shall be entitled to a refund of contributions paid into the Iowa old-age and survivors' insurance fund by such employee without interest, but there shall be deducted from the amount of any such refund any amount which has been or will be paid in the employee's behalf as the employee's contribution as an employee to obtain retroactive federal social security coverage. Any former public employee not in public service as of June 30, 1953, who has contributed to the Iowa old-age and survivors' insurance fund, the employee's beneficiaries or estate, when no benefit has been paid under chapter 97, Code 1950, based upon such employee's prior record, shall be entitled to a refund of seventy-five percent of all contributions paid by the employee into said fund, without interest. The department\*\* shall prescribe rules in regard to the granting of such refunds. In the event of such refund any individual receiving the same shall be deemed to have waived any and all rights in behalf of the individual or any beneficiary or the individual's estate to further benefits under the provisions of chapter 97, Code 1950, as amended.

5. Any employee in public service as of June

30, 1953, may, in lieu of receiving the cash refund of the employee's contributions, elect to come under the coverage of any new retirement system which may be created by the general assembly, to which the employee is eligible, with credits toward future benefits in consideration of the employee's prior contributions and length of service, and may direct the transfer of the amount payable to the employee to the assets of such new retirement system.

6. In the payment of any benefits in the future, as a result of the provisions of chapter 97, Code 1950, as amended, the department\*\* shall follow the same procedure as provided by said chapter 97, as amended, as though said chapter had not been repealed, except the requirements of section 97.21, subsection 4, paragraph "a", and 97.21, subsection 5, shall not be applicable, but no primary benefit, based upon employment prior to June 30, 1953, shall be paid to any individual for any month during which the individual receives compensation for work in any position which would have been subject to coverage under the provisions of said chapter 97, as amended, if the individual's earnings for such month exceed one hundred dollars, nor shall any benefit be paid to a wife or dependent of such employee for such months, except that after a retired member reaches the age of seventy-two years, the member, the member's wife and dependents shall be entitled to the benefits of this chapter regardless of the amount earned.

7. Beginning July 1, 1975 any person receiving benefits under the provisions of chapter 97, Code 1950, as amended, shall receive a monthly increase in benefits equal to one hundred percent of the monthly benefits received for June, 1975 or for which the person was eligible to receive for June, 1975. Any person who becomes eligible for benefits under chapter 97, Code 1950, on or after July 1, 1975 shall receive the same percentage increase.

8. Effective July 1, 1980, a person receiving benefits, or who becomes eligible to receive benefits, on or after July 1, 1980, under this chapter, shall receive the monthly increase in benefits provided in section 97B.49G, subsection 3, paragraph "a".

There is appropriated from the general fund of the state to the Iowa old-age and survivors' insurance liquidation fund from funds not otherwise appropriated an amount sufficient to finance the provisions of this subsection.

9. Effective July 1, 1984, a person receiving benefits, on or after July 1, 1984, under this chapter, shall receive a monthly increase in benefits equal to ten percent of the monthly benefits received for June 1984 or which the person was eligible to receive for June 1984, except as otherwise provided in this subsection. A person who becomes eligible for benefits under chapter 97, Code

1950, on or after July 1, 1984 shall receive the ten percent increase.

A person eligible to receive benefits under this chapter on June 30, 1984, may elect in writing to the Iowa department of job service\* not to receive the monthly benefit increase granted in this subsection.

There is appropriated annually from the general fund of the state to the Iowa old-age and survivors' insurance liquidation fund from funds not otherwise appropriated an amount sufficient to pay the benefit increases provided in this subsection.

10. Effective July 1, 1992, a person receiving benefits, on or after July 1, 1992, under this chapter, shall receive a monthly increase in benefits of ten dollars per month. A person who becomes eligible for benefits under chapter 97, Code 1950, on or after July 1, 1992, shall receive the ten dollar increase.

There is appropriated annually from the general fund of the state to the Iowa old-age and survivors' insurance liquidation fund from funds not

otherwise appropriated an amount sufficient to pay the benefit increases provided in this subsection.

2003 Acts, ch 145, §165, 166, 286

\*Department of workforce development, chapter 84A, is the successor agency

\*\*Iowa public employees' retirement system created in section 97B.1\* or "system" probably intended; corrective legislation is pending

Terminology change applied

Subsections 1 and 3 amended

#### 97.52 Administration agreements.

The Iowa public employees' retirement system created in section 97B.1 may enter into agreements whereby services performed by the system and its employees under chapters 97, 97B, and 97C shall be equitably apportioned among the funds provided for the administration of those chapters. The money spent for personnel, rentals, supplies, and equipment used by the system in administering the chapters shall be equitably apportioned and charged against the funds.

2003 Acts, ch 145, §167

Section amended

## CHAPTER 97A

### PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

#### 97A.5 Administration.

1. *Board of trustees.* A board of trustees of the Iowa department of public safety peace officers' retirement, accident, and disability system is created. The general responsibility for the proper operation of the system is vested in the board of trustees. The board of trustees is constituted as follows: The commissioner of public safety, who is chairperson of the board; the treasurer of state; an actively engaged member of the system, to be chosen by secret ballot by the actively engaged members of the system; a retired member of the system, to be chosen by secret ballot by the retired members of the system; and a person appointed by the governor. The person appointed by the governor shall be an executive of a domestic life insurance company, an executive of a state or national bank operating within the state of Iowa, or an executive in the financial services industry, and shall be subject to confirmation by the senate. The members of the system and the person appointed by the governor shall serve for a term of two years.

2. *Voting.* Each trustee shall be entitled to one vote on said board and three concurring votes shall be necessary for a decision by the trustees on any question at any meeting of said board.

3. *Compensation.* The trustees shall serve as such without compensation, but they shall be reimbursed from the expense fund for all necessary expenses which they may incur through service on

the board.

4. *Rules.* The board of trustees shall, from time to time, establish such rules not inconsistent with this chapter, for the administration of funds created by this chapter and as may be necessary or appropriate for the transaction of its business.

5. *Staff.* The department of public safety shall provide administrative services to the board of trustees. Investments shall be administered through the office of the treasurer of state.

6. *Data — records — reports.*

a. The department of public safety shall keep in convenient form the data necessary for actuarial valuation of the various funds of the system and for checking the expense of the system. The commissioner of public safety shall keep a record of all the acts and proceedings of the board, which records shall be open to public inspection. The board of trustees shall biennially make a report to the general assembly showing the fiscal transactions of the system for the preceding biennium, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the system.

b. The commissioner of public safety shall maintain records, including but not limited to names, addresses, ages, and lengths of service, salaries and wages, contributions, designated

beneficiaries, benefit amounts, if applicable, and other information pertaining to members as necessary in the administration of this chapter, as well as the names, addresses, and benefit amounts of beneficiaries. For the purpose of obtaining these facts, the commissioner of public safety shall have access to the records of the various departments of the state and the departments shall provide such information upon request. Member and beneficiary records containing personal information are not public records for the purposes of chapter 22. However, summary information concerning the demographics of the members and general statistical information concerning the system is subject to chapter 22, as well as aggregate information by category.

7. *Legal advisor.* The attorney general of the state of Iowa shall be the legal advisor for the board of trustees.

8. *Medical board.* The board of trustees shall designate a medical board to be composed of three physicians who shall arrange for and pass upon the medical examinations required under the provisions of this chapter and shall report in writing to the board of trustees, its conclusions and recommendations upon all matters duly referred to it. Each report of a medical examination under section 97A.6, subsections 3 and 5, shall include the medical board's findings in accordance with section 97A.6 as to the extent of the member's physical impairment.

9. *Duties of actuary.* The actuary hired by the board of trustees shall be the technical advisor of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

10. *Tables — rates.* The actuary hired by the board of trustees shall make such investigation of anticipated interest earnings and of the mortality, service, and compensation experience of the members of the system as the actuary recommends, and on the basis of the investigation, the board of trustees shall adopt the tables and the rates as are required in subsection 11 of this section. The board of trustees shall adopt the rate of interest and tables, and certify rates of contributions to be used by the system.

11. *Actuarial investigation.* At least once in each two-year period, the actuary hired by the board of trustees shall make an actuarial investigation in the mortality, service, and compensation experience of the members and beneficiaries of the system, and the interest and other earnings on the moneys and other assets of the system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the results of the investigation and valuation, the board of trustees shall:

a. Adopt for the system such interest rate, mortality and other tables as shall be deemed necessary;

b. Certify the rates of contribution payable by the state of Iowa in accordance with section 97A.8.

12. *Valuation.* On the basis of the rate of interest and tables adopted by the board of trustees, the actuary hired by the board of trustees shall make an annual valuation of the assets and liabilities of the funds of the system created by this chapter.

13. *Requirements related to the Internal Revenue Code.*

a. As used in this subsection, unless the context otherwise requires, "Internal Revenue Code" means the Internal Revenue Code as defined in section 422.3.

b. The funds established in section 97A.8 shall be held in trust for the benefit of the members of the system and the members' beneficiaries. No part of the corpus or income of the funds shall be used for, or diverted to, purposes other than for the exclusive benefit of the members or the members' beneficiaries or for expenses incurred in the operation of the funds. A person shall not have any interest in, or right to, any part of the corpus or income of the funds except as otherwise expressly provided.

c. Notwithstanding any provision of this chapter to the contrary, in the event of a complete discontinuance of contributions, for reasons other than achieving fully funded status upon an actuarially determined basis, or upon termination of the funds established in section 97A.8, a member shall be vested, to the extent then funded, in the benefits which the member has accrued at the date of the discontinuance or termination.

d. Benefits payable from the funds established in section 97A.8 to members and members' beneficiaries shall not be increased due to forfeitures from other members. Forfeitures shall be used as soon as possible to reduce future contributions by the state to the pension accumulation fund, except that the rate shall not be less than the minimum rate established in section 97A.8.

e. Notwithstanding any provision of this chapter to the contrary, a member's service retirement allowance shall commence on or before the later of the following:

(1) April 1 of the calendar year following the calendar year in which the member attains the age of seventy and one-half years.

(2) April 1 of the calendar year following the calendar year in which the member retires.

f. The maximum annual benefit payable to a member by the system shall be subject to the limitations set forth in section 415 of the Internal Revenue Code, and any regulations promulgated pursuant to that section.

g. The annual compensation of a member taken in account for any purpose under this chapter shall not exceed the applicable amount set forth in section 401(a)(17) of the Internal Revenue Code, and any regulations promulgated pursuant to that section.

14. *Investment contracts.* The board of trustees may execute contracts and agreements with investment advisors, consultants, and investment management and benefit consultant firms in the administration of the funds established in section 97A.8.

15. *Liability.* The department, the board of trustees, and the treasurer of state are not personally liable for claims based upon an act or omission of the person performed in the discharge of the person's duties under this chapter, even if those actions or omissions violate the standards established in section 97A.7, except for acts or omissions which involve malicious or wanton misconduct.

2003 Acts, ch 145, §168  
Confirmation; §2, 32  
Subsections 5 and 6 amended

### 97A.6 Benefits.

1. *Service retirement benefit.* Retirement of a member on a service retirement allowance shall be made by the board of trustees as follows:

a. Any member in service may retire upon the member's written application to the board of trustees, setting forth at what time, not less than thirty nor more than ninety days subsequent to the execution and filing therefor, the member desires to be retired, provided that the said member at the time so specified for retirement shall have attained the age of fifty-five and shall have completed twenty-two years or more of creditable service, and notwithstanding that, during such period of notification, the member may have separated from the service. However, a member may retire at fifty years of age and receive a reduced retirement allowance pursuant to subsection 2A.

b. Any member in service who has been a member of the retirement system four or more years and whose employment is terminated prior to the member's retirement, other than by death or disability, shall upon attaining retirement age, receive a service retirement allowance of four twenty-seconds of the retirement allowance the member would receive at retirement if the member's employment had not been terminated, and an additional one twenty-second of such retirement allowance for each additional year of service not exceeding twenty-two years of service. The amount of the retirement allowance shall be calculated in the manner provided in this paragraph using the average final compensation at the time of termination of employment.

c. Once a person commences receiving a service retirement allowance pursuant to this section, if the person is reemployed, as defined in section 97A.3, the service retirement allowance shall not be recalculated based upon the person's reemployment.

2. *Allowance on service retirement.*

a. Upon retirement from service prior to July 1, 1990, a member shall receive a service retire-

ment allowance which shall consist of a pension which equals fifty percent of the member's average final compensation.

b. Upon retirement from service on or after July 1, 1990, but before July 1, 1992, a member shall receive a service retirement allowance which shall consist of a pension which equals fifty-four percent of the member's average final compensation.

c. Commencing July 1, 1992, but before July 1, 2000, the board of trustees shall increase the percentage multiplier of the member's average final compensation by an additional two percent each July 1 until reaching sixty percent of the member's average final compensation.

d. Upon retirement from service on or after July 1, 2000, a member shall receive a service retirement allowance which shall consist of a pension which equals sixty and one-half percent of the member's average final compensation.

e. Commencing July 1, 1990, if the member has completed more than twenty-two years of creditable service, the service retirement allowance shall consist of a pension which equals the amount provided in paragraph "b", "c", or "d", plus an additional percentage as set forth below:

(1) For a member who terminates service, other than by death or disability, on or after July 1, 1990, but before July 1, 1991, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added three-tenths percent of the member's average final compensation for each year of service over twenty-two years, excluding years of service after the member's fifty-fifth birthday. However, this subparagraph does not apply to more than eight additional years of service.

(2) For a member who terminates service, other than by death or disability, on or after July 1, 1991, but before October 16, 1992, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added six-tenths percent of the member's average final compensation for each year of service over twenty-two years, excluding years of service after the member's fifty-fifth birthday. However, this subparagraph does not apply to more than eight additional years of service.

(3) For a member who terminates service, other than by death or disability, on or after October 16, 1992, but before July 1, 1996, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added six-tenths percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than eight additional years of service.

(4) For a member who terminates service, oth-

er than by death or disability, on or after July 1, 1996, but before July 1, 1998, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added one and one-half percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than eight additional years of service.

(5) For a member who terminates service, other than by death or disability, on or after July 1, 1998, but before July 1, 2000, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added one and one-half percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than ten additional years of service.

(6) For a member who terminates service, other than by death or disability, on or after July 1, 2000, and who does not withdraw the member's contributions pursuant to section 97A.16, upon the member's retirement there shall be added two and three-fourths percent of the member's average final compensation for each year of service over twenty-two years. However, this subparagraph does not apply to more than ten additional years of service.

2A. *Early retirement benefits.*

a. Notwithstanding the calculation of the service retirement allowance under subsection 2, beginning July 1, 1996, a member who has completed twenty-two years or more of creditable service and is at least fifty years of age, but less than fifty-five years of age, who has otherwise completed the requirements for retirement under subsection 1, may retire and receive a reduced service retirement allowance pursuant to this subsection. The service retirement allowance for a member less than fifty-five years of age shall be calculated in the manner prescribed in subsection 2, except that the percentage multiplier of the member's average final compensation used in the determination of the service retirement allowance shall be reduced by the board of trustees pursuant to paragraph "b".

b. On July 1, 1996, and on each July 1 thereafter, the board of trustees shall determine for the respective fiscal year the percent by which the percentage multiplier under subsection 2 shall be reduced for each month that a member's retirement date precedes the member's fifty-fifth birthday. The board of trustees shall make this determination based upon the most recent actuarial valuation of the system, the calculation of the actuarial cost for each month of retirement of a member prior to age fifty-five, and the premise that the provision of a service retirement allowance to a member who is less than fifty-five years of age will not result in any increase in cost to the system.

3. *Ordinary disability retirement bene-*

*fit.* Upon the application of a member in service or of the commissioner of public safety, any member shall be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on an ordinary disability retirement allowance, provided that the medical board after a medical examination of such member shall certify that said member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired. However, if a person's membership in the system first commenced on or after July 1, 1992, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the medical board that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same position held immediately prior to the application for disability benefits.

4. *Allowance on ordinary disability retirement.*

a. Upon retirement for ordinary disability prior to July 1, 1998, a member shall receive an ordinary disability retirement allowance which shall consist of a pension which shall equal fifty percent of the member's average final compensation unless either of the following conditions exist:

(1) If the member has not had five or more years of membership service, the member shall receive a disability pension equal to one-fourth of the member's average final compensation.

(2) If the member has had twenty-two or more years of membership service, the member shall receive a disability retirement allowance that is equal to the greater of the benefit that the member would receive under subsection 2 if the member were fifty-five years of age or the disability pension otherwise calculated under this subsection.

b. Upon retirement for ordinary disability on or after July 1, 1998, a member who has five or more years of membership service shall receive a disability retirement allowance in an amount equal to the greater of fifty percent of the member's average final compensation or the retirement allowance that the member would receive under subsection 2 if the member had attained fifty-five years of age. A member who has less than five years of membership service shall receive a pension equal to one-fourth of the member's average final compensation.

5. *Accidental disability benefit.*

a. Upon application of a member in service or of the commissioner of public safety, any member who has become totally and permanently incapacitated for duty as the natural and proximate result of an injury, disease, or exposure occurring or aggravated while in the actual performance of duty

at some definite time and place shall be retired by the board of trustees, provided that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired. However, if a person's membership in the system first commenced on or after July 1, 1992, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the medical board that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same position held immediately prior to the application for disability benefits.

b. Should a member in service become incapacitated for duty as a natural and proximate result of an injury, disease, or exposure incurred or aggravated while in the actual performance of duty at some definite time or place, the member shall, upon being found to be temporarily incapacitated following an examination by the board of trustees, be entitled to receive the member's fixed pay and allowances, without using the member's sick leave, until reexamined by the board and found to be fully recovered or permanently disabled. In addition, a member found to be temporarily incapacitated under this paragraph shall be credited with any sick leave used prior to the determination that the member was temporarily incapacitated under this paragraph for the period of time sick leave was used.

c. Disease under this section shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain, exposure, or the inhalation of noxious fumes, poison, or gases. However, if a person's membership in the system first commenced on or after July 1, 1992, and the heart disease or disease of the lungs or respiratory tract would not exist, but for a medical condition that was known to exist on the date that membership commenced, the presumption established in this paragraph shall not apply.

6. *Retirement after accident.*

a. Upon retirement for accidental disability prior to July 1, 1990, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty-six and two-thirds percent of the member's average final compensation.

b. Upon retirement for accidental disability on or after July 1, 1990, but before July 1, 1998, a member shall receive an accidental disability retirement allowance which shall consist of a pension equal to sixty percent of the member's average final compensation. However, if the member has had twenty-two or more years of membership

service, the member shall receive a disability retirement allowance that is equal to the greater of the retirement allowance that the member would receive under subsection 2 if the member were fifty-five years of age or the disability retirement allowance calculated under this paragraph.

c. Upon retirement for accidental disability on or after July 1, 1998, a member shall receive an accidental disability retirement allowance which shall consist of a pension in an amount equal to the greater of sixty percent of the member's average final compensation or the retirement allowance that the member would receive under subsection 2 if the member had attained fifty-five years of age.

7. *Reexamination of beneficiaries retired on account of disability.* Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board of trustees may, and upon the member's application shall, require any disability beneficiary who has not yet attained age fifty-five to undergo a medical examination at a place designated by the medical board. Such examination shall be made by the medical board or in special cases, by an additional physician or physicians designated by such board. Should any disability beneficiary who has not attained the age of fifty-five refuse to submit to such medical examination, the beneficiary's allowance may be discontinued until the beneficiary's withdrawal of such refusal, and should the beneficiary's refusal continue for one year all rights in and to the beneficiary's pension may be revoked by the board of trustees.

a. Should any beneficiary for either ordinary or accidental disability, except a beneficiary who is fifty-five years of age or over and would have completed twenty-two years of service if the beneficiary had remained in active service, be engaged in a gainful occupation paying more than the difference between the member's net retirement allowance and one and one-half times the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement, then the amount of the retirement allowance shall be reduced to an amount such that the member's net retirement allowance plus the amount earned by the member shall equal one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. Should the member's earning capacity be later changed, the amount of the retirement allowance may be further modified, provided that the new retirement allowance shall not exceed the amount of the retirement allowance originally granted adjusted by annual readjustments of pensions pursuant to subsection 14 of this section nor an amount which would cause the member's net retirement allowance,

when added to the amount earned by the beneficiary, to equal one and one-half times the amount of the current earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at retirement. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which the member was retired at age fifty-five or greater, shall not again become a member of the retirement system and shall have the member's retirement allowance suspended while in active service. If the rank or position held by the retired member is subsequently abolished, adjustments to the allowable limit on the amount of income which can be earned in a gainful occupation shall be computed in the same manner as provided in subsection 14, paragraph "c", of this section for readjustment of pensions when a rank or position has been abolished. If the salary scale associated with a member's rank at retirement is changed after the member retires, earnable compensation for purposes of this section shall be based upon the salary an active member currently would receive at the same rank and with seniority equal to that of the retired member at the time of retirement. For purposes of this paragraph, "*net retirement allowance*" means the amount determined by subtracting the amount paid during the previous calendar year by the beneficiary for health insurance or similar health care coverage for the beneficiary and the beneficiary's dependents from the amount of the member's retirement allowance paid for that year pursuant to this chapter. The beneficiary shall submit sufficient documentation to the board of trustees to permit the system to determine the member's net retirement allowance for the applicable year.

A beneficiary retired under the provisions of this paragraph in order to be eligible for continued receipt of retirement benefits shall no later than May 15 of each year submit to the board of trustees a copy of the beneficiary's state income tax return for the preceding year.

Retroactive to July 1, 1976, the limitations on pay of a member engaged in a gainful occupation who is retired under accidental disability prescribed in this paragraph shall not apply to a member who retired before July 1, 1976.

b. Should a disability beneficiary under age fifty-five be restored to active service at a compensation not less than the disability beneficiary's average final compensation, the disability beneficiary's retirement allowance shall cease, the disability beneficiary shall again become a member and shall contribute thereafter at the same rate payable by other members of comparable rank, seniority, and age, and former service on the basis of which the disability beneficiary's service was computed at the time of retirement shall be restored to full force and effect. Upon subsequent retirement the disability beneficiary shall be credited

with all service as a member, and also with the period of disability retirement.

c. The commissioner of public safety may, subject to approval of the medical board, assign any former member of the division of highway safety, uniformed force, and radio communications or the division of criminal investigation and bureau of identification or an arson investigator who is retired and drawing a pension for disability under the provisions of this chapter, to the performance of light duties in such division.

8. *Ordinary death benefit.*

a. Upon the receipt of proof of the death of a member in service, or a member not in service who has completed four or more years of service as provided in subsection 1, paragraph "b", there shall be paid to the person designated by the member to the board of trustees as the member's beneficiary if the member has had one or more years of membership service and no pension is payable under subsection 9, an amount equal to fifty percent of the compensation earned by the member during the year immediately preceding the member's death if the member is in service, or an amount equal to fifty percent of the compensation earned by the member during the member's last year of service if the member is not in service.

b. In lieu of the payment specified in paragraph "a", a beneficiary meeting the qualifications of paragraph "c" may elect to receive a monthly pension equal to one-twelfth of forty percent of the average final compensation of the member, but not less than an amount equal to twenty-five percent of the monthly earnable compensation paid to an active member having the rank of senior patrol officer of the Iowa state patrol if the member was in service at the time of death. For a member not in service at the time of death, the pension shall be reduced as provided in subsection 1, paragraph "b".

For a member not in service at the time of death, the pension shall be paid commencing when the member would have attained the age of fifty-five except that if there is a child of the member, the pension shall be paid commencing with the member's death until the children reach the age of eighteen, or twenty-two if applicable. The pension shall resume commencing when the member would have attained the age of fifty-five.

For a member in service at the time of death, the pension shall be paid commencing with the member's death. In addition to the pension, there shall also be paid for each child of a member, a monthly pension equal to six percent of the monthly earnable compensation payable to an active member having the rank of senior patrol officer of the Iowa state patrol.

For the purpose of this chapter, a senior patrol officer is a person who has completed ten years of service in the Iowa state patrol.

Notwithstanding section 97A.6, subsection 8, Code 1985, effective July 1, 1990, for a member's

surviving spouse who, prior to July 1, 1986, elected to receive pension benefits under this paragraph, the monthly pension benefit shall be equal to the higher of one-twelfth of forty percent of the average final compensation of the member, or the amount the surviving spouse was receiving on July 1, 1990.

c. The pension under paragraph "b" may be selected only by the following beneficiaries:

(1) The spouse.

(2) If there is no spouse, or if the spouse dies and there is a child of a member, then the guardian of the member's child or children, divided as the board of trustees determines, to continue as a joint and survivor pension until every child of the member dies or attains the age of eighteen, or twenty-two if applicable.

(3) If there is no surviving spouse or child, then the member's dependent father or mother, or both, as the board of trustees determines, to continue until remarriage or death.

d. If there is no nomination of beneficiary, the benefits provided in this subsection shall be paid to the member's estate.

9. *Accidental death benefit.* If, upon the receipt of evidence and proof that the death of a member in service was the natural and proximate result of an accident, disease, or exposure occurring or aggravated at some definite time and place while the member was in the actual performance of duty, the board of trustees shall decide that death was so caused in the performance of duty there shall be paid, in lieu of the ordinary death benefit provided in subsection 8 of this section, to the member's estate or to such person having an insurable interest in the member's life as the member shall have nominated by written designation duly executed and filed with the board of trustees:

a. A pension equal to one-half of the average final compensation of such member shall be paid to the surviving spouse, children or dependent parents as provided in paragraphs "c", "d", and "e" of subsection 8 of this section.

b. If there is no surviving spouse, child, or dependent parent surviving a deceased member, the death shall be treated as an ordinary death case and the benefit payable under subsection 8, paragraph "a" of this section, in lieu of the pension provided in paragraph "a" of this subsection, shall be paid to the member's estate.

c. In addition to the benefits for the surviving spouse enumerated in this subsection, there shall also be paid for each child of a member a monthly pension equal to six percent of the monthly earnable compensation payable to an active member having the rank of senior patrol officer of the Iowa state patrol.

10. *Optional allowance.* With the provision that no optional selection shall be effective in case a beneficiary dies within thirty days after retirement, in which event such a beneficiary shall be

considered as an active member at the time of death, until the first payment on account of any benefit becomes normally due, any beneficiary may elect to receive the beneficiary's benefit in a retirement allowance payable throughout life, or may elect to receive the actuarial equivalent at that time of the beneficiary's retirement allowance in a lesser retirement allowance payable throughout life with the provision that an amount in money not exceeding the amount of the beneficiary's accumulated contributions shall be immediately paid in cash to such member or some other benefit or benefits shall be paid either to the member or to such person or persons as the member shall nominate, provided such cash payment or other benefit or benefits, together with the lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to the member's retirement allowance and shall be approved by the board of trustees; provided, that a cash payment to such member or beneficiary at the time of retirement of an amount not exceeding fifty percent of the member's or beneficiary's accumulated contributions shall be made by the board of trustees upon said member's or beneficiary's election.

11. *Pensions offset by compensation benefits.* Any amounts which may be paid or payable by the state under the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death, shall be offset against and payable in lieu of any benefits payable out of funds provided by the state under the provisions of this chapter on account of the same disability or death. In case the present value of the total commuted benefits under said workers' compensation or similar law is less than the pension reserve on the benefits otherwise payable from funds provided by the state under this chapter, then the present value of the commuted payments shall be deducted from the pension reserve and such benefits as may be provided by the pension reserve so reduced shall be payable under the provisions of this chapter.

12. *Pension to surviving spouse and children of deceased pensioned members.* In the event of the death of any member receiving a retirement allowance under the provisions of subsections 2, 2A, 4, or 6 of this section there shall be paid a pension:

a. To the member's surviving spouse, equal to one-half the amount received by the deceased beneficiary, but in no instance less than an amount equal to twenty-five percent of the monthly earnable compensation paid to an active member having the rank of senior patrol officer of the Iowa state patrol, and in addition a monthly pension equal to the monthly pension payable under subsection 9, paragraph "c", of this section for each child under eighteen years of age or twenty-two years of age if applicable; or

b. If the spouse dies either prior or subsequent to the death of the member, to the guardian of each

surviving child, a monthly pension equal to the monthly pension payable under subsection 9, paragraph "c", of this section for the support of the child.

13. *Judicial review of action of the board of trustees.* Judicial review of any action of the board of trustees may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A, the petition for judicial review must be filed within thirty days after the member receives written notice of the trustees' action. The board of trustees shall be represented by the attorney general. An appeal may be taken by the petitioner or the board of trustees to the supreme court of this state irrespective of the amount involved.

14. *Pensions payable.* Pensions payable under this section shall be adjusted as follows:

a. On each July 1 and January 1, the monthly pensions authorized in this section payable to retired members and to beneficiaries, except children of a deceased member, shall be adjusted as provided in this paragraph. The monthly pension of each retired member and each beneficiary shall be adjusted by adding to that monthly pension an amount equal to the amounts determined in subparagraphs (1) and (2). The adjusted monthly pension of a retired member shall not be less than the amount which was paid at the time of the member's retirement.

(1) An amount equal to the difference between the monthly earnable compensation payable to an active member of the department, of the same rank and position on the salary scale as was held by the retired or deceased member at the time of the member's retirement or death, for the month for which the last preceding adjustment was made and the monthly earnable compensation payable to an active member of the department of the same rank and position on the salary scale for the month for which the adjustment is made shall be multiplied by the following applicable percentage:

(a) Forty percent for members receiving a service retirement allowance and for beneficiaries receiving a pension under subsection 9 of this section.

(b) Forty percent for members with five or more years of membership service who are receiving an ordinary disability retirement allowance.

(c) Twenty-four percent for members with less than five years of membership service who are receiving an ordinary disability retirement allowance, and for beneficiaries receiving a pension under subsection 8 of this section.

(d) Forty percent for members receiving an accidental disability allowance.

The amount added to the monthly pension of a surviving spouse receiving a pension under subsection 12, paragraph "a", of this section shall be equal to one-half the amount that would have been

added to the monthly pension of the retired member under this subparagraph.

(2) For each adjustment occurring on July 1, the following applicable amount determined as follows:

(a) Fifteen dollars where the member's retirement date was less than five years prior to the effective date of the adjustment.

(b) Twenty dollars where the member's retirement date was at least five years, but less than ten years, prior to the effective date of the adjustment.

(c) Twenty-five dollars where the member's retirement date was at least ten years, but less than fifteen years, prior to the effective date of the adjustment.

(d) Thirty dollars where the member's retirement date was at least fifteen years, but less than twenty years, prior to the effective date of the adjustment.

(e) Thirty-five dollars where the member's retirement date was at least twenty years prior to the effective date of the adjustment.

As of July 1 and January 1 of each year, the monthly pension payable to each surviving child under the provisions of subsections 8, 9, and 12 of this section shall be adjusted to equal six percent of the monthly earnable compensation payable in the month for which the adjustment is made to an active member having the rank of senior patrol officer of the Iowa state patrol.

b. All monthly pensions adjusted as provided in this subsection shall be payable beginning on the first of the month in which the adjustment is made and shall continue in effect until the next following month in which an adjustment is made pursuant to this subsection at which time the monthly pensions shall again be adjusted in accordance with paragraph "a" of this subsection.

c. The adjustment of pensions required by this subsection shall recognize the retired or deceased member's position on the salary scale within the member's rank at the time of the member's retirement or death. In the event that the rank or position held by the retired or deceased member at the time of retirement or death is subsequently abolished, adjustments in the pensions of the member or of the member's spouse or children shall be computed by the board of trustees as though such rank or position had not been abolished and salary increases had been granted to such rank or position on the same basis as increases granted to other ranks and positions in the department.

d. A retired member eligible for benefits under the provisions of subsection 1 is not eligible for the annual readjustment of pensions provided in this subsection unless the member served at least twenty-two years prior to the member's termination of employment.

15. *Remarriage of surviving spouse.* Effective July 1, 1990, for a member who died prior to July 1, 1988, if the member's surviving spouse remarried prior to July 1, 1988, the remarriage does

not make the spouse ineligible under subsection 8, paragraph "c", subparagraphs (1) and (2), to receive benefits under subsections 8, 9, 12, and 14.

16. *Line of duty death benefit.*

a. If, upon the receipt of evidence and proof that the death of a member in service was the direct and proximate result of a traumatic personal injury incurred in the line of duty, the board of trustees decides that death was so caused, there shall be paid, to a person authorized to receive an accidental death benefit as provided in subsection 9, the amount of one hundred thousand dollars, which shall be payable in a lump sum.

b. A line of duty death benefit shall not be payable under this subsection if any of the following applies:

(1) The death resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the member's death.

(2) The death was caused by the intentional misconduct of the member or by the member's intent to cause the member's own death.

(3) The member was voluntarily intoxicated at the time of death.

(4) The member was performing the member's duties in a grossly negligent manner at the time of death.

(5) An individual who would otherwise be entitled to a benefit under this subsection was, through the individual's actions, a substantial contributing factor to the member's death.

2003 Acts, ch 20, §1, 2; 2003 Acts, ch 44, §114  
2000 amendment to subsection 8, paragraph b, is effective April 12, 2000, and is retroactively applicable on and after July 1, 1996; 2000 Acts, ch 1077, §9

2002 amendment to subsection 6, paragraph c, takes effect April 26, 2002, and applies retroactively to July 1, 1998; 2002 Acts, ch 1135, §6  
Code chapter reference added  
Subsection 5, paragraph b amended

**97A.7 Management of funds.**

1. The board of trustees shall be the trustees of the several funds created by this chapter as provided in section 97A.8 and shall have full power to invest and reinvest such funds subject to the terms, conditions, limitations and restrictions imposed by subsection 2 of this section, and subject to like terms, conditions, limitations, and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as of the proceeds of said investments and any moneys belonging to said funds. The board of trustees may authorize the treasurer of state to exercise any of the duties of this section. When so authorized the treasurer of state shall report any transactions to the board of trustees at its next monthly meeting.

2. The several funds created by this chapter may be invested in any investments authorized for

the Iowa public employees' retirement system in section 97B.7A.

3. The treasurer of the state shall be the custodian of the several funds. All payments from said funds shall be made by the treasurer only upon vouchers signed by two persons designated by the board of trustees. A duly attested copy of the resolution of the board of trustees designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer of state as the treasurer's authority for making payments on such vouchers. No voucher shall be drawn unless it shall previously have been allowed by resolution of the board of trustees.

4. A member of the board of trustees or an employee of the department of public safety shall not have a direct interest in the gains or profits of any investment made by the board of trustees. A trustee shall not receive any pay or emolument for the trustee's services. A trustee or employee of the department of public safety shall not directly or indirectly use the assets of the system except to make current and necessary payments as authorized by the board of trustees, nor shall a trustee or employee of the department of public safety become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the board of trustees.

2003 Acts, ch 145, §169  
Subsection 4 amended

**97A.8 Method of financing.**

All the assets of the system created and established by this chapter shall be credited according to the purpose for which they are held to one of three funds, namely, the pension accumulation fund, the pension reserve fund, and the expense fund.

1. *Pension accumulation fund.* The pension accumulation fund shall be the fund in which shall be accumulated all moneys for the payment of all pensions and other benefits payable from contributions made by the state and from which shall be paid the lump-sum death benefits for all members payable from the said contributions. Contributions to and payments from the pension accumulation fund shall be as follows:

a. On account of each member there shall be paid annually into the pension accumulation fund by the state of Iowa an amount equal to a certain percentage of the earnable compensation of the member to be known as the "normal contribution". The rate percent of such contribution shall be fixed on the basis of the liabilities of the retirement system as shown by annual actuarial valuations.

b. On the basis of the rate of interest and of the mortality, interest, and other tables adopted by the board of trustees, the board of trustees, upon the advice of the actuary hired by the board for that purpose, shall make each valuation required by this chapter and shall immediately after making such valuation, determine the "normal con-

tribution rate". The normal contribution rate shall be the rate percent of the earnable compensation of all members obtained by deducting from the total liabilities of the fund the sum of the amount of the funds in hand to the credit of the fund and dividing the remainder by one percent of the present value of the prospective future compensation of all members as computed on the basis of the rate of interest and of mortality and service tables adopted by the board of trustees, all reduced by the employee contribution made pursuant to this subsection. However, the normal rate of contribution shall not be less than seventeen percent. The normal rate of contribution shall be determined by the board of trustees after each valuation. To assist in determining the normal rate of contribution, the board of trustees may adopt a smoothing method for valuing the assets of the system. The smoothing method is designed to reduce changes in the normal contribution rate which could result from fluctuations in the market value of the assets of the system.

c. The total amount payable in each year to the pension accumulation fund shall not be less than the rate percent known as the normal contribution rate of the total compensation earnable by all members during the year. However, the aggregate payment by the state shall be sufficient when combined with the amount in the fund to provide the pensions and other benefits payable out of the fund during the then current year.

d. All lump-sum death benefits on account of death in active service payable from contributions of the state shall be paid from the pension accumulation fund.

e. Upon the retirement or death of a member an amount equal to the pension reserve on any pension payable to the member or on account of the member's death shall be transferred from the pension accumulation fund to the pension reserve fund.

f. Except as otherwise provided in paragraph "h":

(1) An amount equal to three and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal year beginning July 1, 1989.

(2) An amount equal to four and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal year beginning July 1, 1990.

(3) An amount equal to five and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal year beginning July 1, 1991.

(4) An amount equal to six and one-tenth percent of each member's compensation from the earnable compensation of the member shall be

paid to the pension accumulation fund for the fiscal year beginning July 1, 1992.

(5) An amount equal to seven and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal year beginning July 1, 1993.

(6) An amount equal to eight and one-tenth percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal period beginning July 1, 1994, through December 31, 1994, and an amount equal to eight and thirty-five hundredths percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal period beginning January 1, 1995, through June 30, 1995.

(7) An amount equal to nine and thirty-five hundredths percent of each member's compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal year beginning July 1, 1995.

(8) Notwithstanding any other provision of this chapter, beginning July 1, 1996, and each fiscal year thereafter, an amount equal to the member's contribution rate times each member's compensation shall be paid to the pension accumulation fund from the earnable compensation of the member. For the purposes of this subparagraph, the member's contribution rate shall be nine and thirty-five hundredths percent. However, the system shall increase the member's contribution rate as necessary to cover any increase in cost to the system resulting from statutory changes which are enacted by any session of the general assembly meeting after January 1, 1995, if the increase cannot be absorbed within the contribution rates otherwise established pursuant to this paragraph, but subject to a maximum employee contribution rate of eleven and three-tenths percent. After the employee contribution reaches eleven and three-tenths percent, sixty percent of the additional cost of such statutory changes shall be paid by the employer under paragraph "c" and forty percent of the additional cost shall be paid by employees under this paragraph.

g. The board of trustees shall certify to the director of the department of administrative services and the director of the department of administrative services shall cause to be deducted from the earnable compensation of each member the contribution required under this subsection and shall forward the contributions to the board of trustees for recording and for deposit in the pension accumulation fund.

The deductions provided for under this subsection shall be made notwithstanding that the minimum compensation provided by law for any member is reduced. Every member is deemed to consent to the deductions made under this section.

*h.* Notwithstanding the provisions of paragraph “*f*”, the following transition percentages apply to members’ contributions as specified:

(1) For members who on July 1, 1990, have attained the age of forty-nine years or more, an amount equal to nine and one-tenth percent of each member’s compensation from the earnable compensation of the member shall be paid to the pension accumulation fund for the fiscal period beginning July 1, 1990, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph “*f*”, subparagraphs (4) through (8), shall apply.

(2) For members who on July 1, 1990, have attained the age of forty-eight years but have not attained the age of forty-nine years, an amount equal to eight and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, and an amount equal to nine and one-tenth percent shall be paid for the fiscal period beginning July 1, 1991, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph “*f*”, subparagraphs (4) through (8), shall apply.

(3) For members who on July 1, 1990, have attained the age of forty-seven years but have not attained the age of forty-eight years, an amount equal to seven and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to eight and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, and an amount equal to nine and one-tenth percent shall be paid for the fiscal period beginning July 1, 1992, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph “*f*”, subparagraphs (4) through (8), shall apply.

(4) For members who on July 1, 1990, have attained the age of forty-six years but have not attained the age of forty-seven years, an amount equal to six and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to seven and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, an amount equal to eight and one-tenth percent shall be paid for the fiscal period beginning July 1, 1992, through October 15, 1992, and commencing October 16, 1992, and for each subsequent fiscal period, the rates specified in paragraph “*f*”, subparagraphs (4) through (8), shall apply.

(5) For members who on July 1, 1990, have attained the age of forty-five years but have not attained the age of forty-six years, an amount equal to five and one-tenth percent shall be paid for the fiscal year beginning July 1, 1990, an amount equal to six and one-tenth percent shall be paid for the fiscal year beginning July 1, 1991, and an amount equal to seven and one-tenth percent shall be paid for the fiscal period beginning July 1, 1992, through October 15, 1992. Commencing October

16, 1992, and for each subsequent fiscal period, the rates specified in paragraph “*f*”, subparagraphs (4) through (8), shall apply.

*i.* (1) Notwithstanding paragraph “*g*” or other provisions of this chapter, beginning January 1, 1995, for federal income tax purposes, and beginning January 1, 1999, for state income tax purposes, member contributions required under paragraph “*f*” or “*h*” which are picked up by the department shall be considered employer contributions for federal and state income tax purposes, and the department shall pick up the member contributions to be made under paragraph “*f*” or “*h*” by its employees. The department shall pick up these contributions by reducing the salary of each of its employees covered by this chapter by the amount which each employee is required to contribute under paragraph “*f*” or “*h*” and shall certify the amount picked up in lieu of the member contributions to the department of revenue.\* The department of revenue\* shall forward the amount of the contributions picked up to the board of trustees for recording and deposit in the pension accumulation fund.

(2) Member contributions picked up by the department under subparagraph (1) shall be treated as employer contributions for federal and state income tax purposes only and for all other purposes of this chapter shall be treated as employee contributions and deemed part of the employee’s earnable compensation or salary.

2. *Pension reserve fund.* The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members or to their beneficiaries and from which such pensions and benefits in lieu thereof shall be paid. Should a beneficiary retired on account of disability be restored to active service and again become a member of the system, the member’s pension reserve shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of a disability beneficiary be reduced as a result of an increase in the beneficiary’s amount earned, the amount of the annual reduction in the beneficiary’s pension shall be paid annually into the pension accumulation fund during the period of such reduction.

3. *Expense fund.* The expense fund shall be the fund to which shall be credited all money provided by the state of Iowa to pay the administration expenses of the system and from which shall be paid all the expenses necessary in connection with the administration and operation of the system. Biennially the board of trustees shall estimate the amount of money necessary to be paid into the expense fund during the ensuing biennium to provide for the expense of operation of the system. Investment management expenses shall be charged to the investment income of the system and there is appropriated from the system an amount required for the investment management expenses. The board of trustees shall report the

investment management expenses for the fiscal year as a percent of the market value of the system.

For purposes of this subsection, investment management expenses are limited to the following:

- a. Fees for investment advisors, consultants, and investment management and benefit consultant firms hired by the board of trustees in administering this chapter.
- b. Fees and costs for safekeeping fund assets.
- c. Costs for performance and compliance monitoring, and accounting for fund investments.
- d. Any other costs necessary to prudently invest or protect the assets of the fund.

2003 Acts, ch 145, §286

\*Department of administrative services probably intended; corrective

legislation is pending  
Terminology change applied

**97A.11 Contributions by the state.**

On or before the first day of November in each year, the board of trustees shall certify to the director of the department of administrative services the amounts which will become due and payable during the year next following to the pension accumulation fund and the expense fund. The amounts so certified shall be paid by the director of the department of administrative services out of the funds appropriated for the Iowa department of public safety, to the treasurer of state, the same to be credited to the system for the ensuing year.

2003 Acts, ch 145, §286

Terminology change applied

**CHAPTER 97B**

**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)**

For transition provisions relating to the establishment of the Iowa public employees' retirement system as an independent state agency; continuation of rules in effect on July 1, 2003; and procedure for updating the Iowa administrative code; see 2003 Acts, ch 145, §287, 288

**97B.1 System created — organizational definitions.**

1. The "Iowa Public Employees' Retirement System" is established as an independent agency within the executive branch of state government. The Iowa public employees' retirement system shall administer the retirement system established under this chapter.

2. As used in this chapter, unless the context requires otherwise:

- a. "Board" means the investment board created by section 97B.8A.
- b. "Chief executive officer" means the chief executive officer of the Iowa public employees' retirement system.
- c. "Committee" means the benefits advisory committee created by section 97B.8B.
- d. "System" means the Iowa public employees' retirement system.

2003 Acts, ch 145, §170

For additional definitions, see §97B.1A  
Section amended

**97B.1A Definitions.**

When used in this chapter:

1. "Abolished system" means the Iowa old-age and survivors' insurance system repealed by sections 97.50 to 97.53.

2. "Accumulated contributions" means the total obtained as of any date, by accumulating each individual contribution by the member with interest plus interest dividends as provided in section 97B.70, for all completed calendar years and for any completed calendar year for which the in-

terest dividend has not been declared and for completed months of partially completed calendar years, compounded as provided in section 97B.70.

2A. "Accumulated employer contributions" means an amount equal to the total obtained as of any date, by accumulating each individual contribution by the employer for the member with interest plus interest dividends as provided in section 97B.70, for all completed calendar years and for any completed calendar year for which the interest dividend has not been declared and for completed months of partially completed calendar years, compounded as provided in section 97B.70.

3. "Active member" during a calendar year means a member who made contributions to the retirement system at any time during the calendar year and who:

- a. Had not received or applied for a refund of the member's accumulated contributions for withdrawal or death, and

- b. Had not commenced receiving a retirement allowance.

4. "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the system.

5. "Beneficiary" means the person or persons who are entitled to receive any benefits payable under this chapter at the death of a member, if the person or persons have been designated on a form provided by the system and filed with the system. If no such designation is in effect at the time of death of the member or if no person so designated is living at that time, then the beneficiary is the es-

tate of the member.

6. “*Bona fide retirement*” means a retirement by a vested member which meets the requirements of section 97B.52A and in which the member is eligible to receive benefits under this chapter.

7. “*Contributions*” means the payments to the fund required herein, by the employer and by the members, to provide the benefits of the retirement system.

8. “*Employee*” means an individual who is employed as defined in this chapter for whom coverage under this chapter is mandatory.

a. “*Employee*” shall also include any of the following individuals who do not elect out of coverage under this chapter pursuant to section 97B.42A:

(1) Elective officials in positions for which the compensation is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions. An elective official covered under this section may terminate membership under this chapter by informing the system in writing of the expiration of the member’s term of office or by informing the system of the member’s intent to terminate membership for employment as an elective official and establishing that the member has a bona fide termination of employment from all employment covered under this chapter other than as an elective official and that the member has filed a completed application for benefits form with the system. A county attorney is an employee for purposes of this chapter whether that county attorney is employed on a full-time or part-time basis.

(2) Members of the general assembly of Iowa and temporary employees of the general assembly of Iowa. A member of the general assembly covered under this chapter may terminate membership under this chapter by informing the system in writing of the member’s intent to terminate membership.

Temporary employees of the general assembly covered under this chapter may terminate membership by sending written notification to the system of their separation from service.

(3) Nonvested employees of drainage and levee districts.

(4) Employees of a community action program determined to be an instrumentality of the state or a political subdivision.

(5) Magistrates.

(6) Members of the ministry, rabbinate, or other religious order who have taken the vow of poverty.

(7) Persons employed as city managers, or as city administrators performing the duties of city managers, under a form of city government listed in chapter 372 or chapter 420.

(8) Members of the state transportation commission, the board of parole, and the state health facilities council.

(9) Employees appointed by the state board of regents who do not elect coverage in a retirement system qualified by the state board of regents that meets the criteria of section 97B.2.

(10) Persons employed by the board of trustees for the statewide fire and police retirement system established in section 411.36.

(11) Persons employed by a municipal water utility or waterworks that has established a pension and annuity retirement system for its employees pursuant to chapter 412.

b. “*Employee*” does not mean the following individuals:

(1) Individuals who are enrolled as students and whose primary occupations are as students who are incidentally employed by employers.

(2) Graduate medical students while serving as interns or resident doctors in training at any hospital, or county medical examiners and deputy county medical examiners under chapter 331, division V, part 8, who are not full-time county employees.

(3) Employees hired for temporary employment of less than six consecutive months or one thousand forty hours in a calendar year. An employee who works for an employer for six or more consecutive months or who works for an employer for more than one thousand forty hours in a calendar year is not a temporary employee under this subparagraph. Adjunct instructors are temporary employees for the purposes of this chapter. As used in this section, unless the context otherwise requires, “*adjunct instructors*” means instructors employed by a community college or a university governed by the state board of regents without a continuing contract, whose teaching load does not exceed one-half time for two full semesters or three full quarters per calendar year.

(4) Foreign exchange teachers and visitors including alien scholars, trainees, professors, teachers, research assistants, and specialists in their field of specialized knowledge or skill.

(5) Employees of the Iowa dairy industry commission established under chapter 179, the Iowa beef cattle producers association established under chapter 181, the Iowa pork producers council established under chapter 183A, the Iowa turkey marketing council established under chapter 184A, the Iowa soybean promotion board established under chapter 185, the Iowa corn promotion board established under chapter 185C, and the Iowa egg council established under chapter 184.

(6) Judicial hospitalization referees appointed under section 229.21.

(7) Employees of an area agency on aging, if as of July 1, 1994, the agency provides for participation by all of its employees in an alternative qualified plan pursuant to the requirements of the federal Internal Revenue Code.

(8) Persons employed through any program described in section 84A.7 and provided by the Iowa conservation corps.

(9) Persons employed by the Iowa student loan liquidity corporation.

9. “*Employer*” means the state of Iowa, the counties, municipalities, agencies, public school districts, all political subdivisions, and all of their departments and instrumentalities, including area agencies on aging, other than those employing persons as specified in subsection 8, paragraph “b”, subparagraph (7), and joint planning commissions created under chapter 28E or 28I.

If an interstate agency is established under chapter 28E and similar enabling legislation in an adjoining state, and an employer had made contributions to the retirement system for employees performing functions which are transferred to the interstate agency, the employees of the interstate agency who perform those functions shall be considered to be employees of the employer for the sole purpose of membership in the retirement system, although the employer contributions for those employees are made by the interstate agency.

10. “*Employment for any calendar quarter*” means any service performed under an employer-employee relationship under this chapter for which wages are reported in the calendar quarter. For the purposes of this chapter, elected officials are deemed to be in employment for all quarters of the elected officials’ respective terms of office, even if the elected officials have selected a method of payment of wages which results in the elected officials not being credited with wages every quarter of a year.

11. “*First month of entitlement*” means the first month for which a member is qualified to receive retirement benefits under this chapter. Effective January 1, 1995, a member who meets all of the following requirements is qualified to receive retirement benefits under this chapter:

a. Has attained the minimum age for retirement.

b. If the member has not attained seventy years of age, has terminated all employment covered under the chapter or formerly covered under the chapter pursuant to section 97B.42.

c. Has filed a completed application for benefits.

d. Has survived into the month for which the member’s first retirement allowance is payable by the retirement system.

12. “*Inactive member*” with respect to future service means a member who at the end of a year had not made any contributions during the current year and who has not received a refund of the member’s accumulated contributions.

13. “*Internal Revenue Code*” means the Internal Revenue Code as defined in section 422.3.

14. “*Member*” means an employee or a former employee who maintains the employee’s or former employee’s accumulated contributions in the retirement system. The former employee is not a member if the former employee has received a re-

fund of the former employee’s accumulated contributions.

14A. “*Member account*” means the account established for each member and includes the member’s accumulated contributions and the member’s share of the accumulated employer contributions as provided in section 97B.53. “*Member account*” does not mean the supplemental account for active members.

15. “*Membership service*” means service rendered by a member after July 4, 1953. Years of membership service shall be counted to the complete quarter calendar year. However, membership service for a calendar year shall not include more than four quarters. In determining a member’s period of membership service, the system shall combine all periods of service for which the member has made contributions.

16. “*Prior service*” means any service by an employee rendered at any time prior to July 4, 1953.

17. “*Regular service*” means service for an employer other than special service.

18. “*Retired member*” means a member who has applied for the member’s retirement allowance and has survived into at least the first day of the member’s first month of entitlement.

19. “*Retirement*” means that period of time beginning when a member who has filed an approved application for a retirement allowance has survived into at least the first day of the member’s first month of entitlement and ending when the member dies.

19A. “*Retirement system*” means the retirement plan as contained in this chapter or as duly amended.

20. “*Service*” means service under this chapter by an employee, except an elected official, for which the employee is paid covered wages. Service shall also mean the following:

a. Service in the armed forces of the United States, if the employee was employed by a covered employer immediately prior to entry into the armed forces, and if the employee was released from service and returns to covered employment with an employer within twelve months of the date on which the employee has the right of release from service or within a longer period as required by the applicable laws of the United States.

b. Leave of absence authorized by the employer prior to July 1, 1998, for a period not exceeding twelve months and ending no later than July 1, 1999.

c. A leave of absence authorized pursuant to the requirements of the federal Family and Medical Leave Act of 1993, or other similar leave authorized by the employer for a period not to exceed twelve weeks in any calendar year.

d. Temporary or seasonal interruptions in service for employees of a school corporation or educational institution when the temporary suspension of service does not terminate the period of employ-

ment of the employee and the employee returns to service at a school corporation or educational institution upon the end of the temporary or seasonal interruption.

21. “*Service*” for an elected official means the period of membership service for which contributions are made beginning on the date an elected official assumes office and ending on the expiration date of the last term the elected official serves, excluding all the intervening periods during which the elected official is not an elected official.

22. “*Special service*” means service for an employer while employed in a protection occupation as provided in section 97B.49B, and as a county sheriff, deputy sheriff, or airport fire fighter as provided in section 97B.49C.

22A. “*Supplemental account for active members*” or “*supplemental account*” means the account established for each active member under section 97B.49H.

23. Reserved.

24. a. “*Three-year average covered wage*” means, for a member who retires prior to July 1, 2005, a member’s covered wages averaged for the highest three years of the member’s service, except as otherwise provided in this subsection. The highest three years of a member’s covered wages shall be determined using calendar years. However, if a member’s final quarter of a year of employment does not occur at the end of a calendar year, the system may determine the wages for the third year by computing the average quarter of all quarters from the member’s highest calendar year of covered wages not being used in the selection of the two highest years and using the computed average quarter for each quarter in the third year in which no wages have been reported in combination with the final quarter or quarters of the member’s service to create a full year. However, the system shall not use the member’s final quarter of wages if using that quarter would reduce the member’s three-year average covered wage. If the three-year average covered wage of a member exceeds the highest maximum covered wages in effect for a calendar year during the member’s period of service, the three-year average covered wage of the member shall be reduced to the highest maximum covered wages in effect during the member’s period of service. Notwithstanding any other provision of this paragraph to the contrary, a member’s wages for the third year as computed by this paragraph shall not exceed, by more than three percent, the member’s highest actual calendar year of covered wages for a member whose first month of entitlement is January 1999 or later.

b. Notwithstanding any other provisions of this subsection to the contrary, the three-year average covered wage shall be computed as follows for the following members:

(1) For a member who retires during the calendar year beginning January 1, 1997, and whose three-year average covered wage at the time of re-

tirement exceeds forty-eight thousand dollars, the member’s covered wages averaged for the highest four years of the member’s service or forty-eight thousand dollars, whichever is greater.

(2) For a member who retires during the calendar year beginning January 1, 1998, and whose three-year average covered wage at the time of retirement exceeds fifty-two thousand dollars, the member’s covered wages averaged for the highest five years of the member’s service or fifty-two thousand dollars, whichever is greater.

(3) For a member who retires during the calendar year beginning January 1, 1999, and whose three-year average covered wage at the time of retirement exceeds fifty-five thousand dollars, the member’s covered wages averaged for the highest six years of the member’s service or fifty-five thousand dollars, whichever is greater.

(4) For a member who retires on or after January 1, 2000, but before January 1, 2001, and whose three-year average covered wage at the time of retirement exceeds sixty-five thousand dollars, the member’s covered wages averaged for the highest six years of the member’s service or sixty-five thousand dollars, whichever is greater.

(5) For a member who retires on or after January 1, 2001, but before January 1, 2002, and whose three-year average covered wage at the time of retirement exceeds seventy-five thousand dollars, the member’s covered wages averaged for the highest six years of the member’s service or seventy-five thousand dollars, whichever is greater.

For purposes of this paragraph, the highest years of the member’s service shall be determined using calendar years and may be determined using one computed year calculated in the manner and subject to the restrictions provided in paragraph “a”.

c. “*Three-year average covered wage*” means, for a member who retires on or after July 1, 2005, the greater of the member’s covered wages averaged for a member’s highest twelve consecutive quarters of service or the member’s covered wages averaged for a member’s highest three calendar years of service. The system shall adopt rules to implement this paragraph in accordance with the requirements of this chapter and the federal Internal Revenue Code.

25. a. “*Vested member*” means a member who has attained through age or sufficient years of service eligibility to receive monthly retirement benefits upon the member’s retirement. A vested member must meet one of the following requirements:

(1) Prior to July 1, 1965, had attained the age of forty-eight and completed at least eight years of service.

(2) Between July 1, 1965, and June 30, 1973, had completed at least eight years of service.

(3) On or after July 1, 1973, has completed at least four years of service.

(4) Has attained the age of fifty-five.

(5) On or after July 1, 1988, an inactive mem-

ber who had accumulated, as of the date of the member's last termination of employment, years of membership service equal to or exceeding the years of membership service specified in this subsection for qualifying as a vested member on that date of termination.

b. "Active vested member" means an active member who has attained sufficient membership service to achieve vested status.

c. "Inactive vested member" means an inactive member who was a vested member at the time of termination of employment.

26. a. (1) "Wages" means all remuneration for employment, including, but not limited to, any of the following:

(a) The cash value of wage equivalents not necessitated by the convenience of the employer. The fair market value of such wage equivalents shall be reported to the system by the employer.

(b) The remuneration paid to an employee before employee-paid contributions are made to plans qualified under sections 125, 129, 401, 403, 408, and 457 of the Internal Revenue Code. In addition, "wages" includes amounts that can be received in cash in lieu of employer-paid contributions to such plans, if the election is uniformly available and is not limited to highly compensated employees, as defined in section 414(q) of the Internal Revenue Code.

(c) For an elected official, other than a member of the general assembly, the total compensation received by the elected official, whether paid in the form of per diem or annual salary, exclusive of expense and travel allowances.

(d) For a member of the general assembly, the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary, exclusive of expense and travel allowances paid to a member of the general assembly except as otherwise provided in this subparagraph subdivision. Wages includes per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly. Wages also includes daily allowances to members of the general assembly for nontravel expenses of office during a session of the general assembly, but does not include the portion of the daily allowance which exceeds the maximum established by law for members from Polk county.

(e) Payments for compensatory time earned that are received in lieu of taking regular work hours off and when paid as a lump sum. However, "wages" does not include payments made in a lump sum for compensatory time earned in excess of two hundred forty hours per year.

(f) Employee contributions required under section 97B.11 and picked up by the employer under section 97B.11A.

(2) "Wages" does not include any of the following:

(a) The cash value of wage equivalents neces-

sitated by the convenience of the employer.

(b) Payments made for accrued sick leave or accrued vacation leave that are not being used to replace regular work hours, whether paid in a lump sum or in installments.

(c) Payments made as an incentive for early retirement or as payment made upon dismissal or severance from employment, or a special bonus payment intended as an early retirement incentive, whether paid in a lump sum or in installments.

(d) Employer-paid contributions that cannot be received by the employee in cash and that are made to, and any distributions from, plans, programs, or arrangements qualified under section 117, 120, 125, 129, 401, 403, 408, or 457 of the Internal Revenue Code.

(e) Employer-paid contributions for coverage under, or distributions from, an accident, health, or life insurance plan, program, or arrangement.

(f) Workers' compensation and unemployment compensation payments.

(g) Disability payments.

(h) Reimbursements of employee business expenses except for those expenses included as wages for a member of the general assembly.

(i) Payments for allowances made to an employee that are not included in an employee's federal taxable income except for those allowances included as wages for a member of the general assembly.

(j) Payments of damages, attorney fees, interest, and penalties made to satisfy a grievance or wage claim.

(k) Payments for services as an independent contractor.

(l) Payments made by an entity that is not an employer under this chapter.

(m) Payments made in lieu of any employer-paid group insurance coverage.

(n) Payments made for the difference between the costs of single and family insurance coverage.

b. "Covered wages" means wages of a member during the periods of membership service as follows:

(1) For the period from July 4, 1953, through December 31, 1953, and each calendar year from January 1, 1954, through December 31, 1963, wages not in excess of four thousand dollars.

(2) For each calendar year from January 1, 1964, through December 31, 1967, wages not in excess of four thousand eight hundred dollars.

(3) For each calendar year from January 1, 1968, through December 31, 1970, wages not in excess of seven thousand dollars, for each calendar year from January 1, 1971, through December 31, 1972, wages not in excess of seven thousand eight hundred dollars, and for each calendar year from January 1, 1973, through December 31, 1975, wages not in excess of ten thousand eight hundred dollars.

(4) For each calendar year from January 1,

1976, through December 31, 1983, wages not in excess of twenty thousand dollars.

(5) For each calendar year from January 1, 1984, through December 31, 1985, wages not in excess of twenty-one thousand dollars per year.

(6) For the calendar year from January 1, 1986, through December 31, 1986, wages not in excess of twenty-two thousand dollars.

(7) For the calendar year from January 1, 1987, through December 31, 1987, wages not in excess of twenty-three thousand dollars.

(8) For the calendar year beginning January 1, 1988, and ending December 31, 1988, wages not in excess of twenty-four thousand dollars.

(9) For the calendar year beginning January 1, 1989, and ending December 31, 1989, wages not in excess of twenty-six thousand dollars.

(10) For the calendar year beginning January 1, 1990, and ending December 31, 1990, wages not in excess of twenty-eight thousand dollars.

(11) For the calendar year beginning January 1, 1991, wages not in excess of thirty-one thousand dollars.

(12) For the calendar year beginning January 1, 1992, wages not in excess of thirty-four thousand dollars.

(13) For the calendar year beginning January 1, 1993, wages not in excess of thirty-five thousand dollars.

(14) For the calendar year beginning January 1, 1994, wages not in excess of thirty-eight thousand dollars.

(15) For the calendar year beginning January 1, 1995, wages not in excess of forty-one thousand dollars.

(16) For the calendar year beginning January 1, 1996, wages not in excess of forty-four thousand dollars.

(17) Commencing with the calendar year beginning January 1, 1997, and for each subsequent calendar year, wages not in excess of the amount permitted for that year under section 401(a)(17) of the Internal Revenue Code.

Notwithstanding any other provision of this chapter providing for the payment of the benefits provided in section 97B.49B, 97B.49C, 97B.49D, or 97B.49G, the system shall establish the covered wages limitation which applies to members covered under section 97B.49B, 97B.49C, 97B.49D, or 97B.49G, at the same level as is established under this subparagraph for other members of the retirement system.

Effective July 1, 1992, “covered wages” does not include wages to a member on or after the effective date of the member’s retirement unless the member is reemployed, as provided under section 97B.48A.

If a member is employed by more than one employer during a calendar year, the total amount of wages paid to the member by the several employers shall be included in determining the limitation

on covered wages as provided in this lettered paragraph. If the amount of wages paid to a member by the member’s several employers during a calendar year exceeds the covered wage limit, the amount of such excess shall not be subject to the contributions required by section 97B.11.

27. “Years of prior service” means the total of all periods of prior service of a member. In computing credit for prior service, service of less than a full quarter shall be rounded up to a full quarter. Where a member had prior service as a teacher, a full year of service shall be granted that member if the member had three quarters of service and a contract for employment for the following school year.

2003 Acts, ch 145, §171, 286

For additional definitions, see §97B.1

Inclusion in definition of wages of certain allowable employer-paid contributions paid by eligible employers to eligible employees; 2000 Acts, ch 1171, §26

2002 amendment to subsection 8, paragraph b, subparagraph (2) takes effect April 26, 2002, and applies retroactively on and after January 1, 1995; 2002 Acts, ch 1135, §38

Terminology changes applied

Subsection 23 amended and renumbered as 19A

### 97B.3 Chief executive officer — appointment and qualifications.

1. The administrator of the system is the chief executive officer. The chief executive officer shall be appointed by the governor subject to confirmation by the senate and shall serve a four-year term of office beginning and ending as provided in section 69.19. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. The governor may remove the chief executive officer for malfeasance in office, or for any cause that renders the chief executive officer ineligible, incapable, or unfit to discharge the duties of the office. The investment board, under the pay plan applicable to employees of the division, shall set the salary of the chief executive officer.

2. The qualifications for appointment as the chief executive officer shall include management-level pension fund administration experience. The qualifications for appointment as the chief executive officer shall also include a demonstrated knowledge of all aspects of pension fund administration, including financial management, investment asset management, benefit design and delivery, legal administration, and operations administration. The chief executive officer shall not be selected on the basis of political affiliation, and while employed as the chief executive officer, shall not be a member of a political committee, participate in a political campaign, or be a candidate for a partisan elective office, and shall not contribute to a political campaign fund, except that the chief executive officer may designate on the checkoff portion of the state or federal income tax return, or both, a party or parties to which a contribution is made pursuant to the checkoff. The chief executive officer shall not hold any other office under the

laws of the United States or of this or any state and shall devote full time to the duties of office.

3. By January 31 of the year in which the term of office of the chief executive officer will end, the investment board and the benefits advisory committee shall submit a written report to the governor and the secretary of the senate concerning the board's and committee's evaluation of the performance of the chief executive officer, together with a recommendation concerning the reappointment of the chief executive officer.

2003 Acts, ch 94, §1, 2, 4; 2003 Acts, ch 145, §286  
Confirmation; §2.32  
2003 amendment to subsection 1 and new subsection 3 are effective May 1, 2003, and are retroactively applicable to July 1, 2002; expiration of term for CEO appointed prior to May 1, 2003; 2003 Acts, ch 94, §3, 4  
Terminology change applied  
Subsection 1 amended  
NEW subsection 3

#### **97B.4 Administration of chapter — powers and duties of system — immunity.**

1. *Chief executive officer.* The system, through the chief executive officer, shall administer this chapter. The chief executive officer shall also be the system's statutory designee with respect to the rulemaking power.

2. *General authority.*

a. The system may adopt, amend, waive, or rescind rules, employ persons, execute contracts with outside parties, make expenditures, require reports, make investigations, and take other action it deems necessary for the administration of the retirement system in conformity with the requirements of this chapter, the applicable provisions of the Internal Revenue Code, and all other applicable federal and state laws. The rules shall be effective upon compliance with chapter 17A.

b. The system may delegate to any person such authority as it deems reasonable and proper for the effective administration of this chapter, and may bond any person handling moneys or signing checks under this chapter.

c. In administering this chapter, the system may enter into a biennial agreement with the department of administrative services concerning the sharing of resources between the system and department which are of benefit to each and which are consistent with the mission of the system and the department. The budget program for the system shall be established by the chief executive officer in consultation with the board and other staff of the system and shall be compiled and submitted by the system pursuant to section 8.23.

3. *Personnel.*

a. *Chief investment officer.* The chief executive officer, following consultation with the board, shall employ a chief investment officer who shall be appointed pursuant to chapter 8A, subchapter IV, and shall be responsible for administering the investment program for the retirement fund pursuant to the investment policies of the board.

b. *Chief benefits officer.* The chief executive officer, following consultation with the benefits

advisory committee, shall employ a chief benefits officer who shall be appointed pursuant to chapter 8A, subchapter IV, and shall be responsible for administering the benefits and other services provided under the retirement system.

c. *Actuary.* The system shall employ an actuary who shall be selected by the board and shall serve at the pleasure of the board. The actuary shall be the technical advisor for the system on matters regarding the operation of the retirement fund.

d. *System employees.* Subject to other provisions of this chapter, the system may employ all other personnel as necessary for the administration of the retirement system. The maximum number of full-time equivalent employees specified by the general assembly for the system for administration of the retirement system for a fiscal year shall not be reduced by any authority other than the general assembly. The personnel of the system shall be appointed pursuant to chapter 8A, subchapter IV. The system shall not appoint or employ a person who is an officer or committee member of a political party organization or who holds or is a candidate for a partisan elective public office.

e. *Legal advisors.* The system may employ attorneys and contract with attorneys and legal firms for the provision of legal counsel and advice in the administration of this chapter and chapter 97C.

f. *Outside advisors.* The system may execute contracts with persons outside state government, including investment advisors, consultants, and managers, in the administration of this chapter. However, a contract with an investment manager or investment consultant shall not be executed by the system pursuant to this paragraph without the prior approval by the board of the hiring of the investment manager or investment consultant.

4. *Reports.*

a. *Annual report to governor.* Not later than the fifteenth day of December of each year, the system shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make recommendations for amendments to this chapter. The report shall include a balance sheet of the moneys in the retirement fund. The report shall also include information concerning the investment management expenses for the retirement fund for each fiscal year expressed as a percent of the market value of the retirement fund investment assets, including the information described in section 97B.7, subsection 3, paragraph "d". The information provided under this paragraph shall also include information on the investment policies and investment performance of the retirement fund. In providing this information, to the extent possible, the system shall include the total investment return for the entire fund, for portions of the fund managed by investment managers, and

for internally managed portions of the fund, and the cost of managing the fund per thousand dollars of assets. The performance shall be based upon market value, and shall be contrasted with relevant market indices and with performances of pension funds of similar asset size.

*b. Annual statement to members.* The system shall prepare and distribute to the members, at the expense of the retirement fund, an annual statement of the member's account and, in such a manner as the system deems appropriate, other information concerning the retirement system.

*c. Actuarial investigation.* During calendar year 2002, and every four years thereafter, the system shall cause an actuarial investigation to be made of all experience under the retirement system. Pursuant to such an investigation, the system shall, from time to time, determine upon an actuarial basis the condition of the retirement system and shall report to the general assembly its findings and recommendations.

*d. Annual valuation of assets.* The system shall cause an annual actuarial valuation to be made of the assets and liabilities of the retirement system and shall prepare an annual statement of the amounts to be contributed under this chapter, and shall publish annually such valuation of the assets and liabilities and the statement of receipts and disbursements of the retirement system. Based upon the actuarial methods and assumptions adopted by the board for the annual valuation, the system shall certify to the governor the contribution rates determined thereby as the rates necessary and sufficient for members and employers to fully fund the benefits and retirement allowances being credited.

*5. Investments.* The system, through the chief investment officer, shall invest, in accordance with the investment policy and goal statement established by the board, the portion of the retirement fund which, in the judgment of the system, is not needed for current payment of benefits under this chapter subject to the requirements of section 97B.7A.

*6. Old records.* The system may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the system and are deemed by the chief executive officer to be no longer necessary to the proper administration of this chapter. The destruction or disposition shall be made only by order of the chief executive officer. Records of deceased members of the retirement system may be destroyed ten years after the later of the final payment made to a third party on behalf of the member or the death of the member. Any moneys received from the disposition of these records shall be deposited to the credit of the retirement fund subject to rules adopted by the system.

*7. Immunity.* The system, employees of the system, the board, the members of the board, and

the treasurer of state are not personally liable for actions or omissions under this chapter that do not involve malicious or wanton misconduct even if those actions or omissions violate the standards established in section 97B.7A.

2003 Acts, ch 145, §172, 173, 286  
Terminology change applied  
Subsection 2, paragraph c amended  
Subsection 3, paragraphs a – d amended

#### **97B.7 Fund created — exclusive benefit — standing appropriations.**

1. There is hereby created as a special fund, separate and apart from all other public moneys or funds of this state, the "Iowa Public Employees' Retirement Fund", hereafter called the "*retirement fund*". The retirement fund shall consist of all moneys collected under this chapter, together with all interest, dividends, and rents thereon, and shall also include all securities or investment income and other assets acquired by and through the use of the moneys belonging to the retirement fund and any other moneys that have been paid into the retirement fund.

2. The treasurer of the state of Iowa is hereby made the custodian of the retirement fund and shall hold and disburse the retirement fund in accordance with the requirements of this chapter. As custodian, the treasurer shall be authorized to disburse moneys in the retirement fund upon warrants drawn by the director of the department of administrative services pursuant to the order of the system. The treasurer shall not select any bank or other third party for the purposes of investment asset safekeeping, other custody, or settlement services without prior consultation with the board.

3. All moneys which are paid or deposited into the fund are appropriated and made available to the system to be used for the exclusive benefit of the members and their beneficiaries or contingent annuitants as provided in this chapter:

*a.* To be used by the system for the payment of claims for benefits under this chapter.

*b.* To be used by the system to pay refunds provided for in this chapter.

*c.* To be used for the costs of administering the system, including up to fifty thousand dollars per fiscal year for actual and necessary expenses of the benefits advisory committee. If as a result of action under section 8.31, the governor has reduced the moneys appropriated from the retirement fund to the system for salaries, support, maintenance, and other operational purposes to pay the costs of the system for a fiscal year, it is the intent of the general assembly that the amount by which the appropriation has been reduced should be transferred from the retirement fund to the system for salaries, support, maintenance, and other operational purposes to pay the costs of the system for that fiscal year.

*d.* To be used to pay for investment manage-

ment expenses incurred in the management of the retirement fund. Expenses incurred pursuant to this paragraph shall be charged to the investment income of the retirement fund. However, the amount appropriated for a fiscal year under this paragraph shall not exceed four-tenths of one percent of the market value of the retirement fund.

2003 Acts, ch 145, §286  
Terminology changes applied

**97B.7A Investment and management of retirement fund — standards — immunity.**

1. *Investment and investment policy standards.* In establishing the investment policy of the retirement fund and providing for the investment of the retirement fund, the system and board shall do the following:

a. Exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for the purpose of speculation, but with regard to the permanent disposition of the funds, considering the probable income, as well as the probable safety, of their capital.

b. Give appropriate consideration to those facts and circumstances that the system and board know or should know are relevant to the particular investment or investment policy involved, including the role the investment plays in the total value of the retirement fund.

c. For the purposes of this subsection, appropriate consideration includes, but is not limited to, a determination that the particular investment or investment policy is reasonably designed to further the purposes of the retirement system, taking into consideration the risk of loss and the opportunity for gain or income associated with the investment or investment policy and consideration of the following factors as they relate to the retirement fund:

(1) The composition of the retirement fund with regard to diversification.

(2) The liquidity and current return of the investments in the retirement fund relative to the anticipated cash flow requirements of the retirement system.

(3) The projected return of the investments relative to the funding objectives of the retirement system.

2. *Investment acquisitions.* Within the limitations of the investment standards prescribed in this section, the system may acquire and retain every kind of property and every kind of investment which persons of prudence, discretion, and intelligence acquire or retain for their own account. Consistent with this section, investments shall be made in a manner that will enhance the economy of this state, and in particular, will result in increased employment of the residents of this state. Investments of moneys in the retirement fund are not subject to sections 73.15 through 73.21.

3. *Liability — reimbursement.* Except as provided in section 97B.4, subsection 7, if there is loss to the retirement fund, the treasurer of state, the system, the employees of the system, the members of the board severally, and the board are not personally liable, and the loss shall be charged against the retirement fund. There is appropriated from the retirement fund the amount required to cover a loss.

4. *Investment procedures.* In managing the investment of the retirement fund, the system, in accordance with the investment policy established by the board, is authorized to do the following:

a. To sell any securities or other property in the retirement fund and reinvest the proceeds when such action may be deemed advisable by the system for the protection of the retirement fund or the preservation of the value of the investment. Such sale of securities or other property of the retirement fund and reinvestment shall only be made in accordance with policies of the board in the manner and to the extent provided in this chapter.

b. To subscribe for the purchase of securities for future delivery in anticipation of future income. The securities shall be paid for by anticipated income or from funds from the sale of securities or other property held by the retirement fund.

c. To pay for securities directed to be purchased upon the receipt of the purchasing bank's paid statement or paid confirmation of purchase.

5. *Travel.* In the administration of the investment of moneys in the retirement fund, employees of the system and members of the board may travel outside the state for the purpose of meeting with investment firms and consultants and attending conferences and meetings to fulfill their fiduciary responsibilities. This travel is not subject to section 8A.512, subsection 2.

2003 Acts, ch 145, §174, 286  
Terminology changes applied  
Subsection 5 amended

**97B.8A Investment board.**

1. *Board established.* A board is established to be known as the "Investment Board of the Iowa Public Employees' Retirement System", referred to in this chapter as the "board". The duties of the board are to establish policy, and review its implementation, in matters relating to the investment of the retirement fund. The board shall be the trustee of the retirement fund.

2. *Investment review.*

a. At least annually the board shall review the investment policies and procedures used by the board and system, and shall hold a public meeting on the investment policies and investment performance of the retirement fund. Following its review and the public meeting, the board shall, pursuant to the requirements of section 97B.7A, and in consultation with the chief investment officer and other relevant personnel of the system, estab-

lish an investment policy and goal statement that shall direct the investment activities concerning the retirement fund.

b. The board shall review and approve, prior to the execution of a contract with the system, the hiring of each investment manager and investment consultant outside of state government.

c. The board shall be involved in the performance evaluation of the chief investment officer.

3. *Actuarial responsibilities.*

a. The board shall select the actuary to be employed by the system as provided in section 97B.4.

b. The board shall, in consultation with the chief executive officer, the actuary, and other relevant personnel of the system, adopt from time to time mortality tables and all other necessary factors for use in actuarial calculations required in connection with the retirement system. The board shall also adopt the actuarial methods and assumptions to be used by the actuary for the annual valuation of assets as required by section 97B.4.

4. *Membership.*

a. The board shall consist of eleven members, including seven voting members and four nonvoting members. The voting members shall be as follows:

(1) Three public members, appointed by the governor, who are not members of the retirement system and who each have substantial institutional investment experience or substantial institutional financial experience.

(2) Three members, appointed by the governor, who are members of the retirement system. Prior to the appointment by the governor of a member of the board under this subparagraph, the benefits advisory committee shall submit a slate of at least two nominees per position to the governor for the governor's consideration. The governor is not required to appoint a member from the slate submitted. Of the three members appointed, one shall be an active member who is an employee of a school district, area education agency, or merged area; one shall be an active member who is not an employee of a school district, area education agency, or merged area; and one shall be a retired member of the retirement system.

(3) The treasurer of state.

The nonvoting members of the board shall be two state representatives, one appointed by the speaker of the house of representatives and one by the minority leader of the house, and two state senators, one appointed by the majority leader of the senate and one by the minority leader of the senate.

b. Four voting members of the board shall constitute a quorum.

c. The three members who have substantial institutional investment experience or substantial institutional financial experience, and the member who is a retired member of the retirement system, shall be paid their actual expenses in-

curred in the performance of their duties and shall receive a per diem as specified in section 7E.6 for each day of service not exceeding forty days per year. Legislative members shall be paid the per diem and expenses specified in section 2.10, for each day of service. The per diem and expenses of the legislative members shall be paid from funds appropriated under section 2.12. The members who are active members of the retirement system and the treasurer of state shall be paid their actual expenses incurred in the performance of their duties as members of the board and the performance of their duties as members of the board shall not affect their salaries, vacations, or leaves of absence for sickness or injury.

d. The appointive terms of the members appointed by the governor are for a period of six years beginning and ending as provided in section 69.19. If there is a vacancy in the membership of the board for one of the members appointed by the governor, the governor has the power of appointment. Gubernatorial appointees to this board are subject to confirmation by the senate.

5. *Closed sessions.* In addition to the reasons provided in section 21.5, subsection 1, the board may hold a closed session pursuant to the requirements of section 21.5 of that portion of a board meeting in which financial or commercial information is provided to or discussed by the board if the board determines that disclosure of such information could result in a loss to the retirement system or to the provider of the information.

2003 Acts, ch 145, §286  
Confirmation; §2.32  
Terminology changes applied

**97B.8B Benefits advisory committee.**

1. *Committee established.* A benefits advisory committee shall be established whose duty is to consider and make recommendations to the system and the general assembly concerning the provision of benefits and services to members of the retirement system.

2. *Membership.* The benefits advisory committee shall be comprised of representatives of constituent groups concerned with the retirement system, and shall include representatives of employers, active members, and retired members. In addition, the director of the department of administrative services and a member of the public selected by the voting members of the committee shall serve as members of the committee. The system shall adopt rules under chapter 17A to provide for the selection of members to the committee and the election of the voting members of the committee.

3. *Voting members.* Of the members who comprise the committee, nine members shall be voting members. Except as otherwise provided by this subsection, the voting members shall be elected by the members of the committee from the membership of the committee. Of the nine voting

members of the committee, four shall represent covered employers, and four shall represent the members of the retirement system. Of the four voting members representing employers, one shall be the director of the department of administrative services, one shall be a member of a constituent group that represents cities, one shall be a member of a constituent group that represents counties, and one shall be a member of a constituent group that represents local school districts. Of the four voting members who represent members of the retirement system, one shall be a member of a constituent group that represents teachers. The ninth voting member of the committee shall be a citizen who is not a member of the retirement system and who is elected by the other voting members of the committee.

4. *Duties.*

a. At least every two years, the benefits advisory committee shall review the benefits and services provided to members under this chapter, and the voting members of the committee shall make recommendations to the system and the general assembly concerning the services provided to members and the benefits, benefits policy, and benefit goals, provided under this chapter.

b. The benefits advisory committee shall be involved in the performance evaluation of the chief benefits officer.

c. Upon the expiration of the term of office of or a vacancy concerning one of the three members of the investment board described in section 97B.8A, subsection 4, paragraph “a”, subparagraph (2), the voting members of the committee shall submit to the governor the names of at least two nominees who meet the requirements specified in that subparagraph. The governor may appoint the member from the list submitted by the committee.

5. *Terms of voting members.* Except for the director of the department of administrative services and as otherwise provided in the rules for the initial selection of voting members of the committee, each member selected to be a voting member shall serve as a voting member for three years. Terms for voting members begin on May 1 in the year of selection and expire on April 30 in the year of expiration. Vacancies shall be filled in the same manner as the original selections. A vacancy shall be filled for the unexpired term.

6. *Expenses.* The members who are not active members of the retirement system shall be paid their actual expenses incurred in the performance of their duties and shall receive a per diem as specified in section 7E.6 for each day of service not exceeding forty days per year. The members who are active members of the retirement system and the director of the department of administrative services shall be paid their actual expenses incurred in the performance of their duties as members of the committee and the performance of their duties as members of the committee shall not affect their salaries, vacations, or leaves of absence

for sickness or injury. However, the benefits advisory committee shall not incur any additional expenses in fulfilling its duties as provided by this section without the express written authority of the chief executive officer.

2003 Acts, ch 145, §286  
Terminology changes applied

**97B.9 Contributions — payment and interest.**

1. An employer shall be charged the greater of ten dollars per occurrence or interest at the combined interest and dividend rate required under section 97B.70 for the applicable calendar year for contributions unpaid on the date on which they are due and payable as prescribed by the system. The system may adopt rules prescribing circumstances for which the interest or charge shall not accrue with respect to contributions required. Interest or charges collected pursuant to this section shall be paid into the Iowa public employees’ retirement fund.

2. If within thirty days after due notice the employer defaults in payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the system, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions.

3. The employer shall pay its contribution from funds available and is directed to pay same from tax money or from any other income of the political subdivision; provided, however, the contributions shall be paid from the same fund as the employee salary.

4. Every political subdivision is hereby authorized and directed to levy a tax sufficient to meet its obligations under the provisions of this chapter if any tax is needed.

5. Regardless of any potentially applicable statute of limitations, if the system finds that the employer or employee, or both, have erroneously underpaid contributions, the system shall notify the employer and employee in writing of the total amount of the underpayment, including interest, and the employer’s and employee’s share of the underpayment. The system shall collect from the employer the total amount of the underpayment, including the employer’s share, the employee’s share, and the interest assessed to both shares of the underpayment, regardless of whether the employee has reimbursed the employer for the employee’s share of the underpayment. The employee shall be obligated to pay only the employee’s share of the underpaid contributions, without interest, to the employer. The employer may collect the employee’s share of underpaid contributions from the employee or the employee’s estate. The employer may collect the employee’s share

through a deduction from the employee's wages, or by maintaining a legal action against the employee or the employee's estate. For purposes of section 1526 of the federal Taxpayer Relief Act of 1997, eligible participants, as defined by section 1526, may make payments of contributions under this section without regard to the limitations of section 415(c)(1) of the federal Internal Revenue Code.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.10 Crediting of erroneous contributions.**

1. If the system finds the employee or employer, or both, have erroneously paid contributions, including the payment of contributions prior to an individual's valid decision to elect out of coverage under this chapter on or after January 1, 1999, pursuant to section 97B.42A, the system shall make an adjustment, compromise, or settlement and shall credit such payments to the appropriate party.

2. A claim of an employee or employer for a credit for erroneously paid contributions shall be made within three years of date of payment. However, the system may issue a credit to employees or employers after the expiration of the three-year deadline if the system finds that issuing the credit is just and equitable.

3. Except as provided in this subsection, interest shall not be paid on credits issued pursuant to this section. However, if a credit for contributions paid prior to an individual's decision to elect out of coverage pursuant to section 97B.42A is issued, accumulated interest and interest on dividends as provided in section 97B.70 shall apply. In addition, the system may, at any time, apply accumulated interest and interest dividends as provided in section 97B.70 on any credits issued under this section if the system finds that the crediting of interest is just and equitable.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.11 Contributions by employer and employee.**

Each employer shall deduct from the wages of each member of the retirement system a contribution in the amount of three and seven-tenths percent of the covered wages paid by the employer, until the member's termination from employment. The contributions of the employer shall be in the amount of five and seventy-five hundredths percent of the covered wages of the member.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.14 Contributions forwarded.**

Contributions deducted from the wages of the member under section 97B.11 prior to January 1, 1995, member contributions picked up by the em-

ployer under section 97B.11A beginning January 1, 1995, and the employer's contribution shall be forwarded to the system for recording and deposited with the treasurer of the state to the credit of the Iowa public employees' retirement fund. Contributions shall be remitted monthly, if total contributions by both employee and employer amount to one hundred dollars or more each month, and shall be otherwise paid in such manner, at such times and under such conditions, either by copies of payrolls or other methods necessary or helpful in securing proper identification of the member, as may be prescribed by the system.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.14A Wage reporting.**

An employer shall report wages of employees covered by this chapter to the system in a manner and form as prescribed by the system. If the wages reported by an employer appear to be a distortion of the normal wage progression pattern for an employee, the system may request that the employer provide documentation indicating that the wages were not misreported for the purposes of causing an increase in the retirement allowance or other payments authorized to be made by this chapter. If the system determines that the wages of an employee were misreported, the employer shall prepare and file wage adjustments allocating the wages to the proper wage reporting period.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.15 Rules, policies, and procedures.**

The system may adopt rules under chapter 17A and establish procedures, not inconsistent with this chapter, which are necessary or appropriate to implement this chapter and shall adopt reasonable and proper rules to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the proofs and evidence in order to establish the right to benefits under this chapter. The system may adopt rules, and take action based on the rules, to conform the requirements for receipt of retirement benefits under this chapter to the mandates of applicable federal and state statutes and regulations.

Prior to the adoption of rules, the system may establish interim written policies and procedures, and take action based on the policies and procedures, to conform the requirements for receipt of retirement benefits under this chapter to the applicable requirements of federal and state law.

2003 Acts, ch 145, §286  
Continuation of rules, regulations, forms, orders, and directives in effect on July 1, 2003; procedure for updating Iowa administrative code; 2003 Acts, ch 145, §287  
Terminology change applied

#### **97B.16 Procedure of system.**

The system shall make decisions as to the rights of an individual applying for a payment under this

chapter. When requested by an individual, or a person who makes a showing in writing that the individual's or person's rights may be prejudiced by a decision the system has made, a hearing shall be scheduled under the Iowa administrative procedures Act, chapter 17A. If a hearing is held, the decision shall, on the basis of evidence adduced at the hearing, be affirmed, modified, or reversed under chapter 17A.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.17 Records maintained.**

1. The system shall establish and maintain records of each member, including but not limited to the amount of wages of each member, the contribution of each member with interest, and interest dividends credited. The records may be maintained in paper, magnetic, or electronic form, including optical disk storage. These records are the basis for the compilation of the retirement benefits provided under this chapter.

2. The following records maintained under this chapter are not public records for the purposes of chapter 22:

- a. Records containing social security numbers.
- b. Records specifying amounts accumulated in members' accounts and supplemental accounts.
- c. Records containing names or addresses of members or their beneficiaries.
- d. Records containing amounts of payments to members or their beneficiaries.
- e. Records containing financial or commercial information that relates to the investment of retirement system funds if the disclosure of such information could result in a loss to the retirement system or to the provider of the information.

3. Summary information concerning the demographics of the members and general statistical information concerning the retirement system are subject to chapter 22, as well as aggregate information by category.

4. a. The system's records are evidence for the purpose of proceedings before the system or any court of the amounts of wages and the periods in which they were paid, and the absence of an entry as to a member's wages in the records for any period is evidence that wages were not paid that member in the period.

b. Notwithstanding any provisions of chapter 22 to the contrary, the system's records may be released to any political subdivision, instrumentality, or other agency of the state solely for use in a civil or criminal law enforcement activity pursuant to the requirements of this subsection. To obtain the records, the political subdivision, instrumentality, or agency shall, in writing, certify that the activity is authorized by law, provide a written description of the information desired, and describe the law enforcement activity for which the information is sought. The system shall

not be civilly or criminally liable for the release or rerelease of records in accordance with this subsection.

5. Confidential records of the system maintained for the operation of the retirement system may be released to the directors, agents, and employees of the legislative services agency, the department of revenue, the department of management, the department of administrative services, or an employer of employees covered by the retirement system pursuant to rules adopted by the system for the performance of the requestor's duties. To obtain a record under this subsection, the person requesting the records shall provide a written description of the information requested and the reason for requesting the records to the system. A person receiving a record pursuant to this subsection shall maintain the confidentiality of any information otherwise required to be kept confidential and shall be subject to the same penalties as the custodian of the records for the public dissemination of such information.

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 44, §30; 2003 Acts, ch 145, §286  
See Code editor's note to §2.9  
Terminology changes applied  
Subsections 3 and 4 amended

#### **97B.18 Statement of accumulated credit.**

After the expiration of each calendar year and prior to July 1 of the succeeding year, the system shall furnish each member with a statement of the member's accumulated contributions and benefit credits accrued under this chapter up to the end of that calendar year and additional information the system deems useful to a member. The system may furnish an estimate of the credits as of the projected normal retirement date of the member under section 97B.45. The records of the system as shown by the statement as to the wages of each individual member for a year and the periods of payment shall be conclusive for the purpose of this chapter, except as otherwise provided in this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.19 Revision for error.**

If following the delivery of the statement provided in section 97B.18, it is brought to the attention of the system that any entry of wages in its records is erroneous, or that any item of wages has been omitted from the records, the system may correct the entry or include the omitted item in its records, as the case may be. Written notice of any revision of any entry which is adverse to the interest of any individual shall be given to the individual in any case where the individual has previously been notified by the system of the amount of wages and of the period of payments shown by the entry. Upon request in writing, the system shall afford any individual, or after the individual's death shall afford the individual's beneficiary or any other person so entitled in the judgment of

the system, reasonable notice and opportunity for hearing with respect to any entry or alleged omission of wages of the individual in such record, or any revision of any entry. If a hearing is held, the system shall make findings of fact and a decision based upon the evidence adduced at the hearing and shall revise its records accordingly. Judicial review of action of the system under this section may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A, and section 97B.29.

2003 Acts, ch 44, §114; 2003 Acts, ch 145, §286  
Terminology change applied  
Code chapter reference added

#### **97B.20A Appeal procedure.**

Members and third-party payees may appeal any decision made by the system that affects their rights under this chapter. The appeal shall be filed with the system within thirty days after the notification of the decision was mailed to the party's last known mailing address, or the decision of the system is final. If the party appeals the decision of the system, the system shall conduct an internal review of the decision and the chief executive officer shall notify the individual who has filed the appeal in writing of the system's decision. The individual who has filed the appeal may file an appeal of the system's final decision with the system under chapter 17A by notifying the system of the appeal in writing within thirty days after the notification of its final decision was mailed to the party's last known mailing address. Once notified, the system shall forward the appeal to the department of inspections and appeals.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.20B Hearing by administrative law judge.**

If an appeal is filed and is not withdrawn, an administrative law judge in the department of inspections and appeals, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify, or reverse the decision of the system. The hearing shall be recorded by mechanical means and a transcript of the hearing shall be made. The transcript shall then be made available for use by the employment appeal board and by the courts at subsequent judicial review proceedings under the Iowa administrative procedure Act, chapter 17A, if any. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons. The decision is final unless, within thirty days after the date of notification or mailing of the decision, review by the employment appeal board is initiated pursuant to section 97B.27.

2003 Acts, ch 44, §114; 2003 Acts, ch 145, §286  
Terminology change applied  
Code chapter reference added

#### **97B.22 Witnesses and evidence.**

For the purpose of any hearing, investigation, or other proceeding authorized or directed under this chapter, or relative to any other matter within its jurisdiction under this chapter, the system or administrative law judge may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the system. Attendance of witnesses and production of evidence at the designated place of the hearing, investigation, or other proceedings may be required from any political subdivision in the state. Subpoenas of the system shall be served by anyone authorized by it by delivering a copy of the subpoena to the individual named in it, or by certified mail addressed to the individual at the individual's last known dwelling place or principal place of business. A verified return by the individual serving the subpoena setting forth the manner of service, or in the case of service by certified mail, the return post-office receipt signed by the individual served, shall be proof of service. Witnesses subpoenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the state of Iowa. In the discharge of the duties imposed by this chapter, the system or an administrative law judge and any duly authorized representative or member of the system may administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the administration of this chapter.

2003 Acts, ch 145, §286  
Witness fees, §622.69  
Terminology change applied

#### **97B.23 Penalty for noncompliance.**

In case of refusal to obey a subpoena duly served upon any person, any district court of the state of Iowa for the district in which the person charged with refusal to obey is found or resides or transacts business, upon application by the system, may issue an order requiring that person to appear and give testimony, or to appear and produce evidence, or both. Any failure to obey the order of the court may be punished by the court as contempt.

2003 Acts, ch 145, §286  
Contempts, chapter 665  
Terminology change applied

#### **97B.28 System deemed party to action.**

The system shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the system or who has been designated by the system for that purpose or, at the sys-

tem's request, by the attorney general.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.29 Judicial review.**

Judicial review of action of the system may be sought in accordance with the terms of the Iowa administrative procedure Act. Notwithstanding the terms of the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the claimant was last employed or resides, provided that if the claimant does not reside in the state of Iowa the action shall be brought in the district court of Polk county, Iowa, against the system for the review of this decision, in which action any other parties to the proceeding before the system shall be named in the petition. The system may also, in its discretion, certify to such courts, questions of law involving any decision by it. Such petitions for judicial review and the questions so certified shall be given precedence over all other civil cases except cases arising under the workers' compensation law and the employment security law of this state.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.33 Certification to director.**

Upon final decision of the system, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this chapter, the system shall certify to the director of the department of administrative services the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the system, through the director of the department of administrative services, shall make payment in accordance with the certification of the system, provided that where judicial review of the system decision is or may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A, certification of payment may be withheld pending such review. The director of the department of administrative services shall not be held personally liable for any payment or payments made in accordance with a certification by the system.

2003 Acts, ch 44, §114; 2003 Acts, ch 145, §286  
Terminology changes applied  
Code chapter reference added

#### **97B.34 Payment to representatives.**

When it appears to the system that the interest of an applicant entitled to a payment would be served, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled to the payment, either for direct payment to the applicant, or for the applicant's use and benefit to a representative of an applicant. The system may adopt rules under chapter 17A for making payments to a representa-

tive of an applicant if the system determines that it can sufficiently safeguard the member's rights under this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.34A Payment to minors.**

The system may make payments to a minor, as defined in section 599.1, as follows:

1. If the total sum to be paid to the minor is less than ten thousand dollars, the funds may be paid to an adult as custodian for the minor. The custodian must complete the proper forms as determined by the system.

2. If the total sum to be paid to the minor is equal to or more than ten thousand dollars, the funds must be paid to a court-established conservator. The system shall not make payment until the conservatorship has been established and the system has received the appropriate documentation.

3. Interest shall be paid on the funds, at a rate determined by the system, until disbursement of the funds.

If the system makes payments to a minor pursuant to this section, the system may make payments directly to the person when the person attains the age of eighteen or is declared to be emancipated by a court of competent jurisdiction.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.36 Representatives of system.**

The system is authorized to delegate to any member, officer, or employee of the system designated by it any of the powers conferred upon it by this chapter and is authorized to be represented by its own attorneys in any court in any case or proceeding arising under the provisions of said chapter.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.37 Recognition of agents.**

The system may prescribe rules governing the recognition of agents or other persons representing claimants before the system, and may require of the agents or other persons, before being recognized as representatives of claimants, that they show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render the claimants valuable service, and otherwise competent to advise and assist the claimants in the presentation of their cases. Claimants may be represented by counsel at their own expense.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.38 Fees for services.**

The system may, by rule, prescribe the maximum fees which may be charged for services performed in connection with any claim before the system under this chapter, and any agreement in

violation of such rules shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this chapter by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the system, shall be deemed guilty of a fraudulent practice.

2003 Acts, ch 145, §286  
Terminology change applied

**97B.39 Rights not transferable or subject to legal process — exceptions.**

The right of any person to any future payment under this chapter is not transferable or assignable, at law or in equity, and the moneys paid or payable or rights existing under this chapter are not subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law except for the purposes of enforcing child, spousal, or medical support obligations or marital property orders. For the purposes of enforcing child, spousal, or medical support obligations, the garnishment or attachment of or the execution against compensation due a person under this chapter shall not exceed the amount specified in 15 U.S.C. § 1673(b). The system shall comply with the provisions of a marital property order requiring the selection of a particular benefit option, designated beneficiary, or contingent annuitant if the selection is otherwise authorized by this chapter and the member has not received payment of the member's first retirement allowance. However, a marital property order shall not require the payment of benefits to an alternative payee prior to the member's retirement, prior to the date the member elects to receive a lump sum distribution of accumulated contributions pursuant to section 97B.53, or in an amount that exceeds the benefits the member would otherwise be eligible to receive pursuant to this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

**97B.40 Fraud.**

1. A person shall be guilty of a fraudulent practice if the person makes, or causes to be made, any false statement or representation for the purpose of causing an increase in any payment authorized to be made under this chapter, for the purpose of causing any payment to be made where no payment is authorized under this chapter, for the purpose of obtaining confidential information from the system, or for any other unlawful purpose related to this chapter.

2. For purposes of this section, "any false statement or representation" includes the following:

a. Any false statement or representation willfully made or caused to be made as to the amount of any wages paid or received for the period during which earned or unpaid, knowing it to be false.

b. Any false statement of a material fact made or caused to be made knowing it to be false in any application for any payment under this chapter.

c. Any false statement, representation, affidavit, or document willfully made, presented, or caused to be made in connection with an application for any payment under this chapter knowing it to be false.

d. Any unauthorized use of any security devices, such as personal identification codes, utilized for the purpose of accessing information from the system.

2003 Acts, ch 145, §286  
Terminology change applied

**97B.42 Mandatory membership — membership in other systems.**

Each employee whose employment commences after July 4, 1953, or who has not qualified for credit for prior service rendered prior to July 4, 1953, or any publicly elected official of the state or any of its political subdivisions shall become a member upon the first day in which such employee is employed. The employee shall continue to be an active member so long as the employee continues in covered employment. The employee shall cease to be an active member if the employee joins another retirement system in the state which is maintained in whole or in part by public contributions or payments and receives retirement credit for service in that other system for the same position previously covered under this chapter. If an employee joins another publicly maintained retirement system and ceases to be an active member under this chapter, the employee may elect to leave the employee's accumulated contributions in the retirement fund or receive a refund of the employee's accumulated contributions in the manner provided for members who are terminating covered employment pursuant to section 97B.53. However, if an employee joins another publicly maintained retirement system and leaves the employee's accumulated contributions in the retirement fund, the employee shall not be eligible to receive retirement benefits until the employee has a bona fide retirement from employment with a covered employer as provided in section 97B.52A, or until the employee would otherwise be eligible to receive benefits upon attaining the age of seventy years as provided in section 97B.46.

Employment shall not be covered under this chapter until the employment is covered under the federal Social Security Act and any agreements which are required pursuant to chapter 97C are effective.

Nothing in this chapter shall be deemed to exclude from coverage, under the provisions of this chapter, any public employee who was not on or as

of July 4, 1953, a member of another retirement system supported by public funds. All such employees and their employers shall be required to make contributions as specified as to other public employees and employers. Nothing in this chapter shall be deemed to prohibit the re-establishment of a retirement system supported by public funds which had been in operation prior to July 4, 1953, and was subsequently liquidated.

Persons who are members of any other retirement system in the state which is maintained in whole or in part by public contributions other than persons who are covered under the provisions of chapter 97, Code 1950, as amended by the Fifty-fourth General Assembly on the date of the repeal of said chapter, under the provisions of sections 97.50 through 97.53 shall not become members under this chapter while still actively participating in that other retirement system unless the persons do not receive retirement credit for service in that other system for the position to be covered under this chapter.

Nothing herein contained shall be construed to permit any employer to make any public contributions or payments on behalf of an employee in the same position for the same period of time to both the Iowa public employees' retirement system and any other retirement system in the state which is supported in whole or in part by public contributions or payments.

Notwithstanding any other provision of this section, commencing July 1, 1994, a member who is employed by a community college may elect coverage under an eligible alternative retirement benefits system as provided in section 260C.14, subsection 17, in lieu of continuing or commencing contributions to the Iowa public employees' retirement system. However, the employer's annual contribution in dollars to the eligible alternative retirement benefits system shall not exceed the annual contribution in dollars which the employer would contribute if the employee had elected to remain an active member under this chapter, as set forth in section 97B.11. A member employed by a community college who elects coverage under an eligible alternative retirement benefits system may withdraw the member's accumulated contributions effective when coverage under the eligible alternative retirement benefits system commences. A member who is employed by a community college prior to July 1, 1994, must file an election for coverage under the eligible alternative retirement benefits system described in section 260C.14, subsection 17, paragraph "a", with the system and the employing community college within eighteen months of the first day on which coverage commences under the community college's eligible alternative retirement benefits system described in section 260C.14, subsection 17, paragraph "a", or the employee shall remain a member under this chapter and shall not be eligible to elect to participate in that community col-

lege's eligible alternative retirement benefits system described in section 260C.14, subsection 17, paragraph "a", at a later date. Employees of a community college hired on or after July 1, 1994, must file an election for coverage under an eligible alternative retirement benefits system with the system and the employing community college within sixty days of commencing employment, or the employee shall remain a member under this chapter and shall not be eligible to elect to participate in an eligible alternative retirement benefits system of the community college at a later date. The system shall cooperate with the boards of directors of the community colleges to facilitate the implementation of this provision.

Notwithstanding any other provision of this section, a person newly entering employment with a community college on or after July 1, 1990, may elect coverage under an eligible alternative retirement benefits system, as defined in section 260C.14, subsection 17, paragraph "a", in lieu of coverage under the Iowa public employees' retirement system, but only if the person is already a member of the alternative retirement benefits system. An election to participate in an eligible alternative retirement benefits system as described in section 260C.14, subsection 17, is irrevocable as to the person's employment with that community college and any other community college in this state.

For purposes of this section, a "retirement system in the state which is maintained in whole or in part by public contributions or payments" shall not include a deferred compensation plan established under section 509A.12 or a tax-sheltered annuity qualified under section 403(b) of the Internal Revenue Code.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.42A Optional exclusion from membership.**

1. Commencing January 1, 1999, a person who is newly hired in a position as an employee, as defined in section 97B.1A, subsection 8, paragraph "a", shall be covered under this chapter unless the person files an application with appropriate documentation to the system within sixty days of employment in the position to affirmatively elect out of coverage. A decision to elect out of coverage under this chapter is irrevocable upon approval from the system.

2. If a person elects out of coverage pursuant to this section, the period of time from the date on which the person was newly hired until the date the person's election out of coverage is effective shall not constitute service for purposes of coverage under this chapter. In addition, a wage adjustment shall be processed for the person based on any contributions collected pursuant to this chapter during that period of time and shall be credited pursuant to section 97B.10.

3. A person who is employed in a position as an employee as defined in section 97B.1A, subsection 8, paragraph “a”, on January 1, 1999, and who has not elected coverage under this chapter prior to that date and is not an active member of another retirement system in the state which is maintained in whole or in part by public contributions or payments, shall begin coverage under the retirement system on January 1, 1999, unless the person files an application with appropriate documentation with the system to elect out of coverage on or before January 1, 2000. If a person elects out of coverage, the period of time from January 1, 1999, until the date the person’s election out of coverage is effective shall not constitute service for purposes of coverage under this chapter and a wage adjustment shall be processed for the person based on any contributions collected pursuant to this chapter during that period of time and shall be credited pursuant to section 97B.10. A decision to elect out of coverage under this chapter pursuant to this section is irrevocable upon approval from the system.

4. A person who becomes a member of the retirement system pursuant to subsection 3, or who is a member of the retirement system, and who has one or more years of covered wages, may purchase credit, pursuant to section 97B.73, for one or more quarters of service prior to January 1, 1999, in which the person was employed in a position as described in section 97B.1A, subsection 8, paragraph “a”, but was not a member of the retirement system.

5. A person who is employed in a position as an employee as defined in section 97B.1A, subsection 8, paragraph “a”, subparagraph (11), on July 1, 2000, and who has not elected out of coverage under this chapter prior to that date, shall begin coverage under the retirement system on July 1, 2000, unless, on or before August 31, 2000, the person files an application with appropriate documentation to elect coverage under an alternative pension and annuity retirement system established pursuant to chapter 412. If a person elects coverage under the alternative pension and annuity retirement system, the period of time from July 1, 2000, until the date the person’s election of coverage is effective shall not constitute service for purposes of coverage under this chapter and a wage adjustment shall be processed for the person based on any contributions collected pursuant to this chapter during that period of time and shall be credited pursuant to section 97B.10. A decision to elect coverage under an alternative pension and annuity retirement system established pursuant to chapter 412 under this subsection is irrevocable upon approval from the system.

A person who becomes a member of the Iowa public employees’ retirement system pursuant to this subsection, and who has one or more years of covered wages, may purchase credit, pursuant to section 97B.73, for one or more quarters of service

prior to August 1, 2000, in which the person was employed in a position as described by section 97B.1A, subsection 8, paragraph “a”, subparagraph (11), but was not a member of the retirement system.

2003 Acts, ch 145, §286  
Terminology changes applied

**97B.42B Transfer to chapter 97A — options for certain public safety employees.**

1. Commencing July 1, 1994, a person who is newly hired in the following positions in the department of public safety shall be a member of the Iowa department of public safety peace officers’ retirement, accident, and disability system established in chapter 97A:

a. Gaming enforcement officers employed by the division of criminal investigation for excursion boat gambling enforcement activities.

b. Fire prevention inspector peace officers.

c. Employees of the division of capitol police, except clerical workers.

2. Commencing July 1, 1994, notwithstanding any other provision of law to the contrary, a member who is employed in a position specified in subsection 1 prior to July 1, 1994, may elect coverage under the Iowa department of public safety peace officers’ retirement, accident, and disability system established in chapter 97A, in lieu of continuing contributions to the Iowa public employees’ retirement system, or may remain a member of the Iowa public employees’ retirement system. A member who is employed in a position specified in subsection 1 prior to July 1, 1994, must file an election for coverage under the Iowa department of public safety peace officers’ retirement, accident, and disability system with the board of trustees established in section 97A.5 on or before July 1, 1995, or the employee shall remain a member under this chapter and shall not be eligible to elect to participate in the system established pursuant to chapter 97A at a later date pursuant to this section. The board of trustees established in section 97A.5 shall notify the system of elections received pursuant to this section, and the board of trustees and the system shall cooperate to facilitate the implementation of this section. Coverage under chapter 97A shall commence, and coverage as an active member under this chapter shall cease, when the election has been approved by the board of trustees established in section 97A.5.

3. If an employee elects coverage under chapter 97A as provided in subsection 2 and the election is approved by the board of trustees established in section 97A.5, membership in the Iowa public employees’ retirement system shall cease, and the employee shall be transferred to membership in the Iowa department of public safety peace officers’ retirement, accident, and disability system. The system shall transfer the accumulated contributions of these employees to the treasurer of state for deposit in the pension accumulation

fund established in section 97A.8. However, employer contributions which were made with respect to the employees while the employees were members of the Iowa public employees' retirement system shall remain in the fund established in section 97B.7, and any costs pertaining to the payment of employer contributions to the system established in chapter 97A with respect to the period of time during which the employees were members of the Iowa public employees' retirement system, or any other costs related to the transfer, shall be borne by the system established in chapter 97A, notwithstanding any other provision of law to the contrary.

4. Notwithstanding any other provision of law to the contrary, if the board of trustees established in section 97A.5 approves an election pursuant to subsection 2, the employees transferred from coverage under this chapter to coverage under the system established in chapter 97A shall receive credit for years of service under chapter 97A for those years of service during which the employees were members of the Iowa public employees' retirement system and employed in positions specified in subsection 1. In addition, notwithstanding the limitation on covered wages provided in section 97B.1A, subsection 26, compensation which was paid to an employee in a position specified in subsection 1 while the employee was a member pursuant to this chapter shall be included in determining the average final compensation of the employee pursuant to chapter 97A, if applicable. Employees whose membership is transferred pursuant to this section and the employer, the department of public safety, shall not be required to pay the difference in the employee and employer contributions in effect for the period of time in which the employees were members pursuant to this chapter, as compared to the employee and employer contributions then in effect for members of the system established in chapter 97A.

5. It is the intent of the general assembly that in administering the provisions of this section, the board of trustees established in section 97A.5 and the system shall interpret this section in a manner which provides that the employees whose membership is transferred shall not lose benefits which would have otherwise accrued had the employees been members of the system established in chapter 97A during the period of time in which the employees were actually members of the Iowa public employees' retirement system.

2003 Acts, ch 145, §286  
Terminology change applied

**97B.42C Retirement system merger — municipal utility retirement system.**

A municipal water utility or waterworks that has established a pension and annuity retirement system for its employees pursuant to chapter 412 may adopt a resolution to authorize the merger of its pension and annuity retirement system with

and into the Iowa public employees' retirement system. The system is authorized, but is not required, to accept such a proposal. The governing body of the municipal water utility or waterworks and the Iowa public employees' retirement system shall, acting in their fiduciary capacities, mutually determine the terms and conditions of such a merger, including any additional funds necessary to fund the service credits being transferred to the Iowa public employees' retirement system, and either party may decline the merger if they cannot agree on such terms and conditions. The system shall adopt such rules as it deems necessary and prudent to effectuate mergers as provided by this section.

2003 Acts, ch 44, §31; 2003 Acts, ch 145, §286  
See Code editor's note  
Terminology change applied  
Section amended

**97B.43 Prior service credit.**

Each member in service on July 4, 1953, who made contributions under the abolished system, and who has not applied for and qualified for benefit payments under the abolished system, shall receive credit for years of prior service in the determination of retirement allowance payments under this chapter, if the member elects to become a member on or before October 1, 1953, the member has not made application for a refund of the part of the member's contributions under the abolished system which are payable under sections 97.50 to 97.53, and the member gives written authorization prior to October 1, 1953, to the commission to credit to the retirement fund the amount of the member's contribution which would be subject to a claim for refund. The amount so credited shall, after transfer, be considered as a contribution to the retirement system made as of July 4, 1953, by the member and shall be included in the determination of the amount of moneys payable under this chapter. However, an employee who was under a contract of employment as a teacher in the public schools of the state of Iowa at the end of the school year 1952-1953, or any person covered by section 97B.1A, subsection 20, paragraph "c" or "d", shall be considered as in service as of July 4, 1953, if they were members of the abolished system.

Any person with a record of thirty years as a public employee in the state of Iowa prior to July 1, 1947, and who is not eligible for prior service credit under other provisions of this section, is entitled to a credit for years of prior service in the determination of the retirement allowance payment under this chapter, provided the public employee makes application to the system for credit for prior public service, accompanied by verification of the person's claim as the system may require. The person's allowance for prior service credits shall be computed in the same manner as otherwise provided in this section, but shall not exceed the sum of four hundred fifty dollars nor be less than three

hundred dollars per annum. Any such person is entitled to receive retirement allowances computed as provided by this chapter, effective from the date of application to the system, provided such application is approved. However, beginning July 1, 1975, the amount of such person's retirement allowance payment received during June 1975, as computed under this section shall be increased by two hundred percent and the allowance for prior service credits shall not exceed one thousand three hundred fifty dollars nor be less than nine hundred dollars per annum. Effective July 1, 1987, there is appropriated for each fiscal year from the Iowa public employees' retirement fund created in section 97B.7 to the system an amount sufficient to fund the retirement allowance increases paid under this paragraph. Effective July 1, 1980, a person with a record of thirty years as a public employee in the state of Iowa prior to July 1, 1947, receiving retirement allowances under this chapter shall receive the monthly increase in benefits provided in section 97B.49G, subsection 3, paragraph "a".

Each individual who on or after July 1, 1978, was an active, vested, or retired member and who (1) made application for and received a refund of contributions made under the abolished system or (2) has on deposit with the retirement fund contributions made under the abolished system shall be entitled to credit for years of prior service in the determination of retirement allowance payments by filing a written election with the system on or after July 1, 1978, and by redepositing any withdrawn contributions under the abolished system together with interest as stated in this paragraph. Any individual who on or after July 1, 1978, is a retired member and who made application for and received a refund of contributions made under the abolished system may, by filing a written election with the system on or after July 1, 1978, have the system retain fifty percent of the monthly increase in retiree benefits that will accrue to the individual because of prior service. If the monthly increase in retirement benefits is less than ten dollars, the system shall retain five dollars of the scheduled increase, and if the monthly increase is less than five dollars, the provisions of this paragraph shall not apply. The system shall continue to retain such funds until the withdrawn contributions, together with interest accrued to the month in which the written election is filed, have been repaid. Due notice of this provision shall be sent to all retired members on or after July 1, 1978. However, this paragraph shall not apply to any person who received a refund of any membership service contributions unless the person repaid the membership service contributions pursuant to section 97B.74; but a refund of contributions remitted for the calendar quarter ending September 30, 1953 which was based entirely upon employment which terminated prior to July 4, 1953 shall not be con-

sidered as a refund of membership service contributions. The interest to be paid into the fund shall be compounded at the rates credited to member accounts from the date of payment of the refund of contributions under the abolished system to the date the member redeposits the refunded amount. The provisions of the first paragraph of this section relating to the consideration given to credited amounts shall apply to the redeposited amounts or to amounts left on deposit. Effective July 1, 1978, the provisions of this paragraph shall apply to each individual who on or after July 1, 1978, was an active, vested, or retired member, but who was not in service on July 4, 1953. The period for filing the written election with the system and redepositing any withdrawn contributions together with interest accrued shall commence July 1, 1978. A member who is a retired member on or after July 1, 1978, may file written election with the system on or after July 1, 1978, to have the system retain fifty percent of the monthly increase as provided in this paragraph.

Effective July 1, 1988, a member eligible for an increased retirement allowance because of the repayment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the system.

2003 Acts, ch 145, §175, 286  
Terminology change applied  
Unnumbered paragraph 1 amended

#### **97B.44 Beneficiary.**

Each member shall designate on a form to be furnished by the system a beneficiary for death benefits payable under this chapter on the death of the member. The designation may be changed from time to time by the member by filing a new designation with the system. A designation or change in designation made by a member on or after July 1, 2000, shall contain the written consent of the member's spouse, if applicable. The designation of a beneficiary is not applicable if the member receives a refund of all contributions of the member. If a member who has received a refund of contributions returns to employment, the member shall file a new designation with the system.

If a member has not designated a beneficiary on a form furnished by the system, or if there are no surviving designated beneficiaries of a member, death benefits payable under this chapter shall be paid to the member's estate.

However, the system may accept a married member's designation or change in designation under this section without the written consent of the member's spouse if the member submits a notarized statement indicating that the member has been unable to locate the member's spouse to obtain the written consent of the spouse after reasonable diligent efforts. The member's designation or change in designation shall become effec-

tive upon filing the necessary forms, including the notarized statement, with the system. The system shall not be liable to the member, the member's spouse, or to any other person affected by the member's designation or change of designation, based upon a designation or change of designation accomplished without the written consent of the member's spouse.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.45 Normal retirement date.**

A member's normal retirement date is any of the following, whichever is applicable to the member:

1. The first of the month in which a member attains the age of sixty-five years if the member has not completed twenty years of membership service.
2. The first of the month in which the member attains the age of sixty-two years if the member has completed twenty years of membership service.
3. The first of any month in which the member has completed twenty years of membership service if the member has attained the age of sixty-two years but is not yet sixty-five years of age.
4. The first of any month in which the member is at least fifty-five years of age and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds eighty-eight.

A member retiring on or after the normal retirement date, as provided in section 97B.46, shall submit a written notice to the system setting forth the date the retirement is to become effective. The date shall be after the member's last day of service and not before the first day of the sixth calendar month preceding the month in which the notice is filed.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.46 Service after age sixty-five.**

1. A member who is not an active member of any other retirement system in the state which is maintained in whole or in part by public contributions may remain in service beyond the date the member attains the age of sixty-five. The employer shall not consider age as a factor in determining the continuation of the member's service.

2. A member remaining in service after attaining the age of seventy years is entitled to receive a retirement allowance under sections 97B.49A through 97B.49H, as applicable, commencing with payment for the calendar month within which the written notice is submitted to the system, except that if the member fails to submit the notice on a timely basis, retroactive payments shall be made for no more than six months immediately preced-

ing the month in which the written notice is submitted.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.47 Early retirement date.**

A member's early retirement date shall be the first of the month in which a member attains the age of fifty-five years or the first of any month after attaining the age of fifty-five years prior to the member's normal retirement date, provided such date shall be after the last day of service. A member may retire on the member's early retirement date by submitting written notice to the system setting forth the early retirement date which shall not be before the first day of the sixth calendar month preceding the month in which such notice is filed.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.48 Payment of allowances.**

1. Retirement allowances shall be paid monthly, except that an allowance of less than six hundred dollars a year may, at the member's option, be paid as a lump sum in an amount equal to the sum of the member's and employer's accumulated contributions and the retirement dividends standing to the member's credit before December 31, 1966. Receipt of the lump sum payment by a member shall terminate any and all entitlement for the period of service covered of the member under this chapter and the member shall not be eligible to buy back the period of service.

2. The first monthly payment of a normal retirement allowance shall be paid as of the normal retirement effective date, which date shall be the later of the normal retirement date or the first day of the sixth calendar month preceding the month in which written notice of normal retirement is submitted to the system. Written notice under this section may consist of submission of a completed estimate request form, a completed application for retirement form, or a letter from the member requesting information on retirement benefits, whichever is received first by the system. However, a letter requesting information on benefits or submission of a completed estimate request form is only valid for six months following the date of its receipt by the system, unless during that six-month period the system receives a completed application for retirement form from the member. A retirement allowance may only be provided retroactively for a single six-month period. Payment of an early retirement allowance or an allowance for retirement after the normal retirement date shall be paid as of the effective date of retirement subject to section 97B.45, 97B.46, or 97B.47. The payments shall be continued thereafter for the lifetime of the retired member except as provided in section 97B.48A.

3. On or before the first of the month in which a member attains the age of seventy years, the sys-

tem shall provide written notification to each member for whom the system has an address that the member may commence receiving a retirement allowance regardless of the member's employment status. Prior to receiving a retirement allowance pursuant to this subsection, a member shall acknowledge in writing that the member was informed by the system of the consequences of electing to receive a retirement allowance pursuant to this subsection and that receipt of a retirement allowance under this subsection is optional. Upon termination from employment of a member receiving a retirement allowance pursuant to this subsection, the member is entitled to have the member's monthly retirement allowance recalculated using the applicable formula for determining a retirement allowance pursuant to sections 97B.49A through 97B.49G, as applicable, in place at the time of the member's first month of entitlement.

4. Payment of a member's retirement allowance pursuant to sections 97B.49A through 97B.49H shall commence no later than the required beginning date specified under section 401(a)(9) of the federal Internal Revenue Code regardless of whether the member has submitted the appropriate notice to receive an allowance. If the lump sum actuarial equivalent under subsection 1 could have been selected by the member, payments shall be made in a lump sum rather than as a monthly allowance.

5. In the event that all, or any portion, of the retirement allowance payable to a member pursuant to subsection 4 shall remain unpaid solely by reason of the inability of the system to locate the member, the amounts payable shall be forfeited. If the member is located after the amounts payable are forfeited, the amounts payable shall be restored.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.48A Reemployment.**

1. If a member who has not reached the member's sixty-fifth birthday and who has a bona fide retirement under this chapter is in regular full-time employment during a calendar year, the member's retirement allowance shall be reduced by fifty cents for each dollar the member earns over the limit provided in this subsection. However, employment is not full-time employment until the member receives remuneration in an amount in excess of thirty thousand dollars for a calendar year, or an amount equal to the amount of remuneration permitted for a calendar year for persons under sixty-five years of age before a reduction in federal social security retirement benefits is required, whichever is higher. Effective the first of the month in which a member attains the age of sixty-five years, a retired member may receive a retirement allowance without a reduction after return to covered employment regardless of the

amount of remuneration received.

If a member dies and the full amount of the reduction from retirement allowances required under this subsection has not been paid, the remaining amounts shall be deducted from the payments made, if any, to the member's designated beneficiary or contingent annuitant. If the member has selected an option under which remaining payments are not required or the remaining payments are insufficient to satisfy the full amount of the reduction from retirement allowances required under this subsection, the amount still unpaid shall be a claim against the member's estate.

2. Effective January 1, 1991, a retired member of any age may receive a retirement allowance after return to covered employment, regardless of the amount of remuneration received, if the covered employment consists of holding an elective office.

3. Upon a retirement after reemployment, a retired member may have the retired member's retirement allowance redetermined under this section or section 97B.48, section 97B.50, or section 97B.51, whichever is applicable, based upon the addition of credit for the years of membership service of the employee after reemployment, the covered wage during reemployment, and the age of the employee after reemployment. The member shall receive a single retirement allowance calculated from both periods of membership service, one based on the initial retirement and one based on the second retirement following reemployment. If the total years of membership service and prior service of a member who has been reemployed equals or exceeds thirty, the years of membership service on which the original retirement allowance was based may be reduced by a fraction of the years of service equal to the number of years by which the total years of membership service and prior service exceeds thirty divided by thirty, if this reduction in years of service will increase the total retirement allowance of the member. The additional retirement allowance calculated for the period of reemployment shall be added to the retirement allowance calculated for the initial period of membership service and prior service, adjusted as provided in this subsection. The retirement allowance calculated for the initial period of membership service and prior service shall not be adjusted for any other factor than years of service. The retired member shall not receive a retirement allowance based upon more than a total of thirty years of service. Effective July 1, 1998, a redetermination of a retirement allowance as authorized by this subsection for a retired member whose combined service exceeds the applicable years of service for that member as provided in sections 97B.49A through 97B.49G shall have the determination of the member's reemployment benefit based upon the percentage multiplier as determined for that member as provided in sections 97B.49A through 97B.49G.

4. The system shall pay to the member the accumulated contributions of the member and all of the employer contributions, plus interest plus interest dividends as provided in section 97B.70, for all completed calendar years, compounded as provided in section 97B.70, on the covered wages earned by a retired member that are not used in the recalculation of the retirement allowance of a member. A payment of contributions to a member pursuant to this subsection shall be considered a retirement payment and not a refund and the member shall not be eligible to buy back the period of reemployment service.

2003 Acts, ch 145, §286  
Terminology change applied

**97B.49A Monthly payments of allowance — general calculation.**

1. *Definitions.* For the purposes of this section:

*a. “Applicable percentage”* means sixty percent or, for each active or inactive vested member retiring on or after July 1, 1996, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of membership and prior service beyond thirty years of service, not to exceed a total of five additional percentage points.

*b. “Fraction of years of service”* means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

2. *Entitlement to monthly allowance.* Each member, upon retirement on or after the member’s normal retirement date, is entitled to receive a monthly retirement allowance determined under this section. For an inactive vested member the monthly retirement allowance shall be determined on the basis of this section and section 97B.50 as they are in effect on the date of the member’s retirement.

3. *Calculation of monthly allowance.* For each active or inactive vested member retiring on or after July 1, 1994, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage multiplied by a fraction of years of service. However, if benefits under this section commence on an early retirement date, the amount of the benefit shall be reduced in accordance with section 97B.50.

4. *Alternative calculations.*

*a.* For each active member employed before January 1, 1976, and retiring on or after January 1, 1976, and for each member who was a vested member before January 1, 1976, with four or more complete years of service, a formula benefit shall be determined equal to the larger of the benefit determined under this paragraph and paragraph “b” of this subsection, as applicable, the benefit deter-

mined under subsection 3, or the benefit determined under section 97B.49G, subsection 1. The amount of the monthly formula benefit for each such active or vested member who retired on or after January 1, 1976, shall be equal to one-twelfth of one and fifty-seven hundredths percent per year of membership service multiplied by the member’s average annual covered wages. In no case shall the amount of monthly formula benefit accrued for membership service prior to July 1, 1967, be less than the monthly annuity at the normal retirement date determined by applying the sum of the member’s accumulated contributions, the member’s employer’s accumulated contributions on or before June 30, 1967, and any retirement dividends standing to the member’s credit on or before December 31, 1966, to the annuity tables in use by the system with due regard to the benefits payable from such accumulated contributions under sections 97B.52 and 97B.53.

*b.* For each member employed before January 1, 1976, who has qualified for prior service credit in accordance with the first paragraph of section 97B.43, a formula benefit shall be determined equal to the larger of the benefit determined under this paragraph and paragraph “a” of this subsection, as applicable, the benefit determined under subsection 3, or the benefit determined under section 97B.49G, subsection 1. The amount of the monthly formula benefit under this paragraph shall be equal to eight-tenths of one percent per year of prior service credit multiplied by the monthly rate of the member’s total remuneration not in excess of three thousand dollars annually during the twelve consecutive months of the member’s prior service for which that total remuneration was the highest. An additional three-tenths of one percent of the remuneration not in excess of three thousand dollars annually shall be payable for prior service during each year in which the accrued liability for benefit payments created by the abolished system is funded by appropriation from the Iowa public employees’ retirement fund.

*c.* For each active and vested member retiring with less than four complete years of service and who therefore cannot have a benefit determined under the formula benefit of paragraph “a” or “b” of this subsection, subsection 3, or section 97B.49G, subsection 1, a monthly annuity for membership service shall be determined by applying the member’s accumulated contributions and the employer’s matching accumulated contributions as of the effective retirement date and any retirement dividends standing to the member’s credit on or before December 31, 1966, to the annuity tables in use by the system according to the member’s age and contingent annuitant’s age, if applicable.

2003 Acts, ch 145, §286  
Calculation of allowance for members subject to employer-mandated reduction in hours between January 1, 2002, and June 30, 2003; emergency rules authorized; 2002 Acts, ch 1135, §36  
Terminology change applied

**97B.49B Protection occupation.**

1. *Definitions.* For purposes of this section:

a. “*Applicable percentage*” means the greater of the following percentages:

(1) Sixty percent.

(2) For each active or inactive vested member retiring on or after July 1, 1996, but before July 1, 2000, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-five years of service for the member, not to exceed a total of five additional percentage points.

(3) For each active or inactive vested member retiring on or after July 1, 2000, but before July 1, 2001, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-four years of service for the member, not to exceed a total of six additional percentage points.

(4) For each active or inactive vested member retiring on or after July 1, 2001, but before July 1, 2002, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-three years of service for the member, not to exceed a total of seven additional percentage points.

(5) For each active or inactive vested member retiring on or after July 1, 2002, but before July 1, 2003, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service for the member, not to exceed a total of eight additional percentage points.

(6) For each active or inactive vested member retiring on or after July 1, 2003, sixty percent plus, if applicable, an additional three-eighths of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service for the member, not to exceed a total of twelve additional percentage points.

b. “*Applicable years of service*” means the following:

(1) For each active or inactive vested member retiring on or after July 1, 1996, and before July 1, 2000, twenty-five.

(2) For each active or inactive vested member retiring on or after July 1, 2000, and before July 1, 2001, twenty-four.

(3) For each active or inactive vested member retiring on or after July 1, 2001, and before July 1, 2002, twenty-three.

(4) For each active or inactive vested member retiring on or after July 1, 2002, twenty-two.

c. “*Eligible service*” means membership and prior service in a protection occupation. In addition, for a member with membership and prior service in a protection occupation described in paragraph “e”, subparagraph (2), eligible service includes membership and prior service as a sheriff,

deputy sheriff, or airport fire fighter as defined in section 97B.49C.

d. “*Fraction of years of service*” means a number, not to exceed one, equal to the sum of the years of eligible service in a protection occupation divided by the applicable years of service for the member.

e. “*Protection occupation*” includes all of the following:

(1) A conservation peace officer employed under section 456A.13 or as designated by a county conservation board pursuant to section 350.5.

(2) A marshal in a city not covered under chapter 400 or a fire fighter or police officer of a city not participating in the retirement systems established in chapter 410 or 411.

(3) A correctional officer or correctional supervisor employed by the Iowa department of corrections, and any other employee of that department whose primary purpose is, through ongoing direct inmate contact, to enforce and maintain discipline, safety, and security within a correctional facility. The Iowa department of corrections and the department of administrative services shall jointly determine which job classifications are covered under this subparagraph.

(4) An airport safety officer employed under chapter 400 by an airport commission in a city of one hundred thousand population or more.

(5) An employee of the state department of transportation who is designated as a “*peace officer*” by resolution under section 321.477, but only if the employee retires on or after July 1, 1990. For purposes of this subparagraph, service as a traffic weight officer employed by the highway commission prior to the creation of the state department of transportation or as a peace officer employed by the Iowa state commerce commission prior to the creation of the state department of transportation shall be included in computing the employee’s years of membership service.

(6) A fire prevention inspector peace officer employed by the department of public safety prior to July 1, 1994, who does not elect coverage under the Iowa department of public safety peace officers’ retirement, accident, and disability system, as provided in section 97B.42B.

(7) An employee covered by the merit system as provided in chapter 8A, subchapter IV, whose primary duty is providing airport security and who carries or is licensed to carry a firearm while performing those duties.

2. *Calculation of monthly allowance.* Notwithstanding other provisions of this chapter, a member who is or has been employed in a protection occupation who retires on or after July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to section 97B.49A or 97B.49D, a monthly retirement allowance equal to one-twelfth of an amount

equal to the applicable percentage of the three-year average covered wage as a member who has been employed in a protection occupation multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

3. *Additional contributions.*

a. Annually, the system shall actuarially determine the cost of the additional benefits provided for members covered under this section as a percentage of the covered wages of the employees covered by this section. Sixty percent of the cost shall be paid by the employers of employees covered under this section and forty percent of the cost shall be paid by the employees. The employer and employee contributions required under this paragraph are in addition to the contributions paid under sections 97B.11 and 97B.11A.

b. (1) For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, there is appropriated from the state fish and game protection fund to the system the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph "e", subparagraph (1).

(2) Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each applicable city shall pay to the system the amount necessary to pay the employer share of the cost of the additional benefits provided to employees of that city covered under subsection 1, paragraph "e", subparagraphs (2) and (4).

(3) For the fiscal year commencing July 1, 1988, and each succeeding fiscal year, the department of corrections shall pay to the system from funds appropriated to the Iowa department of corrections, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph "e", subparagraph (3).

(4) For the fiscal year commencing July 1, 1990, and each succeeding fiscal year, the state department of transportation shall pay to the system, from funds appropriated to the state department of transportation from the road use tax fund and the primary road fund, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees covered under subsection 1, paragraph "e", subparagraph (5).

(5) For the fiscal year commencing July 1, 1992, and each succeeding fiscal year, the department of public safety shall pay to the system from funds appropriated to the department of public safety, the amount necessary to pay the employer share of the cost of the additional benefits provided to a fire prevention inspector peace officer pursuant to subsection 1, paragraph "e", subparagraph (6).

(6) For the fiscal year commencing July 1, 1994, and each succeeding fiscal year through the fiscal year ending June 30, 1998, each judicial district department of correctional services shall pay

to the system from funds appropriated to that judicial district department of correctional services, the amount necessary to pay the employer share of the cost of the additional benefits provided to employees of a judicial district department of correctional services who are employed as a probation officer III or a parole officer III.

4. Notwithstanding any provision of this chapter to the contrary, the three-year average covered wage for a member retiring under this section whose years of eligible service equals or exceeds twenty-two years of eligible service for that member shall be determined by calculating the member's eligible combined wage for each year of eligible service. For purposes of this subsection, "eligible combined wage" means the wages earned by the member for each quarter year period from eligible service and from covered employment that is not eligible service if at least seventy-five percent of the wages earned was from eligible service.

2003 Acts, ch 145, §176, 177, 286

Terminology change applied

Subsection 1, paragraph e, subparagraphs (3) and (7) amended

**97B.49C Sheriffs, deputy sheriffs, and airport fire fighters.**

1. *Definitions.* For purposes of this section:

a. "Airport fire fighter" means an airport fire fighter employed by the military division of the department of public defense.

b. "Applicable percentage" means the greater of the following percentages:

(1) Sixty percent.

(2) For each active or inactive vested member retiring on or after July 1, 1996, and before July 1, 1998, sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service, not to exceed a total of five additional percentage points.

(3) For each active or inactive vested member retiring on or after July 1, 1998, sixty percent plus, if applicable, an additional three-eighths of one percentage point for each additional calendar quarter of eligible service beyond twenty-two years of service, not to exceed a total of twelve additional percentage points.

c. "Deputy sheriff" means a deputy sheriff appointed pursuant to section 341.1 prior to July 1, 1981, or section 331.903 on or after July 1, 1981.

d. "Eligible service" means membership and prior service as an airport fire fighter, sheriff, and deputy sheriff under this section. In addition, eligible service includes membership and prior service as a marshal in a city not covered under chapter 400 or a fire fighter or police officer of a city not participating in the retirement systems established in chapter 410 or 411, and as an airport fire fighter prior to July 1, 1994.

e. "Fraction of years of service" means a number, not to exceed one, equal to the sum of the years of eligible service under this section divided by

twenty-two years.

f. "Sheriff" means a county sheriff as defined in section 39.17.

2. *Calculation of monthly allowance.* Notwithstanding other provisions of this chapter, a member who retires from employment as a sheriff, deputy sheriff, or airport fire fighter on or after July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to section 97B.49A or 97B.49D, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed in eligible service multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

3. *Additional contributions.*

a. Annually, the system shall actuarially determine the cost of the additional benefits provided for members covered under this section as a percentage of the covered wages of the employees covered by this section. Sixty percent of the cost shall be paid by the employers of employees covered under this section and forty percent of the cost shall be paid by the employees. The employer and employee contributions required under this paragraph are in addition to the contributions paid under sections 97B.11 and 97B.11A. However, the cost of including service as an airport fire fighter prior to July 1, 1994, as eligible service under this section shall not affect the contribution rates calculated and paid by the member or the employer under this section.

b. (1) Annually, during each fiscal year commencing with the fiscal year beginning July 1, 1988, each county shall pay to the system the amount necessary to pay the employer share of the cost of the additional benefits provided to sheriffs and deputy sheriffs.

(2) For the fiscal year commencing July 1, 1994, and each succeeding fiscal year, there is appropriated from the general fund of the state to the system, from funds not otherwise appropriated, an amount necessary to pay the employer share of the cost of the additional benefits provided to airport fire fighters under this section.

4. Notwithstanding any provision of this chapter to the contrary, the three-year average covered wage for a member retiring under this section whose years of eligible service equals or exceeds twenty-two years of eligible service for that member shall be determined by calculating the member's eligible combined wage for each quarter year of eligible service. For purposes of this subsection, "eligible combined wage" means the wages earned by the member for each quarter year period from eligible service and from covered employment that is not eligible service if at least seventy-five percent of the wages earned was from eligible service.

2003 Acts, ch 145, §286  
Terminology change applied

#### 97B.49D Hybrid formula.

1. An active or inactive vested member, who is or has been employed in both special service and regular service, who retires on or after July 1, 1996, with four or more completed years of service and at the time of retirement is at least fifty-five years of age, may elect to receive, in lieu of the receipt of a monthly retirement allowance as calculated pursuant to sections 97B.49A through 97B.49C, a combined monthly retirement allowance equal to the sum of the following:

a. One-twelfth of an amount equal to the applicable percentage of the member's three-year average covered wage multiplied by a fraction of years of service. The fraction of years of service for purposes of this paragraph shall be the actual years of service, not to exceed thirty, for which regular service contributions were made, divided by thirty. However, any otherwise applicable age reduction for early retirement shall apply to the calculation under this paragraph.

b. One-twelfth of an amount equal to the applicable percentage of the member's three-year average covered wage multiplied by a fraction of years of service. The fraction of years of service for purposes of this paragraph shall be the actual years of service, not to exceed the applicable years of service for the member as defined in section 97B.49B, earned in a position described in section 97B.49B, for which special service contributions were made, divided by the applicable years of service for the member as defined in section 97B.49B. In calculating the fractions of years of service under the paragraph, a member shall not receive special service credit for years of service for which the member and the member's employer did not make the required special service contributions to the system.

c. One-twelfth of an amount equal to the applicable percentage of the member's three-year average covered wage multiplied by a fraction of years of service. The fraction of years of service for purposes of this paragraph shall be the actual years of service, not to exceed twenty-two, earned in a position described in section 97B.49C, for which special service contributions were made, divided by twenty-two. In calculating the fractions of years of service under this paragraph, a member shall not receive special service credit for years of service for which the member and the member's employer did not make the required special service contributions to the system.

2. In calculating the combined monthly retirement allowance pursuant to subsection 1, the sum of the fraction of years of service provided in subsection 1, paragraphs "a", "b", and "c", shall not exceed one. If the sum of the fractions of years of service would exceed one, the system shall deduct years of service first from the calculation under subsection 1, paragraph "a", and then from the calculation under subsection 1, paragraph "b", if nec-

essary, so that the sum of the fractions of years of service shall equal one.

3. In calculating the combined monthly retirement allowance pursuant to subsection 1, the applicable percentage shall be sixty percent plus, if applicable, an additional one-fourth of one percentage point for each additional calendar quarter of membership service in service as described in subsection 1, paragraph “a”, “b”, or “c”, beyond thirty years of service, not to exceed a total of five additional percentage points. Any addition in the percentage multiplier shall be included in the calculations required under this section.

2003 Acts, ch 145, §286  
Terminology change applied

### 97B.49F Retirement dividends.

#### 1. *Cost-of-living dividend.*

a. Effective July 1, 1997, commencing with dividends payable in November 1997, and for each subsequent year, all members who retired prior to July 1, 1990, and all beneficiaries and contingent annuitants of such members, shall be eligible for annual dividend payments, payable in November of that year, pursuant to the requirements of this subsection. The dividend payable in any given year shall be the sum of the dollar amount of the dividend payable in the previous November and the dividend adjustment. A dividend determined pursuant to this subsection shall not be used to increase the monthly benefit amount payable. In no event shall the dividend payable be less than twenty-five dollars.

b. (1) The dividend adjustment for a given year shall be calculated by multiplying the total of the retiree’s, beneficiary’s, or contingent annuitant’s monthly benefit payments and the dividend payable to the retiree, beneficiary, or contingent annuitant, in the previous calendar year by the applicable percentage as determined by this paragraph.

(2) The applicable percentage shall be the least of the following percentages:

(a) The percentage representing the percentage increase in the consumer price index published in the federal register by the federal department of labor, bureau of labor statistics, that reflects the percentage increase in the consumer price index for the twelve-month period ending June 30 of the year that the dividend is to be paid.

(b) The percentage representing the percentage amount the actuary has certified, in the annual actuarial valuation of the retirement system as of June 30 of the year in which the dividend is to be paid, that the fund can absorb without requiring an increase in the employer and employee contributions to the fund.

(c) Three percent.

c. If a member eligible to receive a cost-of-living dividend dies before November 1 of a year, a cost-of-living dividend shall not be payable in November of that year in the name of the member.

If a member dies on or after November 1, but before payment of a dividend is made in that month, the full amount of the retirement dividend for that year shall be paid in the member’s name upon notification of the member’s death.

#### 2. *Favorable experience dividend.*

a. Commencing January 1, 1999, all qualified recipients who have received a monthly allowance for at least one year as of the date the dividend is payable shall be eligible to receive a favorable experience dividend, payable on the last business day in January of each year pursuant to the requirements of this subsection. If the qualified recipient eligible to receive a favorable experience dividend dies before January 1 of a year, a favorable experience dividend shall not be payable in January of that year in the name of the qualified recipient. However, if the qualified recipient dies on or after January 1 but before the dividend is paid in that month, the full amount of the dividend payable in that month shall be paid in the name of the qualified recipient, upon notification of death. For purposes of this paragraph, “qualified recipient” includes all members who retired on or after July 1, 1990, or a beneficiary or contingent annuitant of such a member who receives a monthly benefit, and a beneficiary of an active member who elects a monthly allowance under section 97B.52, subsection 1, paragraph “c”.

b. A favorable experience dividend reserve account, hereafter called the “reserve account”, is established within the retirement fund. Moneys credited to the reserve account shall be used by the system for the purpose of providing a favorable experience dividend pursuant to this subsection.

c. Moneys shall be credited to the reserve account in the retirement fund as follows:

(1) On or before January 15, 1999, there shall be credited to the reserve account an amount that the system’s actuary determines is sufficient to pay the maximum favorable experience dividend for each of the next following five years, based on reasonable actuarial assumptions.

(2) Beginning with the annual actuarial valuation of the retirement system as of June 30, 1999, and for each annual actuarial valuation of the retirement system thereafter, there shall be credited to the reserve account on each applicable January 15 following an actuarial valuation, an amount that represents that portion of the favorable actuarial experience, if any, that the system’s actuary determines shall be credited to the reserve account pursuant to rules adopted by the system.

(3) The portion of the favorable actuarial experience, if any, that is not initially credited to the reserve account pursuant to subparagraph (2), but which, if applied to the retirement fund, would result in the actuarial valuation of assets exceeding the actuarial accrued liability of the retirement system based on the most recent annual actuarial valuation of the retirement system, shall be credited to the reserve account.

(4) Notwithstanding the provisions of this paragraph to the contrary, moneys credited to the reserve account in any applicable year shall not exceed an amount which, if credited to the reserve account, would exceed an amount that the system's actuary determines is sufficient to pay the maximum favorable experience dividend for each of the next following ten years, based on reasonable actuarial assumptions.

(5) As used in this paragraph, "*favorable actuarial experience*" means the difference, if positive, between the anticipated and actual experience of the retirement system's actuarial assets and liabilities as measured by the system's actuary in the most recent annual actuarial valuation of the retirement system pursuant to rules adopted by the system.

d. The favorable experience dividend is calculated by multiplying the monthly retirement allowance payable to the retiree, beneficiary, or contingent annuitant for the previous December, or such other month as determined by the system, by twelve, and then multiplying that amount by the number of complete years the member has been retired or would have been retired if living as of the date the dividend is payable, and by the applicable percentage. For purposes of this paragraph, the applicable percentage is the percentage, not to exceed three percent, that the system determines shall be applied in calculating the favorable experience dividend if the system determines that the reserve account is sufficiently funded to make a distribution. In making its determination, the system shall consider, but not be limited to, the amounts credited to the reserve account, the distributions from the reserve account made in previous years, the likelihood of future credits to and distributions from the reserve account, and the distributions paid under subsection 1.

2003 Acts, ch 145, §178, 286  
Terminology changes applied  
Subsection 2, paragraph c, subparagraph (5) amended

**97B.49G Monthly payments of allowance — miscellaneous provisions.**

1. *Monthly payments of allowance — percentage multiplier.*

a. For each active or inactive vested member retiring on or after July 1, 1986, and before July 1, 1994, with four or more complete years of service, a monthly benefit shall be computed which is equal to one-twelfth of an amount equal to the applicable percentage multiplier of the three-year average covered wage multiplied by a fraction of years of service.

b. The applicable percentage multiplier for purposes of this subsection shall be the following:

(1) For active or inactive vested members retiring on or after July 1, 1986, but before July 1, 1990, fifty percent.

(2) For active or inactive vested members retiring on or after July 1, 1990, but before July 1,

1991, fifty-two percent.

(3) For active or inactive vested members retiring on or after July 1, 1991, but before July 1, 1992, fifty-four percent.

(4) For active or inactive vested members retiring on or after July 1, 1992, but before July 1, 1993, fifty-six percent.

(5) For active or inactive vested members retiring on or after July 1, 1993, but before July 1, 1994, fifty-seven and four-tenths percent.

(6) For active or inactive vested members retiring on or after July 1, 1994, sixty percent.

c. For purposes of this subsection, fraction of years of service means a number, not to exceed one, equal to the sum of the years of membership service and the number of years of prior service divided by thirty years.

2. *Extra payments on allowance — pre-1976 retirees.*

a. On January 1, 1976, for each member who retired before January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for December 1975 is increased by ten percent for the first calendar year or portion of a calendar year the member was retired, and by an additional five percent for each calendar year after the first calendar year the member was retired through the calendar year beginning January 1, 1975. The total increase shall not exceed one hundred percent. Effective July 1, 1987, there is appropriated for each fiscal year from the Iowa public employees' retirement fund created in section 97B.7 to the system from funds not otherwise appropriated an amount sufficient to fund the monthly retirement allowance increases paid under this paragraph.

The benefit increases granted to members retired under the retirement system on January 1, 1976, shall be granted only on January 1, 1976, and shall not be further increased for any year in which the member was retired after the calendar year beginning January 1, 1975.

b. Effective July 1, 1978, for each member who retired from the retirement system prior to January 1, 1976, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1978 is increased as follows:

(1) For the first ten years of service, fifty cents per month for each complete year of service.

(2) For the eleventh through the twentieth years of service, two dollars per month for each complete year of service.

(3) For the twenty-first through the thirtieth years of service, three dollars per month for each complete year of service.

Effective July 1, 1979, the increases granted to members under this subparagraph shall be paid to contingent annuitants and to beneficiaries.

3. *Extra payments on allowance.*

a. Effective July 1, 1980, for each member who retired from the retirement system prior to January 1, 1976, and for each member who retired from the retirement system on or after January 1, 1976, under section 97B.49A, subsection 4, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1980 is increased as follows:

(1) For the first ten years of service, fifty cents per month for each complete year of service.

(2) For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

(3) For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

(4) The amount of monthly increase payable to a member under this paragraph is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section or section 97B.49A, as applicable.

However, effective July 1, 1980, the monthly retirement allowance attributable to membership service and prior service of a member, contingent annuitant, and beneficiary shall not be less than five dollars times the number of complete years of service of the member, not to exceed thirty, reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52, compared to the full monthly retirement benefit provided in this section or section 97B.49A, as applicable.

b. Effective beginning July 1, 1982, for each member who retired from the retirement system prior to January 1, 1976, and for each member who retired from the retirement system on or after January 1, 1976, under section 97B.49A, subsection 4, the amount of regular monthly retirement allowance attributable to membership service and prior service that was payable to the member for June 1982 is increased as follows:

(1) For the first ten years of service, fifty cents per month for each complete year of service.

(2) For the eleventh through the twentieth years of service, one dollar per month for each complete year of service.

(3) For the twenty-first through the thirtieth years of service, one dollar and fifty cents per month for each complete year of service.

(4) The amount of monthly increase payable to a member under this paragraph is also payable to a beneficiary and a contingent annuitant and shall be reduced by an amount based upon the actuarial equivalent of the option selected in section 97B.51 or section 97B.52 compared to the full monthly benefit provided in this section or section 97B.49A, as applicable.

c. Beginning January 1, 1999, for each mem-

ber who retired from the retirement system prior to July 1, 1986, the amount of regular monthly retirement allowance attributable to membership and prior service that was payable to the member, or the beneficiary or contingent annuitant of the member, for December 1998 shall be increased by fifteen percent.

d. Beginning January 1, 1999, for each member who retired from the retirement system on or after July 1, 1986, but before July 1, 1990, the amount of regular monthly retirement allowance attributable to membership and prior service that was payable to the member, or the beneficiary or contingent annuitant of the member, for December 1998 shall be increased by seven percent.

4. *Normal retirement dates.* A retired member shall be deemed to have retired on the member's normal retirement date, and retirement benefits calculated shall not be reduced pursuant to section 97B.50, if the member meets any of the following requirements:

a. The member is an active or inactive vested member retiring on or after July 1, 1988, and before July 1, 1990, who is at least fifty-five years of age and has completed at least thirty years of membership service and prior service, and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety-two.

b. The member is an active or inactive vested member retiring on or after July 1, 1990, and before July 1, 1996, who is at least fifty-five years of age and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety-two.

c. The member is an active or inactive vested member retiring on or after July 1, 1996, and before July 1, 1997, who is at least fifty-five years of age and for which the sum of the number of years of membership service and prior service and the member's age in years as of the member's last birthday equals or exceeds ninety.

d. The member is an active or inactive vested member retiring on or after July 1, 1986, and before January 1, 1999, who is at least sixty-two years of age and who has completed thirty years of membership service.

5. *Dividends — November 1996.*

a. Each member who retired from the retirement system between July 4, 1953, and December 31, 1975, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend equal to two hundred ninety-two percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

b. A member who retired from the retirement

system between January 1, 1976, and June 30, 1982, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend equal to two hundred twenty-three percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

c. A member who retired from the retirement system between July 1, 1982, and June 30, 1986, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend equal to seventy-four percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

d. A member who retired from the retirement system between July 1, 1986, and June 30, 1990, or a contingent annuitant or beneficiary of such a member, shall receive with the November 1996 monthly benefit payment a retirement dividend equal to twenty-four percent of the monthly benefit payment the member received for the preceding June, or the most recently received benefit payment, whichever is greater. The retirement dividend does not affect the amount of a monthly benefit payment.

e. Notwithstanding the determination of the amount of a retirement dividend under this subsection, a retirement dividend shall not be less than twenty-five dollars.

6. *Conservation peace officer — July 1986 — July 1988.*

a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a conservation peace officer under section 456A.13 and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a conservation peace officer, may elect to receive, in lieu of the receipt of any benefits under subsection 1 or section 97B.49A, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer, with benefits payable during the member's lifetime.

b. A conservation peace officer who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a conservation peace officer, multiplied by a fraction of years of service as a conservation peace officer. For the purpose of this subsection, "*fraction of*

*years of service*" means a number, not to exceed one, equal to the sum of the years of membership service as a conservation peace officer, divided by twenty-five years. On or after July 1, 1986, but before July 1, 1988, if the conservation peace officer has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the conservation peace officer's retirement precedes the date on which the conservation peace officer attains sixty years of age.

The annual contribution necessary to pay for the additional benefits provided in this paragraph shall be paid by the employer and employee in the same proportion that employer and employee contributions are made under section 97B.11.

c. There is appropriated from the state fish and game protection fund to the system an actuarially determined amount calculated by the Iowa public employees' retirement system sufficient to pay for the additional benefits to conservation peace officers provided by this subsection, as a percentage, in paragraph "a" and for the employer portion of the benefits provided in paragraph "b". The amount is in addition to the contribution paid by the employer under section 97B.11. The cost of the benefits relating to fish and wildlife conservation peace officers within the department of natural resources shall be paid from the state fish and game protection fund and the cost of the benefits relating to the other conservation peace officers of the department shall be paid from the general fund.

7. *Peace officer — July 1986 — July 1988.*

a. Notwithstanding other provisions of this chapter, a member who is or has been employed as a peace officer and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as a peace officer, may elect to receive, in lieu of the benefits under subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer, with benefits payable during the member's lifetime.

A peace officer who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a peace officer multiplied by the fraction of years of service as a peace officer. For the purpose of this subsection, "*fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service as a peace officer, divided by twenty-five years. On or after July 1, 1984, but before July 1, 1988, if the peace officer has not reached sixty years of age at retirement, the monthly retirement

allowance shall be reduced by five-tenths of one percent per month for each month that the peace officer's retirement precedes the date on which the peace officer attains sixty years of age.

For the purpose of this subsection, membership service as a peace officer means service under this retirement system as any or all of the following:

(1) As a county sheriff as defined in section 39.17.

(2) As a deputy sheriff appointed pursuant to section 341.1, Code 1981, or section 331.903.

(3) As a marshal or police officer in a city not covered under chapter 400.

b. Each county and applicable city and employee eligible for benefits under this subsection shall annually contribute an amount determined by the system, as a percentage of covered wages, to be necessary to pay for the additional benefits provided by this subsection. The annual contribution in excess of the employer and employee contributions required by this chapter shall be paid by the employer and the employee in the same proportion that employer and employee contributions are made under section 97B.11. The additional percentage of covered wages shall be calculated separately by the system for service under paragraph "a", subparagraphs (1) and (2), and for service under paragraph "a", subparagraph (3), and each shall be an actuarially determined amount for that type of service which, if contributed throughout the entire period of active service, would be sufficient to provide the pension benefit provided in this subsection.

8. *Correctional officer — July 1986 – July 1988.*

a. Notwithstanding sections of this chapter relating to eligibility for and determination of retirement benefits, a vested member who is or has been employed as a correctional officer by the Iowa department of corrections and who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least thirty years of membership service as a correctional officer, may elect to receive, in lieu of the receipt of benefits under subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as a correctional officer, with benefits payable during the member's lifetime.

b. The Iowa department of corrections and the system shall jointly determine the applicable merit system job classifications of correctional officers.

c. The Iowa department of corrections shall pay to the system, from funds appropriated to the Iowa department of corrections, an actuarially determined amount sufficient to pay for the additional benefits provided in this subsection. The amount is in addition to the employer contributions required in section 97B.11.

9. *Airport fire fighter — July 1986 – July 1988.*

a. Notwithstanding other provisions of this chapter, a member who is or has been employed by the office of disaster services as an airport fire fighter who retires on or after July 1, 1986, and before July 1, 1988, and at the time of retirement is at least sixty years of age and has completed at least twenty-five years of membership service as an airport fire fighter, may elect to receive, in lieu of the receipt of any benefits under subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport fire fighter, with benefits payable during the member's lifetime.

b. An airport fire fighter who retires on or after July 1, 1986, and before July 1, 1988, and has not completed twenty-five years of membership service as required under this subsection is eligible to receive a monthly retirement allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage as an airport fire fighter multiplied by a fraction of years of service as an airport fire fighter. For the purpose of this subsection, "fraction of years of service" means a number, not to exceed one, equal to the sum of the years of membership service as an airport fire fighter, divided by twenty-five years. On or after July 1, 1986, but before July 1, 1988, if the airport fire fighter has not reached sixty years of age at retirement, the monthly retirement allowance shall be reduced by five-tenths of one percent per month for each month that the airport fire fighter's retirement precedes the date on which the airport fire fighter attains sixty years of age.

c. The employer and each employee eligible for benefits under this subsection shall annually contribute an actuarially determined amount specified by the system, as a percentage of covered wages, that is necessary to pay for the additional benefits provided by this subsection. The annual contribution in excess of the employer and employee contributions required in section 97B.11 shall be paid by the employer and the employee in the same proportion that the employer and employee contributions are made under section 97B.11.

d. There is appropriated from the general fund of the state to the system from funds not otherwise appropriated an amount sufficient to pay the employer share of the cost of the additional benefits provided in this subsection.

10. *Protection occupation — July 1988 – July 1994.*

a. For purposes of this subsection:

(1) "Applicable percentage" means the applicable percentage multiplier defined in subsection 1, paragraph "b", that applies on the date a member retires and becomes eligible to receive a monthly allowance as calculated pursuant to this subsection.

(2) "Fraction of years of service" means a num-

ber, not to exceed one, equal to the sum of the years of membership service in a protection occupation divided by twenty-five years.

b. Notwithstanding other provisions of this chapter, a member who is or has been employed in a protection occupation who retires on or after July 1, 1988, and before July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed in a protection occupation multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

11. *Sheriffs and deputy sheriffs — July 1988 — July 1994.*

a. For purposes of this subsection:

(1) "*Applicable percentage*" means the applicable percentage multiplier as described in subsection 1, paragraph "b", that applies on the date a member retires and becomes eligible to receive a monthly allowance as calculated pursuant to this subsection.

(2) "*Fraction of years of service*" means a number, not to exceed one, equal to the sum of the years of membership service as a sheriff or deputy sheriff divided by twenty-two years.

b. Notwithstanding other provisions of this chapter, a member who retires from employment as a sheriff or deputy sheriff on or after July 1, 1988, and before July 1, 1994, and at the time of retirement is at least fifty-five years of age may elect to receive, in lieu of the receipt of any benefits as calculated pursuant to subsection 1 or section 97B.49A, subsection 4, as applicable, a monthly retirement allowance equal to one-twelfth of an amount equal to the applicable percentage of the three-year average covered wage as a member who has been employed as a sheriff or deputy sheriff multiplied by a fraction of years of service, with benefits payable during the member's lifetime.

12. *Probation and parole officers III — July 1994 — July 1998.* The system shall establish and maintain additional contribution accounts for employees of judicial district departments of correctional services who were employed as parole officers III and probation officers III during any portion of the period from July 1, 1994, through June 30, 1998. A probation officer III or parole officer III who made contributions to the retirement fund during the period from July 1, 1994, through June 30, 1998, as a member of a protection occupation shall have credited to an additional contribution account for that probation or parole officer an amount equal to the contributions made to the retirement fund in excess of three and seven-tenths percent of the probation or parole officer's covered

wages paid from July 1, 1994, through June 30, 1998, plus interest at the applicable statutory interest rates established in this chapter. Moneys deposited in an additional contribution account established pursuant to this section shall be payable in a lump sum to the probation or parole officer at retirement or upon request for a refund of moneys in the account. If the probation or parole officer dies prior to receipt of moneys in the account, the beneficiary designated by that probation or parole officer shall receive a lump sum payment of moneys in the account. The payment of moneys from the account created in this subsection shall not be annuitized. A probation officer III or parole officer III for which an account is established under this subsection shall not receive credit for eligible service as a member of a protection occupation for that service.

2003 Acts, ch 145, §286  
Terminology changes applied

#### **97B.49H Active member supplemental accounts.**

1. There is established, for each active member, a supplemental account consisting of amounts credited to the account as provided in this section which shall be held and used for the exclusive benefit of the member pursuant to the requirements of this section.

2. Amounts shall be credited to a supplemental account of each active member pursuant to the requirements of this section following a determination by the system's actuary during the most recent annual actuarial valuation that the retirement system does not have an unfunded accrued liability. For purposes of this section, the retirement system does not have an unfunded accrued liability if the actuarial accrued liability of the retirement system based on the actuarial cost method used by the actuary does not exceed the actuarial value of assets of the retirement system as of the valuation date.

3. The system shall annually determine the amount to be credited to the supplemental accounts of active members. The amount to be credited shall be calculated by multiplying the member's covered wages for the applicable wage reporting period by the supplemental rate. For purposes of this subsection, the supplemental rate is the difference, if positive, between the combined employee and employer statutory contribution rates in effect under section 97B.11 and the normal cost rate of the retirement system as determined by the system's actuary in the most recent annual actuarial valuation of the retirement system. The credits shall be made at least quarterly during the calendar year following a determination that the retirement system does not have an unfunded accrued liability. The normal cost rate, calculated according to the actuarial cost method used, is the percent of pay allocated to each year

of service that is necessary to fund projected benefits over all members' service with the retirement system.

4. Amounts credited to a member's supplemental account shall be credited with interest quarterly pursuant to section 97B.70, subsection 2.

5. Amounts credited to a member's supplemental account shall be distributed as follows:

*a.* If a member terminates covered employment and files an application for a refund under section 97B.53, the member shall receive in a lump sum payment, in addition to any other payment provided by this chapter, all amounts credited to the member's supplemental account.

*b.* If a member dies prior to retirement, the member's beneficiary shall receive in a lump sum payment, in addition to any other payment provided by this chapter, all amounts credited to the member's supplemental account.

*c.* Upon retirement, the member shall elect to receive in a lump sum payment or in an annuity, in addition to any other payment provided by this chapter, all amounts credited to the member's supplemental account. The annuity provided under this section shall be payable in the same form, at the same time, and to the same persons, including beneficiaries and contingent annuitants, that the member elects for the payments under the other provisions of this chapter providing for the monthly payment of allowances. The amount of an annuity provided under this section, including amounts payable to beneficiaries and contingent annuitants, shall be calculated using the amount credited to the member's supplemental account as of the date of retirement, and the assumptions underlying the actuarial tables used to calculate optional allowances under section 97B.51.

2003 Acts, ch 145, §286  
Terminology changes applied

#### **97B.49I Qualified benefits arrangement.**

The system, by rule, may establish and maintain a qualified benefits arrangement under section 415(m) of the federal Internal Revenue Code. The amount of any annual benefit that would be payable pursuant to this chapter but for the limitation imposed by section 415 of the federal Internal Revenue Code shall be paid from a qualified benefits arrangement established and maintained pursuant to this section.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.50 Early retirement.**

1. Except as otherwise provided in this section, a vested member who is at least fifty-five years of age, upon retirement prior to the normal retirement date for that member, is entitled to receive a monthly retirement allowance determined in the same manner as provided for normal retirement in sections 97B.49A, 97B.49E, and 97B.49G,

reduced as follows:

*a.* For a member who is less than sixty-two years of age, by twenty-five hundredths of one percent per month for each month that the early retirement date precedes the normal retirement date.

*b.* For a member who is at least sixty-two years of age and who has not completed twenty years of membership service and prior service, by twenty-five hundredths of one percent per month for each month that the early retirement date precedes the normal retirement date.

2. *a.* A vested member who retires from the retirement system due to disability and commences receiving disability benefits pursuant to the federal Social Security Act, 42 U.S.C. § 423 et seq., and who has not reached the normal retirement date, shall receive benefits as selected under section 97B.51, and shall not have benefits reduced upon retirement as required under subsection 1 regardless of whether the member has completed thirty or more years of membership service. However, the benefits shall be suspended during any period in which the member returns to covered employment. This section takes effect July 1, 1990, for a member meeting the requirements of this paragraph who retired from the retirement system at any time after July 4, 1953. Eligible members retiring on or after July 1, 2000, are entitled to the receipt of retroactive adjustment payments for no more than thirty-six months immediately preceding the month in which written notice of retirement due to disability was submitted to the system, notwithstanding the requirements of subsection 4.

*b.* A vested member who retires from the retirement system due to disability and commences receiving disability benefits pursuant to the federal Railroad Retirement Act, 45 U.S.C. § 231 et seq., and who has not reached the normal retirement date, shall receive benefits as selected under section 97B.51, and shall not have benefits reduced upon retirement as required under subsection 1 regardless of whether the member has completed thirty or more years of membership service. However, the benefits shall be suspended during any period in which the member returns to covered employment. This section takes effect July 1, 1990, for a member meeting the requirements of this paragraph who retired from the retirement system at any time since July 4, 1953. Eligible members retiring on or after July 1, 2000, are entitled to the receipt of retroactive adjustment payments for no more than thirty-six months immediately preceding the month in which written notice of retirement due to disability was submitted to the system, notwithstanding the requirements of subsection 4.

*c.* A vested member who terminated service due to a disability, who has been issued payment for a refund pursuant to section 97B.53, and who

subsequently commences receiving disability benefits as a result of that disability pursuant to the federal Social Security Act, 42 U.S.C. § 423 et seq. or the federal Railroad Retirement Act, 45 U.S.C. § 231 et seq., may receive credit for membership service for the period covered by the refund payment, upon repayment to the system of the actuarial cost of receiving service credit for the period covered by the refund payment, as determined by the system. For purposes of this paragraph, the actuarial cost of the service purchase shall be determined as provided in section 97B.74. The payment to the system as provided in this paragraph shall be made within ninety days after July 1, 2000, or the date federal disability payments commenced, whichever occurs later. For purposes of this paragraph, the date federal disability payments commence shall be the date that the member actually receives the first such payment, regardless of any retroactive payments included in that payment. A member who repurchases service credit under this paragraph and applies for retirement benefits shall have the member's monthly allowance, including retroactive adjustment payments, determined in the same manner as provided in paragraph "a" or "b", as applicable. This paragraph shall not be implemented until the system has received a determination letter from the federal internal revenue service approving the system's plan's qualified status under Internal Revenue Code section 401(a).

3. A member who is at least sixty-two years of age and less than sixty-five years of age, and who has completed twenty or more years of membership service and prior service, shall receive benefits under sections 97B.49A through 97B.49G, as applicable, determined as if the member had attained sixty-five years of age.

4. A vested member eligible for a retirement allowance adjusted under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice of retirement was submitted to the system.

2003 Acts, ch 145, §179, 286  
Terminology changes applied  
Subsection 2, paragraph c amended

### **97B.50A Disability benefits for special service members.**

1. *Definitions.* For purposes of this section, unless the context otherwise provides:

a. "*Member*" means a vested member who is classified as a special service member under section 97B.1A, subsection 22, at the time of the alleged disability. "*Member*" does not mean a volunteer fire fighter.

b. "*Net disability retirement allowance*" means the amount determined by subtracting the amount paid during the previous calendar year by the member for health insurance or similar health care coverage for the member and the member's

dependents from the amount of the member's disability retirement allowance, including any dividends and distributions from supplemental accounts, paid for that year pursuant to this section.

c. "*Reemployment comparison amount*" means an amount equal to the current covered wages of an active special service member at the same position on the salary scale within the rank or position the member held at the time the member received a disability retirement allowance pursuant to this section. If the rank or position held by the member at the time of retirement pursuant to this section is abolished, the amount shall be computed by the system as though the rank or position had not been abolished and salary increases had been granted on the same basis as granted to other ranks or positions by the former employer of the member. The reemployment comparison amount shall not be less than the three-year average covered wage of the member, based on all regular and special service covered under this chapter.

2. *In-service disability retirement allowance.*

a. A member who is injured in the performance of the member's duties, and otherwise meets the requirements of this subsection, shall receive an in-service disability retirement allowance under this subsection, in lieu of a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

b. Upon application of a member, a member who has become totally and permanently incapacitated for duty in the member's special service occupation as the natural and proximate result of an injury, disease, or exposure occurring or aggravated while in the actual performance of duty at some definite place and time shall be eligible to retire under this subsection, provided that the medical board, as established by this section, shall certify that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. The system shall make the final determination, based on the medical evidence received, of a member's total and permanent disability. However, if a person's special service membership in the retirement system first commenced on or after July 1, 2000, the member shall not be eligible for benefits with respect to a disability which would not exist but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the system that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same or comparable special service occupation position held by the member immediately prior to the application for disability benefits.

c. Disease under this subsection shall mean

heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain, exposure, or the inhalation of noxious fumes, poison, or gases. However, if a person's special service membership in the retirement system first commenced on or after July 1, 2000, and the heart disease or disease of the lungs or respiratory tract would not exist, but for a medical condition that was known to exist on the date that special service membership commenced, the presumption established in this paragraph shall not apply.

d. Upon retirement for an in-service disability as provided by this subsection, a member shall have the option to receive a monthly in-service disability retirement allowance calculated under this subsection or a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable, that the member would receive if the member had attained fifty-five years of age. The monthly in-service disability allowance calculated under this subsection shall consist of an allowance equal to one-twelfth of sixty percent of the member's three-year average covered wage or its actuarial equivalent as provided under section 97B.51.

3. *Ordinary disability retirement allowance.*

a. A member who otherwise meets the requirements of this subsection shall receive an ordinary disability retirement allowance under this subsection in lieu of a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

b. Upon application of a member, a member who has become totally and permanently incapacitated for duty in the member's special service occupation shall be eligible to retire under this subsection, provided that the medical board, as established by this section, shall certify that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. The system shall make the final determination, based on the medical evidence received, of a member's total and permanent disability. However, if a person's special service membership in the retirement system first commenced on or after July 1, 2000, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that special service membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the system that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same or comparable special service occupation position held by the member immediately prior to the application for disability benefits.

c. Upon retirement for an ordinary disability as provided by this subsection, a member shall re-

ceive the greater of a monthly ordinary disability retirement allowance calculated under this subsection or a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable. The monthly ordinary disability allowance calculated under this subsection shall consist of an allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage or its actuarial equivalent as provided under section 97B.51.

4. *Waiver of allowance.* A member receiving a disability retirement allowance under this section may file an application to receive benefits pursuant to section 97B.50, subsection 2, in lieu of receiving a disability retirement allowance under this section, if the member becomes eligible for benefits under section 97B.50, subsection 2. An application to receive benefits pursuant to section 97B.50, subsection 2, shall be filed with the system within sixty days after the member becomes eligible for benefits pursuant to that section or the member shall be ineligible to elect coverage under that section. On the first of the month following the month in which a member's application is approved by the system, the member's election of coverage under section 97B.50, subsection 2, shall become effective and the member's eligibility to receive a disability retirement allowance pursuant to this section shall cease. Benefits payable pursuant to section 97B.50, subsection 2, shall be calculated using the option choice the member selected for payment of a disability retirement allowance pursuant to this section. An application to elect coverage under section 97B.50, subsection 2, is irrevocable upon approval by the system.

5. *Offset to allowance.* Notwithstanding any provisions to the contrary in state law, or any applicable contract or policy, any amounts which may be paid or payable by the employer under any workers' compensation, unemployment compensation, or other law to a member, and any disability payments the member receives pursuant to the federal Social Security Act, 42 U.S.C. § 423 et seq., shall be offset against and payable in lieu of any retirement allowance payable pursuant to this section on account of the same disability.

6. *Reexamination of members retired on account of disability.*

a. Once each year during the first five years following the retirement of a member under this section, and once in every three-year period thereafter, the system may, and upon the member's application shall, require any member receiving an in-service or ordinary disability retirement allowance who has not yet attained the age of fifty-five years to undergo a medical examination as arranged by the medical board as established by this section. The examination shall be made by the medical board or by an additional physician or physicians designated by the medical board. If any member receiving an in-service or ordinary disability retirement allowance who has not at-

tained the age of fifty-five years refuses to submit to the medical examination, the allowance may be discontinued until the member's withdrawal of the refusal, and should the member's refusal continue for one year, all rights in and to the member's disability retirement allowance shall be revoked by the system.

b. If a member is determined under paragraph "a" to be no longer eligible for in-service or ordinary disability benefits, all benefits paid under this section shall cease. The member shall be eligible to receive benefits calculated under section 97B.49B or 97B.49C, as applicable, when the member reaches age fifty-five.

7. *Reemployment.*

a. If a member receiving a disability retirement allowance is returned to covered employment, the member's disability retirement allowance shall cease, and the member shall again become an active member, and shall contribute thereafter at the same rate payable by similarly classified members. If a member receiving a disability retirement allowance returns to special service employment, then the period of time the member received a disability retirement allowance shall constitute eligible service as defined in section 97B.49B, subsection 1, or section 97B.49C, subsection 1, as applicable. Upon subsequent retirement, the member's retirement allowance shall be calculated as provided in section 97B.48A.

b. (1) If a member receiving a disability retirement allowance is engaged in a gainful occupation that is not covered employment, the member's disability retirement allowance shall be reduced, if applicable, as provided in this paragraph.

(2) If the member is engaged in a gainful occupation paying more than the difference between the member's net disability retirement allowance and one and one-half times the reemployment comparison amount for that member, then the amount of the member's disability retirement allowance shall be reduced to an amount such that the member's net disability retirement allowance plus the amount earned by the member shall equal one and one-half times the reemployment comparison amount for that member.

(3) The member shall submit sufficient documentation to the system to permit the system to determine the member's net disability retirement allowance and earnings from a gainful occupation that is not covered employment for the applicable year.

(4) This paragraph does not apply to a member who is at least fifty-five years of age and would have completed a sufficient number of years of service if the member had remained in active special service employment. For purposes of this subparagraph, a sufficient number of years of service shall be the applicable years of service for a special service member as described in section 97B.49B or twenty-two for a special service member as described in section 97B.49C.

8. *Death benefits.* A member who is receiving an in-service or ordinary disability retirement allowance under this section shall be treated as having elected a lifetime monthly retirement allowance with death benefits payable under section 97B.52, subsection 3, unless the member elects an optional form of benefit provided under section 97B.51, which shall be actuarially equivalent to the lifetime monthly retirement allowance provided under this section.

9. *Medical board.* The system shall designate a medical board to be composed of three physicians from the university of Iowa hospitals and clinics who shall arrange for and pass upon the medical examinations required under this section and shall report in writing to the system the conclusions and recommendations upon all matters duly referred to the medical board. Each report of a medical examination under this section shall include the medical board's findings as to the extent of the member's physical or mental impairment. Except as required by this section, each report shall be confidential and shall be maintained in accordance with the federal Americans with Disabilities Act, and any other state or federal law containing requirements for confidentiality of medical records.

10. *Liability of third parties — subrogation.*

a. If a member receives an injury for which benefits are payable under this section, and if the injury is caused under circumstances creating a legal liability for damages against a third party other than the system, the member or the member's legal representative may maintain an action for damages against the third party. If a member or a member's legal representative commences such an action, the plaintiff member or representative shall serve a copy of the original notice upon the system not less than ten days before the trial of the action, but a failure to serve the notice does not prejudice the rights of the system, and the following rights and duties ensue:

(1) The system shall be indemnified out of the recovery of damages to the extent of benefit payments made by the system, with legal interest, except that the plaintiff member's attorney fees may be first allowed by the district court.

(2) The system has a lien on the damage claim against the third party and on any judgment on the damage claim for benefits for which the system is liable. In order to continue and preserve the lien, the system shall file a notice of the lien within thirty days after receiving a copy of the original notice in the office of the clerk of the district court in which the action is filed.

b. If a member fails to bring an action for damages against a third party within thirty days after the system requests the member in writing to do so, the system is subrogated to the rights of the member and may maintain the action against the third party, and may recover damages for the injury to the same extent that the member may recover.

er damages for the injury. If the system recovers damages in the action, the court shall enter judgment for distribution of the recovery as follows:

(1) A sum sufficient to repay the system for the amount of such benefits actually paid by the system up to the time of the entering of the judgment.

(2) A sum sufficient to pay the system the present worth, computed at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of such benefits for which the system is liable, but the sum is not a final adjudication of the future payment which the member is entitled to receive.

(3) Any balance shall be paid to the member.

c. Before a settlement is effective between the system and a third party who is liable for any injury, the member must consent in writing to the settlement; and if the settlement is between the member and a third party, the system must consent in writing to the settlement; or on refusal to consent, in either case, the district court in the county in which either the employer of the member or the system is located must consent in writing to the settlement.

d. For purposes of subrogation under this section, a payment made to an injured member or the member's legal representative, by or on behalf of a third party or the third party's principal or agent, who is liable for, connected with, or involved in causing the injury to the member, shall be considered paid as damages because the injury was caused under circumstances creating a legal liability against the third party, whether the payment is made under a covenant not to sue, compromise settlement, denial of liability, or is otherwise made.

11. *Document submissions.* A member retired under this section, in order to be eligible for continued receipt of retirement benefits, shall submit to the system any documentation the system may reasonably request which will provide information needed to determine payments to the member under this section.

12. *Additional contributions.* The expenses incurred in the administration of this section by the system shall be paid through additional contributions as determined pursuant to section 97B.49B, subsection 3, or section 97B.49C, subsection 3, as applicable.

13. *Applicability — retroactivity.*

a. This section applies to a member who becomes disabled on or after July 1, 2000, and also applies to a member who becomes disabled prior to July 1, 2000, if the member has not terminated special service employment as of June 30, 2000.

b. To qualify for benefits under this section, a member must file a completed application with the system within one year of the member's termination of employment. A member eligible for a disability retirement allowance under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediate-

ly preceding the month in which the completed application for receipt of a disability retirement allowance under this section is approved.

14. *Rules.* The system shall adopt rules pursuant to chapter 17A specifying the application procedure for members pursuant to this section.

2003 Acts, ch 145, §286  
Terminology changes applied

#### **97B.51 Allowance upon retirement.**

1. Each member has the right prior to the member's retirement date to elect to have the member's retirement allowance payable under one of the options set forth in this section. The amount of the optional retirement allowance selected in paragraph "a", "c", "d", "e", or "f" shall be the actuarial equivalent of the amount of the retirement allowance otherwise payable to the member as determined by the system in consultation with the system's actuary. The member shall make an election by written request to the system and the election is subject to the approval of the system. If the member is married, election of an option under this section requires the written acknowledgment of the member's spouse. However, the system may accept a married member's election of a benefit option under this section without the written acknowledgement of the member's spouse if the member submits a notarized statement indicating that the member has been unable to locate the member's spouse to obtain the written acknowledgement of the spouse after reasonable diligent efforts. The member's election of a benefit option shall become effective upon filing the necessary forms, including the notarized statement, with the system. The system shall not be liable to the member, the member's spouse, or to any other person affected by the member's election of a benefit option, based upon an election of benefit option accomplished without the written acknowledgement of the member's spouse. The member may, if eligible, select one of the following options:

a. At retirement, a member may designate that upon the member's death, a specified amount of money shall be paid to a named beneficiary, and the member's monthly retirement allowance shall be reduced by an actuarially determined amount to provide for the lump sum payment. The amount designated by the member must be in thousand dollar increments and shall be limited to the amount of the member's accumulated contributions. The amount designated shall not lower the monthly retirement allowance of the member by more than one-half the amount payable as provided in paragraph "b". A member may designate a different beneficiary at any time, except as limited by an order that has been accepted by the system as complying with the requirements of section 97B.39. The election of a death benefit amount under this paragraph shall be irrevocable upon payment of the first monthly retirement allowance.

b. A member may elect a retirement allowance otherwise payable to the member upon retirement under the retirement system pursuant to this chapter, to include the applicable provisions of sections 97B.49A through 97B.49G, and a death benefit as provided in section 97B.52, subsection 3.

c. A member may elect an increased retirement allowance during the member's lifetime with no death benefit after the member's retirement date.

d. (1) A member may elect to receive a decreased retirement allowance during the member's lifetime and have the decreased retirement allowance, or a designated fraction thereof, continued after the member's death to another person, called a contingent annuitant, during the lifetime of the contingent annuitant. The member cannot change the contingent annuitant after the member's retirement. In case of the election of a contingent annuitant, no death benefits, as might otherwise be provided by this chapter, will be payable upon the death of either the member or the contingent annuitant after the member's retirement.

(2) In lieu of a benefit as calculated under subparagraph (1), a member may elect to receive a decreased retirement allowance during the member's lifetime and have the decreased retirement allowance, or a designated fraction thereof, continued after the member's death to another person, called a contingent annuitant, during the lifetime of the contingent annuitant, as determined by this subparagraph. In addition, if the contingent annuitant dies prior to the death of the member, the member shall receive a retirement allowance beginning with the first month following the death of the contingent annuitant as if the member had selected the option provided by paragraph "b" at the time of the member's first retirement. The member cannot change the contingent annuitant after the member's retirement. If a contingent annuitant receives a decreased retirement allowance under this subparagraph following the death of the member, no death benefits, as might otherwise be provided by this chapter, will be payable upon the death of the contingent annuitant.

e. A member may elect to receive a decreased retirement allowance during the member's lifetime with provision that in event of the member's death during the first one hundred twenty months of retirement, monthly payments of the member's decreased retirement allowance shall be made to the member's beneficiary until a combined total of one hundred twenty monthly payments have been made to the member and the member's beneficiary. When the member designates multiple beneficiaries, the present value of the remaining payments shall be paid in a lump sum to each beneficiary, either in equal shares to the beneficiaries, or if the member specifies otherwise in a written re-

quest, in the specified proportion. A member may designate a different beneficiary at any time, except as limited by an order that has been accepted by the department as complying with the requirements of section 97B.39.

f. A member retiring under section 97B.49B or 97B.49C may select an allowance upon retirement as provided under paragraph "a", "b", "c", or "e", or paragraph "d", subparagraph (1), and may elect to have the monthly allowance otherwise payable to the member pursuant to the selected paragraph or subparagraph recalculated as provided in this paragraph. A member electing payment of a monthly allowance under this paragraph shall have the member's monthly allowance increased, as determined by the system's actuary, by an amount equal to the monthly federal social security benefit that would be payable to the member on the date the member would be first eligible to receive a reduced social security pension benefit based upon the member's account. Upon reaching the date the member would be first eligible to receive a reduced social security pension benefit, the member's monthly retirement allowance shall be permanently reduced, as determined by the system's actuary. A member electing payment of an allowance under this paragraph shall provide the system with a copy of the estimate provided by the federal social security administration of the member's monthly federal social security benefit that would be payable on the date the member would be first eligible to receive a reduced social security pension benefit at least sixty days prior to the member's first month of entitlement.

2. The election by a member of an option stated under this section shall be null and void if the member dies prior to the member's first month of entitlement.

3. A member who had elected to take an option stated in this section, may, at any time prior to retirement, revoke such an election by written notice to the system. A member shall not change or revoke an election once the first retirement allowance is paid.

2003 Acts, ch 145, §286  
Subsection 1, paragraph d, subparagraph (2) applies on or after July 1, 2001; 2000 Acts, ch 1077, §78  
Terminology change applied

### **97B.52 Payment to beneficiary.**

1. If a member dies prior to the member's first month of entitlement, the member's beneficiary shall be entitled to receive a death benefit equal to the greater of the amount provided in paragraph "a" or "b".

a. A lump sum payment equal to the accumulated contributions of the member at the date of death plus the product of an amount equal to the highest year of covered wages of the deceased member and the number of years of membership service divided by the applicable denominator. However, a lump sum payment made to a benefi-

ciary under this paragraph due to the death of a member shall not be less than the amount that would have been payable on the death of the member on June 30, 1984, under this paragraph as it appeared in the 1983 Code.

As used in this paragraph, “*applicable denominator*” means the following, based upon the type of membership service in which the member served either on the date of death, or if the member died after terminating service, on the date of the member’s last termination of service:

(1) For regular service, the applicable denominator is thirty.

(2) For service in a protection occupation, as defined in section 97B.49B, the applicable denominator is the applicable years of service for the member as defined in section 97B.49B if the member had retired on the date of death.

(3) For service as a sheriff, deputy sheriff, or airport fire fighter, as provided in section 97B.49C, the applicable denominator is twenty-two.

Effective July 1, 1978, a method of payment under this paragraph filed with the system by a member does not apply.

b. For a member who dies on or after January 1, 2001, a lump sum payment equal to the actuarial present value of the member’s accrued benefit as of the date of death. The actuarial equivalent present value of the member’s accrued benefit as of the date of death shall be calculated using the same interest rate and mortality tables that are used by the system and the system’s actuary under section 97B.51, and shall assume that the member would have retired at the member’s earliest normal retirement date.

c. The payment of a death benefit to a designated beneficiary as provided by this subsection shall be in a lump sum payment. However, if the designated beneficiary is a sole individual, the beneficiary may elect to receive, in lieu of a lump sum payment under this subsection, a monthly annuity payable for the life of the beneficiary. The monthly annuity shall be calculated by applying the annuity tables used by the system to the lump sum payment under this subsection based on the beneficiary’s age. If the designated beneficiary is more than one individual, or if the designated beneficiary is an estate, trust, church, charity, or other similar organization, a death benefit under this subsection shall only be paid in a lump sum.

2. a. If the system determines, upon the receipt of evidence and proof, that the death of a member in special service was the direct and proximate result of a traumatic personal injury incurred in the line of duty as a member in special service, a line of duty death benefit in an amount of one hundred thousand dollars shall be paid in a lump sum to the special service member’s beneficiary. A line of duty death benefit payable under this subsection shall be in addition to any death benefit payable as provided in subsection 1.

b. A line of duty death benefit shall not be payable under this subsection if any of the following applies:

(1) The death resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the special service member’s death.

(2) The death was caused by the intentional misconduct of the special service member or by the special service member’s intent to cause the special service member’s own death.

(3) The special service member was voluntarily intoxicated at the time of death.

(4) The special service member was performing the special service member’s duties in a grossly negligent manner at the time of death.

(5) A beneficiary who would otherwise be entitled to a benefit under this subsection was, through the beneficiary’s actions, a substantial contributing factor to the special service member’s death.

3. If a member dies on or after the first day of the member’s first month of entitlement, the excess, if any, of the accumulated contributions by the member as of said date over the total gross monthly retirement allowances received by the member under the retirement system will be paid to the member’s beneficiary unless the retirement allowance is then being paid in accordance with section 97B.48 or with section 97B.51, subsection 1, paragraph “a”, “c”, “d”, or “e”.

4. a. Other than as provided in subsections 1, 2, and 3 of this section, or section 97B.51, all rights to any benefits under the retirement system shall cease upon the death of a member.

b. If a death benefit is due and payable on behalf of a member who dies prior to the member’s first month of entitlement, interest shall continue to accumulate through the quarter preceding the quarter in which payment is made to the designated beneficiary, heirs at law, or the estate unless the payment of the death benefit is delayed because of a dispute between alleged heirs, in which case the benefit due and payable shall be placed in a noninterest bearing escrow account until the beneficiary is determined in accordance with this section.

5. In order to receive the death benefit, the beneficiary, heirs at law, or the estate, or any other third-party payee, must apply to the system within five years of the member’s death. However, death benefits payable under this section shall not exceed the amount permitted pursuant to Internal Revenue Code section 401(a)(9) and the applicable treasury regulations.

The system shall reinstate a designated beneficiary’s right to receive a death benefit beyond the five-year limitation if the designated beneficiary was the member’s spouse at the time of the mem-

ber's death and the distribution is required or permitted pursuant to Internal Revenue Code section 401(a)(9) and the applicable treasury regulations.

In the event that all, or any portion, of the death benefit payable to the member's designated beneficiary, heirs at law, or estate, shall remain unpaid solely by reason of the inability of the system to locate the payee, the amount payable shall be forfeited after the time for making a claim has run. However, if the appropriate payee is located after the death benefit is forfeited, the benefit shall be restored.

6. Following written notification to the system, a beneficiary of a deceased member may waive current and future rights to payments to which the beneficiary would otherwise be entitled under section 97B.51, subsection 1, paragraphs "a", "b", and "e". Upon receipt of the waiver, the system shall pay the amount designated to be received by that beneficiary to the member's other surviving beneficiary or beneficiaries or to the estate of the deceased member, as elected by the beneficiary in the waiver. If the payments being waived are payable to the member's estate and an estate is not probated, the payments shall be paid to the deceased member's surviving spouse, or if there is no surviving spouse, to the member's heirs other than the beneficiary who waived the payments.

7. If a member has not filed a designation of beneficiary with the system, the death benefit is payable to the member's estate. If no designation has been filed and an estate is not probated, the death benefit shall be paid to the surviving spouse, if any. If no designation has been filed, no estate has been probated, and there is no surviving spouse, the death benefit shall be paid to the heirs. Otherwise, the death benefit shall remain in the fund.

2003 Acts, ch 145, §286

Subsection 2, establishing a line of duty death benefit for a member in special service, applies retroactively to covered deaths occurring on and after January 1, 1992; 2002 Acts, ch 1135, §37

Terminology change applied

#### **97B.52A Eligibility for benefits — bona fide retirement.**

1. A member has a bona fide retirement when the member terminates all employment covered under the chapter or formerly covered under the chapter pursuant to section 97B.42, files a completed application for benefits form with the system, survives into the month for which benefits are first payable, and meets the following applicable requirement:

a. For a member whose first month of entitlement is prior to July 1, 1998, the member does not return to covered employment until the member has qualified for no fewer than four calendar months of retirement benefits.

b. For a member whose first month of entitlement is July 1998 or later, but before July 2000,

the member does not return to any employment with a covered employer until the member has qualified for no fewer than four calendar months of retirement benefits.

c. For a member whose first month of entitlement is July 2000 or later, the member does not return to any employment with a covered employer until the member has qualified for at least one calendar month of retirement benefits, and the member does not return to covered employment until the member has qualified for no fewer than four calendar months of retirement benefits. For purposes of this paragraph, effective July 1, 2000, any employment with a covered employer does not include employment as an elective official or member of the general assembly if the member is not covered under this chapter for that employment.

2. A member may commence receiving retirement benefits under this chapter upon satisfying eligibility requirements. However, a retired member who commences receiving a retirement allowance but fails to meet the applicable requirements of subsection 1 does not have a bona fide retirement and any retirement allowance received by such a member must be returned to the system together with interest earned on the retirement allowance calculated at a rate determined by the system. Until the member has repaid the retirement allowance and interest, the system may withhold any future retirement allowance for which the member may qualify.

3. A member whose first month of entitlement is before July 1998 and who terminates covered employment but maintains an employment relationship with an employer that made contributions to the retirement system on the member's behalf does not have a bona fide retirement until all employment, including employment which is not covered by this chapter, with such employer is terminated for at least thirty days. In order to receive retirement benefits, the member must file a completed application for benefits form with the system before returning to any employment with the same employer.

4. The requirements of this section shall apply to a lump sum payment as provided by section 97B.48, subsection 1, and the payment of contributions as provided in section 97B.48A, subsection 4.

2003 Acts, ch 145, §286

Terminology changes applied

#### **97B.53 Termination of employment — refund options.**

Membership in the retirement system, and all rights to the benefits under the retirement system, cease upon a member's termination of employment with the employer prior to the member's retirement, other than by death, and upon receipt by the member of a refund of moneys in the member's account as provided in this section.

1. Upon the termination of employment with the employer prior to retirement other than by

death of a member, the member's account, consisting of accumulated contributions by the member and, for a member who is vested on the date an application for a refund is filed, the member's share of the accumulated employer contributions for the vested member at the date of the termination, may be paid to the member upon application, except as provided in subsections 2, 4, and 8. For the purpose of this subsection, the "member's share of the accumulated employer contributions" is an amount equal to the accumulated employer contributions of the member multiplied by a fraction of years of service for that member as defined in section 97B.49A, 97B.49B, or 97B.49C.

2. If a vested member's employment is terminated prior to the member's retirement, other than by death, the member may receive a monthly retirement allowance commencing on the first day of the month in which the member attains the age of sixty-five years, if the member is then alive, or, if the member so elects in accordance with section 97B.47, commencing on the first day of the month in which the member attains the age of fifty-five or any month thereafter prior to the date the member attains the age of sixty-five years, and continuing on the first day of each month thereafter during the member's lifetime, provided the member does not receive prior to the date the member's retirement allowance is to commence a refund of moneys in the member's account as provided under any of the provisions of this chapter. The amount of each such monthly retirement allowance shall be determined as provided in either sections 97B.49A through 97B.49G, or in section 97B.50, whichever is applicable.

3. A terminated, vested member has the right, prior to the commencement of the member's retirement allowance, to receive a refund of moneys in the member's account, and in the event of the death of the member prior to the commencement of the member's retirement allowance and prior to the receipt of any such refund, the benefits authorized by subsection 1 and subsection 2 of section 97B.52 shall be paid.

4. A member has not terminated employment for purposes of this section if the member accepts other covered employment within thirty days after receiving the last payment of wages for covered employment, or if the member begins covered employment prior to filing a request for a refund with the system.

5. Within sixty days after a member has been issued payment for a refund of moneys in the member's account, the member may repay the moneys refunded, plus interest that would have accrued, as determined by the system, and receive credit for membership service for the period covered by the refund payment.

6. A member who does not withdraw moneys in the member's account upon termination of employment may at any time request the return of

the moneys in the member's account, but if the member receives a return of moneys in the member's account the member has waived all claims for any other benefits and membership rights from the fund.

7. If a member is involuntarily terminated from covered employment, has been issued payment for a refund, and is retroactively reinstated in covered employment as a remedy for an employment dispute, the member may receive credit for membership service for the period covered by the refund payment upon repayment to the system within ninety days after the date of the order or agreement requiring reinstatement of the amount of the refund plus interest that would have accrued, as determined by the system.

8. The system is under no obligation to maintain the member account of a member who terminates covered employment prior to December 31, 1998, if the member was not vested at the time of termination. A person who made contributions to the abolished system, who is entitled to a refund in accordance with the provisions of this chapter, and who has not claimed and received such a refund prior to January 1, 1964, shall, if the person makes a claim for refund after January 1, 1964, be required to submit proof satisfactory to the system of the person's entitlement to the refund. The system is under no obligation to maintain the member accounts of such persons after January 1, 1964.

9. Any member whose employment is terminated may elect to leave the moneys in the member's member account in the retirement fund.

10. If an employee hired to fill a permanent position terminates the employee's employment within six months from the date of employment, the employer may file a claim with the system for a refund of the funds contributed to the system by the employer for the employee.

2003 Acts, ch 145, §286  
Terminology changes applied

#### **97B.53A Duty of system.**

Upon a member's termination of covered employment prior to the member's retirement, the system shall send the member by first class mail, to the member's last known mailing address, a notice setting forth the balance and status of the member's account and supplemental account and an explanation of the courses of action available to the member under this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.53B Rollovers of members' accounts.**

1. As used in this section, unless the context otherwise requires, and to the extent permitted by the internal revenue service:

*a. "Direct rollover"* means a payment by the system to the eligible retirement plan specified by the member or the member's surviving spouse.

b. “*Eligible retirement plan*” means either of the following that accepts an eligible rollover distribution from a member or a member’s surviving spouse:

(1) An individual retirement account in accordance with section 408(a) of the federal Internal Revenue Code.

(2) An individual retirement annuity in accordance with section 408(b) of the federal Internal Revenue Code.

In addition, an “*eligible retirement plan*” includes an annuity plan in accordance with section 403(a) of the federal Internal Revenue Code, or a qualified trust in accordance with section 401(a) of the federal Internal Revenue Code, that accepts an eligible rollover distribution from a member. Effective January 1, 2002, the term “*eligible retirement plan*” also includes an annuity contract described in section 403(b) of the federal Internal Revenue Code, and an eligible plan under section 457(b) of the federal Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that chooses to separately account for amounts transferred into such eligible retirement plan from the system.

c. (1) “*Eligible rollover distribution*” includes any of the following:

(a) All or any portion of a member’s account and supplemental account.

(b) Effective January 1, 2002, after-tax employee contributions, if the plan to which such amounts are to be transferred is an individual retirement account described in federal Internal Revenue Code section 408(a) or 408(b), or is a qualified defined contribution plan described in federal Internal Revenue Code section 401(a) or 403(a), and such plan agrees to separately account for the after-tax amount so transferred.

(c) A distribution made on behalf of a surviving spouse and to an alternate payee, who is a spouse or former spouse, under a qualified domestic relations order.

(2) An eligible rollover distribution does not include any of the following:

(a) A distribution that is one of a series of substantially equal periodic payments, which occur annually or more frequently, made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee’s designated beneficiary, or made for a specified period of ten years or more.

(b) A distribution to the extent that the distribution is required pursuant to section 401(a)(9) of the federal Internal Revenue Code.

(c) The portion of any distribution that is not includible in the gross income of the distributee, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

2. Effective January 1, 1993, a member or a member’s surviving spouse may elect, at the time

and in the manner prescribed in rules adopted by the system, to have the system pay all or a portion of an eligible rollover distribution directly to an eligible retirement plan, specified by the member or the member’s surviving spouse, in a direct rollover.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.58 Information furnished by employer.**

To enable the system to perform its functions, the employer shall, upon the request of and in the manner provided by the system, supply full and timely information to the system of all matters relating to the pay of all members, date of birth, their retirement, death, or other cause for termination of employment, and other pertinent facts the system may require in the manner provided by the system.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.64 Insurance laws not applicable.**

None of the laws of this state regulating insurance or insurance companies shall apply to the system or to the retirement system or any of its funds.

2003 Acts, ch 145, §180  
Section amended

#### **97B.65 Revision rights reserved — increase of benefits — rates of contribution.**

The right is reserved to the general assembly to alter, amend, or repeal any provision of this chapter or any application thereof to any person, provided, however, that to the extent of the funds in the retirement system the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to any member of the retirement system shall not be repudiated, provided further, however, that the amount of benefits accrued on account of prior service shall be adjusted to the extent of any unfunded accrued liability then outstanding. Any increase enacted in benefits or retirement allowance under this chapter shall be accompanied by a change in the employer and employee contribution rates necessary to support such increase, all determined in accordance with sound actuarial principles and methods.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.66 Former members.**

A vested or retired member who was a member of the teachers insurance and annuity association-college retirement equities fund (TIAA-CREF) at any time between July 1, 1967, and June 30, 1971, and who became a member of the retirement system on July 1, 1971, upon submitting verification of service and wages earned during the applicable period of service under the teachers insurance and annuity association-college retirement equities

fund, may make employer and employee contributions to the retirement system based upon the covered wages of the member and the covered wages and the contribution rates in effect for all or a portion of that period of service and receive credit for membership service under this retirement system equivalent to the applicable period of membership service in the teachers insurance and annuity association-college retirement equities fund for which the contributions have been made. In addition, a member making employer and employee contributions because of membership in the teachers insurance and annuity association-college retirement equities fund under this section who was a member of the retirement system on June 30, 1967, and withdrew the member's accumulated contributions because of membership on July 1, 1967, in the teachers insurance and annuity association-college retirement equities fund, may make employee contributions to the retirement system for all or a portion of the period of service under the retirement system prior to July 1, 1967. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

The contributions paid by the vested or retired member shall be equal to the accumulated contributions as defined in section 97B.1A, subsection 2, by the member for the applicable period of service, and the employer contribution for the applicable period of service under the teachers insurance and annuity association college retirement equities fund, that would have been or had been contributed by the vested or retired member and the employer, if applicable, plus interest on the contributions that would have accrued for the applicable period from the date the previous applicable period of service commenced under this retirement system or from the date the service of the member in the teachers insurance and annuity association-college retirement equities fund commenced to the date of payment of the contributions by the member as provided in section 97B.70.

However, the system shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

2003 Acts, ch 108, §27; 2003 Acts, ch 145, §286  
See Code editor's note to §2.9  
Terminology changes applied  
Unnumbered paragraph 1 amended

#### **97B.68 Employees under federal civil service.**

1. Effective July 1, 1996, a person who is a member of the federal civil service retirement program or the federal employee's retirement system

is not eligible for membership in the Iowa public employees' retirement system for the same position, and this chapter does not apply to that employee. An employee whose membership in the federal civil service retirement program or the federal employee's retirement system is subsequently terminated shall immediately notify the employee's employer and the system of that fact, and the employee shall become subject to this chapter on the date the notification is received by the system.

2. Upon termination of membership in the Iowa public employees' retirement system under the provisions of this section, the employee shall be paid from the Iowa public employees' retirement fund within six months of the termination a lump sum cash amount equal to the sum of:

a. Such member's accumulated contributions as defined in subsection 2 of section 97B.1A, computed as of July 4, 1959, plus

b. The total amount contributed to the Iowa old-age and survivors' insurance fund prior to July 1, 1953, by such member which was transferred to the retirement fund as of July 1, 1953, and would have been refundable to the member had the member not elected to receive prior service credit in accordance with section 97B.43, with interest on such amount at two percent per annum compounded annually from July 1, 1953, to July 4, 1959.

3. Effective July 1, 1996, an employee who participates in the federal civil service retirement program or the federal employee's retirement system may be covered under this chapter if otherwise eligible. The employee shall not be covered under this chapter, however, unless the employee is not credited for service in the federal civil service retirement system or the federal employee's retirement system for the position to be covered under this chapter. This subsection shall not be construed to permit any employer to contribute on behalf of an employee for the same position and the same period of service to both the Iowa public employees' retirement system and either the federal civil service retirement program or the federal employee's retirement system.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.70 Interest and dividends to members.**

1. For calendar years prior to January 1, 1997, interest at two percent per annum and interest dividends declared by the system shall be credited to the member's contributions and the employer's contributions to become part of the accumulated contributions and accumulated employer contributions thereby.

a. The average rate of interest earned shall be determined upon the following basis:

(1) Investment income shall include interest and cash dividends on stock.

(2) Investment income shall be accounted for on an accrual basis.

(3) Capital gains and losses, realized or unrealized, shall not be included in investment income.

(4) Mean assets shall include fixed income investments valued at cost or on an amortized basis, and common stocks at market values or cost, whichever is lower.

(5) The average rate of earned interest shall be the quotient of the investment income and the mean assets of the retirement fund.

*b.* The interest dividend shall be determined within sixty days after the end of each calendar year as follows:

The dividend rate for a calendar year shall be the excess of the average rate of interest earned for the year over the statutory two percent rate plus twenty-five hundredths of one percent. The average rate of interest earned and the interest dividend rate in percent shall be calculated to the nearest one hundredth, that is, to two decimal places. Interest and interest dividends calculated pursuant to this subsection shall be compounded annually.

2. For calendar years beginning January 1, 1997, a per annum interest rate at one percent above the interest rate on one-year certificates of deposit shall be credited to the member's contributions and the employer's contributions to become part of the accumulated contributions and accumulated employer contributions account. For purposes of this subsection, the interest rate on one-year certificates of deposit shall be determined by the system based on the average rate for such certificates of deposit as of the first business day of each year as published in a publication of general acceptance in the business community. The per annum interest rate shall be credited on a quarterly basis by applying one-quarter of the annual interest rate to the sum of the accumulated contributions and the accumulated employer contributions as of the end of the previous calendar quarter.

3. Interest shall be credited to the accumulated contributions and accumulated employer contributions accounts, and supplemental accounts of active members, inactive vested members, and, effective January 1, 1999, to inactive nonvested members, until the quarter prior to the quarter in which the member's first retirement allowance is paid or in which the member is issued a refund under section 97B.53, or in which a death benefit is issued.

4. Prior to January 1, 1999, interest and interest dividends shall be credited to the accumulated contributions and accumulated employer contributions account of a person who leaves the contributions in the retirement fund upon termination from covered employment prior to achieving vested status, but who subsequently returns to covered employment. Upon return to covered employment but prior to January 1, 1999, interest and interest dividends shall be credited to

the accumulated contributions and accumulated employer contributions account of the person commencing upon the date on which the person has covered wages.

5. If the system no longer maintains the accumulated contributions and accumulated employer contributions account of the person pursuant to this chapter, but the person submits satisfactory proof to the system that the person, or the person's employer, did make contributions that should be included in the accumulated contributions and accumulated employer contributions account, the system shall credit interest and interest dividends in the manner provided in subsection 4.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.72 Members of general assembly — appropriation.**

1. Persons who are members of the Seventy-first General Assembly or a succeeding general assembly who submit proof to the system of membership in the general assembly during any period beginning July 4, 1953, may make contributions to the retirement system for all or a portion of the period of service in the general assembly, and receive credit for the applicable period for which contributions are made. The proof of membership in the general assembly and payment of contributions as provided by this section shall be transmitted to the system. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

2. The contributions required to be made for purposes of this section shall be determined as follows:

*a.* For a member making contributions for a purchase of additional service prior to July 1, 1999, the member shall make contributions in an amount equal to the accumulated contributions as defined in section 97B.1A, subsection 2, which would have been made if the member of the general assembly had been a member of the retirement system during the applicable period of service in the general assembly. There is appropriated from moneys available to the general assembly under section 2.12 an amount sufficient to pay the contributions pursuant to this paragraph of the employer based on the period of service for which the members have paid accumulated contributions, in an amount equal to the contributions which would have been made if the members of the general assembly who made employee contributions had been members of the retirement system during the applicable period of service in the general assembly, plus interest and interest dividends at the rate provided in section 97B.70 for all completed calendar years, and for any completed calendar

year for which the interest dividend has not been declared and for completed months of partially completed calendar years, compounded as provided in section 97B.70.

*b.* For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to forty percent of the actuarial cost of the service purchase. There is also appropriated from moneys available to the general assembly under section 2.12 an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. However, the system shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

2003 Acts, ch 145, §286  
Terminology changes applied

#### **97B.72A Former legislative service — appropriation.**

1. A vested or retired member of the retirement system who was a member of the general assembly prior to July 1, 1988, may make contributions to the retirement system for all or a portion of the period of service in the general assembly. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters. The member of the retirement system shall submit proof to the system of membership in the general assembly. The system shall credit the member with the period of membership service for which contributions are made.

2. The contributions required to be made for purposes of this section shall be determined as follows:

*a.* For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions made by the member shall be equal to the accumulated contributions as defined in section 97B.1A, subsection 2, which would have been made if the member of the general assembly had been a member of the retirement system during the applicable period of service in the general assembly. There is appropriated from the general fund of the state to the system an amount sufficient to pay the contributions of the employer

based on the period of service of members of the general assembly for which the member paid accumulated contributions pursuant to this paragraph. The amount appropriated is equal to the employer contributions which would have been made if the members of the retirement system who made employee contributions had been members of the retirement system during the period for which they made employee contributions, plus interest at the rate provided in section 97B.70 for each year compounded as provided in section 97B.70.

*b.* For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to forty percent of the actuarial cost of the service purchase. There is also appropriated from the general fund of the state to the system an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. However, the system shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

2003 Acts, ch 145, §286  
Terminology changes applied

#### **97B.73 Members from other public systems.**

1. *a.* A vested or retired member who has one or more full calendar years of covered wages who was in public employment comparable to employment covered under this chapter in another state or in the federal government, or who was a member of another public retirement system in this state, including but not limited to the teachers insurance and annuity association-college retirement equities fund (TIAA-CREF), but who was not retired under that system, upon submitting verification of membership and service in the other public system to the system, including proof that the member has no further claim upon a retirement benefit from that other public system, may make contributions as provided by this section to the retirement system either for the entire period of service in the other public system, or for partial service in the other public system in increments of one or more calendar quarters. If the member wishes to transfer only a portion of the service value of another public system to this retirement system and the other public system al-

lows a partial withdrawal of a member's system credits, the member shall receive credit for membership service in this retirement system equivalent to the period of service transferred from the other public system.

b. A vested or retired member who has five or more full calendar years of covered wages who was in public employment comparable to employment covered under this chapter in a qualified Canadian governmental entity may make contributions as provided by this section to the retirement system and receive service credit, in increments of one or more calendar quarters, for up to the lesser of twenty quarters of service credit for such employment or the entire period of service in the other public system. Prior to receiving service credit, the member shall submit verification of membership and service in the other public system to the system, including proof that the member has no further claim upon a retirement benefit from that other public system. If the member wishes to transfer only a portion of the service value of another public system to this retirement system and the other public system allows a partial withdrawal of a member's system credits, the member shall receive credit for membership service in this retirement system equivalent to the period of service transferred from the other public system. For purposes of this paragraph, "*qualified Canadian governmental entity*" means an elementary school, secondary school, college, or university that is organized, administered, and primarily supported by the provincial, territorial, or federal governments of Canada, or any combination of the same.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contribution payable, representing both employee and employer contributions, shall be based upon the member's covered wages for the most recent full calendar year at the applicable rates in effect for that calendar year under sections 97B.11, 97B.49B, 97B.49C, and 97B.49G and multiplied by the member's years of service in other public employment. If the member's most recent covered wages were earned prior to the most recent calendar year, the member's covered wages shall be adjusted by the system by an inflation factor to reflect changes in the economy since the covered wages were earned.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the sys-

tem's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. This section is applicable to a vested or retired member who was a member of a public retirement system established in sections 294.8, 294.9, and 294.10 but was not retired under that system.

4. A member entitled to a benefit from another public system must waive, on a form provided by the Iowa public employees' retirement system, all rights to a retirement benefit under the other public system before receiving credit in this retirement system for the years of service in the other public system. The waiver must be accepted by the other public system.

5. Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which the member pays contributions under this section.

6. Effective July 1, 1998, a purchase of service made in accordance with this section by a retired reemployed member shall be applied to either the member's original retirement allowance, or to the member's reemployment service, whichever is more beneficial to the member. If applied to a member's original retirement allowance, or to the member's reemployment service after the retirement allowance payments for such service begin, the member is eligible to receive retroactive adjustment payments for no more than six months prior to completion of the purchase.

7. However, the system shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

2003 Acts, ch 108, §28; 2003 Acts, ch 145, §286  
See Code editor's note to §2.9  
Terminology changes applied  
Subsection 1, paragraph a amended

### 97B.73A Part-time county attorneys.

1. A part-time county attorney may elect in writing to the system to make contributions to the retirement system for the county attorney's previous service as a county attorney and receive credit for membership service in the retirement system for the applicable period of service as a part-time county attorney for which contributions are made. A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

2. The contributions required to be made for purposes of this section shall be determined as follows:

*a.* For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions paid by the member shall be equal to the accumulated contributions, as defined in section 97B.1A, subsection 2, for the applicable period of membership service. A member who elects to make contributions pursuant to this paragraph shall notify the applicable county board of supervisors of the member's election, and the county board of supervisors shall pay to the system the employer contributions that would have been contributed by the employer under section 97B.11, plus interest on the contributions that would have accrued if the county attorney had been a member of the retirement system for the applicable period of service.

*b.* For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to forty percent of the actuarial cost of the service purchase. Upon notification of the applicable county board of supervisors of the member's election, the county board of supervisors shall pay to the system an amount sufficient to pay sixty percent of the actuarial cost of the service purchase by a member pursuant to this paragraph. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the system.

4. However, the system shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

2003 Acts, ch 145, §286  
Terminology changes applied

#### **97B.73B Patient advocates — unpaid contributions — service purchase.**

1. Notwithstanding the provisions of section 97B.9 to the contrary, unpaid contributions for a person classified as a patient advocate under section 229.19, for service as a patient advocate prior to July 1, 2000, shall be determined and collected as provided under section 97B.9, subsection 5, but

shall be limited to the collection of underpaid contributions for a maximum of one year of service.

2. A patient advocate who becomes covered under this chapter and for whom underpaid contributions for one year of service have been paid shall be eligible to purchase membership service for service as a patient advocate prior to July 1, 2000, in excess of the one year of service provided in this section by paying the system an amount determined as follows:

*a.* For a purchase of membership service prior to July 1, 2002, the total of the employee and employer contributions, without interest, on the covered wages that would have been reported to the system under the provisions of this chapter in effect for the applicable period of service.

*b.* For a purchase of membership service on or after July 1, 2002, the actuarial cost of the service purchase in a manner as provided in section 97B.73.

2003 Acts, ch 145, §286  
Terminology change applied

#### **97B.74 Reinstatement as a vested member (buy-back).**

1. A vested or retired member who was a member of the retirement system at any time on or after July 4, 1953, and who received a refund of the member's contributions for that period of membership service, may elect in writing to the system to make contributions to the retirement system for all or a portion of the period of membership service for which a refund of contributions was made, and receive credit for the period of membership service for which contributions are made.

A member making contributions pursuant to this section may make the contributions either for the entire applicable period of service, or for portions of the period of service, and if contributions are made for portions of the period of service, the contributions shall be in increments of one or more calendar quarters.

2. The contributions required to be made for purposes of this section shall be determined as follows:

*a.* For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions to be repaid by the member for such service shall be equal to the accumulated contributions, as defined in section 97B.1A, subsection 2, received by the member for the applicable period of membership service, plus interest on the accumulated contributions for the applicable period, from the date of receipt by the member to the date of repayment, at the interest rate provided in section 97B.70 applicable for each year compounded as provided in section 97B.70.

*b.* For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an

amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. Effective July 1, 1988, a member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the system.

2003 Acts, ch 145, §286  
Terminology changes applied

**97B.75 Prior service credit before January 1, 1946.**

An active, vested, or retired member who was employed prior to January 1, 1946, by an employer may file written verification of the member's dates of employment with the system and receive credit for years of prior service for the period of employment. However, a member who is eligible for or receiving a retirement allowance based upon employment with an employer prior to January 1, 1946, is not eligible for credit for that period of employment.

Effective July 1, 1988, a member eligible for an increased retirement allowance under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which written notice was submitted to the system.

2003 Acts, ch 145, §286  
Terminology change applied

**97B.80 Veteran's credit.**

1. Effective July 1, 1992, a vested or retired member who has one or more full calendar years of covered wages and who at any time served on active duty in the armed forces of the United States, upon submitting verification of the dates of the active duty service, may make contributions to the retirement system for all or a portion of the period of time of the active duty service, in increments of one or more calendar quarters, and receive credit for membership service and prior service for the period of time for which the contributions are made.

2. The contributions required to be made for purposes of this section shall be determined as follows:

*a.* For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions to be paid, representing both employer and employee contributions, shall be based upon the member's covered wages for the

most recent full calendar year in which the member had reportable wages at the applicable rates in effect for that year under sections 97B.11, 97B.49B, 97B.49C, and 97B.49G. If the member's most recent covered wages were earned prior to the most recent calendar year, the member's covered wages shall be adjusted by the system by an inflation factor to reflect changes in the economy.

*b.* For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. The system shall adjust benefits for a six-month period prior to the date the member pays contributions under this section if the member is receiving a retirement allowance at the time the contribution payment is made. Verification of active duty service and payment of contributions shall be made to the system. However, a member is not eligible to make contributions under this section if the member is receiving, is eligible to receive, or may in the future be eligible to receive retirement pay from the United States government for active duty in the armed forces, except for retirement pay granted by the United States government under retired pay for nonregular service pursuant to 10 U.S.C. § 12731 – 12739. A member receiving retired pay for nonregular service who makes contributions under this section shall provide information required by the system documenting time periods covered under retired pay for nonregular service.

4. Effective July 1, 1998, a purchase of service made in accordance with this section by a retired reemployed member shall be applied to either the member's original retirement allowance, or to the member's reemployment service, whichever is more beneficial to the member. If applied to the member's original retirement allowance, or to the member's reemployment service after the retirement allowance payments for such service begin, the member is eligible to receive retroactive adjustment payments for no more than six months prior to completion of the purchase.

5. However, the system shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

2003 Acts, ch 145, §286  
Terminology changes applied

**97B.80A Public employment service credit.**

1. A vested or retired member who has five or more full calendar years of covered wages and who at any time was employed in eligible public employment, upon submitting verification of the eligible public employment and the dates of the eligible public employment, may make contributions to the retirement system for up to the lesser of twenty quarters of service credit for such eligible public employment or the entire period of the eligible public employment, in increments of one or more calendar quarters, and receive credit for membership service and prior service for the period of time for which the contributions are made.

2. The contributions required to be made for purposes of this section shall be in an amount equal to the actuarial cost of the service purchase. For purposes of this subsection, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. The verification of the eligible public employment and the dates of such eligible public employment shall be made by the system prior to receiving contributions from the member.

4. A member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which the member pays contributions under this section.

5. A purchase of service made in accordance with this section by a retired reemployed member shall be applied to either the member's original retirement allowance, or to the member's reemployment service, whichever is more beneficial to the member. If applied to a member's original retirement allowance, or to the member's reemployment service after the retirement allowance payments for such service begin, the member is eligible to receive retroactive adjustment payments for no more than six months prior to completion of the purchase.

6. The system shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

7. For purposes of this section, "*eligible public employment*" means employment of a person who at the time of the employment was not covered by this chapter and the employment meets any of the following conditions:

a. Employment by a covered employer under this chapter of a person who did not opt out of coverage under this chapter.

b. Employment of a person as an adjunct instructor as defined in section 97B.1A, subsection 8.

2003 Acts, ch 145, §286  
Terminology changes applied

**97B.80B Volunteer public service credit.**

1. A vested or retired member who has five or more full calendar years of covered wages and who at any time was in full-time volunteer public service, upon submitting verification of the full-time volunteer public service and the dates of the service, may make contributions to the retirement system for up to the lesser of twenty quarters of service credit for such volunteer public service or the entire period of the volunteer public service, in increments of one or more calendar quarters, and receive credit for membership service and prior service for the period of time for which the contributions are made. For purposes of this section, "*full-time volunteer public service*" means service in the federal peace corps program.

2. The contributions required to be made for purposes of this section shall be in an amount equal to the actuarial cost of the service purchase. For purposes of this subsection, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the system's actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. The verification of the full-time volunteer public service and the dates of such service shall be made by the system prior to receiving contributions from the member.

4. A member eligible for an increased retirement allowance because of the payment of contributions under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which the member pays contributions under this section.

5. A purchase of service made in accordance with this section by a retired reemployed member shall be applied to either the member's original retirement allowance, or to the member's reemployment service, whichever is more beneficial to the member. If applied to a member's original retirement allowance, or to the member's reemployment service after the retirement allowance payments for such service begin, the member is eligible to receive retroactive adjustment payments for no more than six months prior to completion of the purchase.

6. The system shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

2003 Acts, ch 145, §286  
Terminology changes applied

**97B.80C Purchases of permissive service credit.**

1. *Definitions.* For purposes of this section:

a. “*Nonqualified service*” means service that is not qualified service.

b. “*Permissive service credit*” means credit that will be recognized by the retirement system for purposes of calculating a member’s benefit, for which the member did not previously receive service credit in the retirement system, and for which the member voluntarily contributes to the retirement system the amount required by the retirement system, not in excess of the amount necessary to fund the benefit attributable to such service.

c. (1) “*Qualified service*” means any of the following:

(a) Service with the United States government or any state or local government, including any agency or instrumentality thereof, regardless of whether that government, agency, or instrumentality was a covered employer at the time of the service.

(b) Service with an association representing employees of the United States government or any state or local government, including any agency or instrumentality thereof, regardless of whether that government, agency, or instrumentality was a covered employer at the time of the service.

(c) Service with an educational organization which normally maintains a regular faculty and curriculum, normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on, and is a public, private, or sectarian school which provides elementary education or secondary education through grade twelve.

(d) Military service other than military service required to be recognized under Internal Revenue Code section 414(u) or under the federal Uniformed Services Employment and Reemployment Rights Act.

(2) “*Qualified service*” does not include service as described in subparagraph (1) if the receipt of credit for such service would result in the member receiving a retirement benefit under more than one retirement plan for the same period of service.

2. a. A vested or retired member may make contributions to the retirement system to purchase up to the maximum amount of permissive service credit for qualified service as determined by the system, pursuant to Internal Revenue Code section 415(n) and the requirements of this section.

b. A vested or retired member of the retirement system who has five or more full calendar years of covered wages may make contributions to the retirement system to purchase up to five years of permissive service credit for nonqualified service as determined by the system, pursuant to In-

ternal Revenue Code section 415(n) and the requirements of this section.

3. A member making contributions for a purchase of permissive service credit under this section shall make contributions in an amount equal to the actuarial cost of the permissive service credit purchase. For purposes of this subsection, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the system’s actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of permissive service credit.

4. The system shall ensure that the member, in exercising an option provided in this section, does not exceed the amount of annual additions to a member’s account permitted pursuant to section 415 of the federal Internal Revenue Code.

2003 Acts, ch 145, §286  
Terminology changes applied

**97B.81 Leaves of absence.**

1. A vested member on an approved leave of absence which does not constitute service as defined in section 97B.1A, subsection 19, which is granted on or after July 1, 1998, may make contributions to the retirement system for all or a portion of the leave of absence, and shall receive service credit for the period of time for which the contributions are made.

2. The contributions required to be made for purposes of this section shall be determined as follows:

a. For a member making contributions for a purchase of additional service prior to July 1, 1999, the contributions to be paid, representing both employer and employee contributions, shall be based upon the member’s covered wages for the most recent full calendar year in which the member had covered wages at the applicable rates in effect for that calendar year under sections 97B.11, 97B.49B, 97B.49C, and 97B.49G. If the member’s most recent covered wages were earned prior to the most recent calendar year, the member’s covered wages shall be adjusted by the system by an inflation factor to reflect changes in the economy.

b. For a member making contributions for a purchase of additional service on or after July 1, 1999, the member shall make contributions in an amount equal to the actuarial cost of the service purchase. For purposes of this paragraph, the actuarial cost of the service purchase is an amount determined by the system in accordance with actuarial tables, as reported to the system by the system’s actuary, which reflects the actuarial cost necessary to fund an increased retirement allowance resulting from the purchase of additional service.

3. A member shall not be entitled to purchase

the service credit, however, if the member is entitled to receive a retirement benefit from another public retirement system for the same period of time. A member entitled to a benefit from another public system must waive, on a form provided by the Iowa public employees' retirement system, all rights to a retirement benefit under the other public system before receiving credit in this retirement system for any period of service in the other public system. The waiver must be accepted by the other public system.

4. However, the system shall ensure that the member, in exercising an option provided by this section, does not exceed the amount of annual additions to a member's account permitted pursuant to section 415 of the federal Internal Revenue Code.

2003 Acts, ch 145, §286  
Terminology changes applied

#### **97B.82 Purchase of service credit — direct rollovers — direct transfers.**

1. Effective July 1, 2002, a member may, to the extent permitted by the internal revenue service, purchase any service credit permitted under this chapter by means of a direct rollover or a direct transfer as provided in this section pursuant to rules adopted by the system and consistent with applicable requirements of the federal Internal Revenue Code. Purchases of service credit by means of a direct rollover or direct transfer under this section shall not exceed the amounts permitted under section 415(n) of the federal Internal Revenue Code and section 97B.80C as determined by the system.

2. *a.* A member may purchase service credit as authorized by this section through a direct rollover to the retirement system of an eligible rollover distribution from an eligible retirement plan as permitted by the internal revenue service under the federal Internal Revenue Code. The amount of the direct rollover into the retirement system cannot exceed the cost of the service purchase by a member under this chapter. Once a direct rollover is made, the member must forfeit the applicable service credit from the eligible retirement plan from which the eligible rollover distribution is received.

*b.* (1) For purposes of this subsection, “an eligible rollover distribution from an eligible retirement plan” includes distributions from any of the following:

(a) Qualified plans described in federal Inter-

nal Revenue Code sections 401(a) and 403(a).

(b) Annuity contracts described in federal Internal Revenue Code section 403(b).

(c) Eligible plans described under federal Internal Revenue Code section 457(b) which are maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(d) Individual retirement accounts described in federal Internal Revenue Code section 408(a) or 408(b).

(2) An eligible rollover distribution from an eligible retirement plan does not include any of the following:

(a) A distribution that is one of a series of substantially equal periodic payments, which occur annually or more frequently, made for the life or life expectancy of the distributee or the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary, or made for a specified period of ten years or more.

(b) A distribution to the extent that the distribution is required pursuant to section 401(a)(9) of the federal Internal Revenue Code.

(c) The portion of any distribution that is not includible in the gross income of the distributee, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

(d) Any amounts that are not permitted to be treated as eligible rollover distributions by the internal revenue service under the federal Internal Revenue Code.

3. A member may purchase any service credit as authorized by this section, to the extent permitted by the internal revenue service, by means of a direct transfer, excluding any after-tax contributions, from an annuity contract qualified under federal Internal Revenue Code section 403(b), or an eligible plan described in federal Internal Revenue Code section 457(b), maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. A direct transfer is a trustee-to-trustee transfer to the retirement system of contributions made to annuity contracts qualified under federal Internal Revenue Code section 403(b) and eligible governmental plans qualified under federal Internal Revenue Code section 457(b) for purposes of purchasing service credit in the retirement system.

2003 Acts, ch 145, §286  
Terminology changes applied

## CHAPTER 97C

### FEDERAL SOCIAL SECURITY ENABLING ACT

#### **97C.2 Definitions.**

For the purposes of this chapter:

1. The term “employee” includes elective and appointive officials of the state or any political

subdivision thereof, except elective officials in positions, the compensation for which is on a fee basis, elective officials of school districts, elective officials of townships, and elective officials of other political subdivisions who are in part-time positions. However, a member of a county board of supervisors or a county attorney shall not be deemed to be an elective official in a part-time position, but every member of a county board of supervisors and every county attorney shall be deemed to be an employee under this chapter and is eligible to receive the benefits provided by this chapter to which the member may be entitled as an employee.

2. The term “*employer*” means the state of Iowa and all of its political subdivisions which employ persons eligible to coverage under an agreement entered into by this state and the federal security administrator under the provisions of the Social Security Act, Title II, of the Congress of the United States as amended.

3. The term “*employment*” means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (1) service which in the absence of an agreement entered into under this chapter would constitute “*employment*” as defined in the Social Security Act; or (2) service which under the Social Security Act may not be included in an agreement between the state and the federal security administrator entered into under this chapter.

4. The term “*Federal Insurance Contributions Act*” means subchapter “A” of chapter 9 of the federal Internal Revenue Code as such code has been and may from time to time be amended.

5. The term “*Federal Security Administrator*” means the administrator of the federal security

agency (or the administrator’s successor in function), and includes any individual to whom the federal security administrator has delegated any of the administrator’s functions under the Social Security Act, Title II, with respect to coverage under such Act of employees of states and their political subdivisions.

6. The term “*political subdivision*” includes an instrumentality (a) of the state of Iowa, (b) of one or more of its political subdivisions or (c) of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivisions.

7. The term “*Social Security Act*” means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the “*Social Security Act*,” Title II, (including regulations and requirements issued pursuant thereto) as such Act has been and may from time to time be amended.

8. The term “*state agency*” means the Iowa public employees’ retirement system created in section 97B.1.

9. The term “*wages*” means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for “*employment*” within the meaning of the federal Insurance Contribution Act, would not constitute “*wages*” within the meaning of that Act.

2003 Acts, ch 145, §181  
Subsection 8 amended

## CHAPTER 97D

### PUBLIC RETIREMENT SYSTEMS GENERALLY

#### **97D.3 Newly hired peace officers, police officers, and fire fighters — referendum.**

1. As soon as possible after July 1, 1990, the department of administrative services, in cooperation with the board of trustees of the public safety peace officers’ retirement system and the board of trustees for the statewide fire and police retirement system created in section 411.36, shall submit to the members of retirement systems under chapters 97A and 411 in a referendum the question of requiring federal social security coverage for all persons newly hired as peace officers, as defined in section 97A.1, police officers, and fire fighters. The referendum shall be conducted before January 1, 1991. The referendum procedures

shall comply with the requirements of federal law and regulations. If there is a favorable vote of a majority of the persons eligible to vote in the referendum, subsection 2 applies.

2. Upon a favorable vote in the referendum and notwithstanding sections 97A.3 and 411.3, all persons newly hired as peace officers, as defined in section 97A.1, police officers, and fire fighters after July 1, 1991, shall be members of the Iowa public employees’ retirement system under chapter 97B, rather than members of retirement systems under chapters 97A and 411. Such members shall have federal social security coverage in addition to coverage under the Iowa public employees’ retirement system and shall have the same benefits as

county sheriffs and deputy sheriffs under section 97B.49C or 97B.49G, as applicable.

2003 Acts, ch 145, §286  
Terminology change applied

**97D.4 Public retirement systems committee established.**

1. A public retirement systems committee is established. The committee consists of five members of the senate appointed by the majority leader of the senate in consultation with the minority leader and five members of the house of representatives appointed by the speaker of the house in consultation with the minority leader. The committee shall elect a chairperson and vice chairperson. Meetings may be called by the chairperson or a majority of the members.

Members shall be appointed prior to January 31 of the first regular session of each general assembly and shall serve for terms ending upon the convening of the following general assembly or when their successors are appointed, whichever is later. A vacancy shall be filled in the same manner as the original appointment and shall be for the remainder of the unexpired term of the vacancy.

2. The members of the committee shall be reimbursed for actual and necessary expenses incurred in the performance of their duties and shall be paid a per diem as specified in section 7E.6 for each day in which they engaged in the performance of their duties. However, per diem compensation and expenses shall not be paid when the general assembly is actually in session at the seat of government. Expenses and per diem shall be paid from funds appropriated pursuant to section 2.12.

3. The committee shall:

*a.* Develop and recommend retirement standards and a coherent state policy on public retirement systems.

*b.* Continuously survey pension and retirement developments in other states and in industry and business and periodically review the state's policy and standards in view of these developments and changing economic and social conditions.

*c.* Review the provisions in the public retirement systems in effect in this state.

*d.* Review individually sponsored bills relating to the public retirement systems.

*e.* Review proposals from interested associations and organizations recommending changes in the state's retirement laws.

*f.* Study the feasibility of adopting a consolidated retirement system for the public employees of this state.

*g.* Make recommendations to the general assembly.

4. The committee may contract for actuarial assistance deemed necessary, and the costs of actuarial studies are payable from funds appropriated in section 2.12, subject to the approval of the legislative council. The committee may administer oaths, issue subpoenas, and cite for contempt with the approval of the general assembly when the general assembly is in session and with the approval of the legislative council when the general assembly is not in session.

Administrative assistance shall be provided by the legislative services agency.

2003 Acts, ch 35, §40, 49  
Subsection 4, unnumbered paragraph 2 amended

## CHAPTER 99A

### POSSESSION OF GAMBLING DEVICES

**99A.10 Manufacture and distribution of gambling devices permitted.**

A person may manufacture or act as a distributor for gambling devices for sale out of the state in another jurisdiction where possession of the de-

vice is legal or for sale in the state or use in the state if the use is permitted pursuant to either chapter 99B or chapter 99G.

2003 Acts, ch 178, §101, 121; 2003 Acts, ch 179, §142  
Section amended

## CHAPTER 99B

### GAMES OF SKILL OR CHANCE, AND RAFFLES

**99B.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Amusement concession*" means any place where a single game of skill or game of chance is conducted by a person for profit, and includes the area within which are confined the equipment,

playing area and other personal property necessary for the conduct of the game.

2. "*Amusement device*" means an electrical or mechanical device possessed and used in accordance with section 99B.10. When possessed and used in accordance with that section, an amusement device is not a game of skill or game of

chance, and is not a gambling device.

3. “*Applicant*” means an individual or an organization.

4. “*Authorized*” means approved as a concession by the Iowa state fair board or a county or district fair or agricultural society holding a fair.

5. “*Bingo*” means a game, whether known as bingo or any other name, in which each participant uses one or more cards each of which is marked off into spaces arranged in horizontal and vertical rows of spaces, with each space being designated by number, letter, or combination of numbers and letters, no two cards being identical, with the players covering spaces as the operator of the game announces the number, letter, or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically, from a receptacle in which have been placed objects bearing numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the spaces, with the winner of each game being the player or players first properly covering a predetermined and announced pattern of spaces on a card being used by the player or players. Each determination of a winner by the method described in the preceding sentence is a single bingo game at any bingo occasion.

6. “*Bingo occasion*” means a single gathering or session at which successive bingo games are played. A bingo occasion commences when the operator of the game begins to announce the number, letter, or combination of numbers or letters through which the winner of a single bingo game will be determined.

7. “*Bona fide social relationship*” as used herein means a real, genuine, unfeigned social relationship between two or more persons wherein each person has an established knowledge of the other, which has not arisen for the purpose of gambling.

8. “*Bookmaking*” as used herein means the taking or receiving of any bet or wager upon the result of any trial or contest of skill, speed, power or endurance of human, beast, fowl or motor vehicle, which is not a wager or bet pursuant to section 99B.12, subsection 2, paragraph “c”, or which is laid off, placed, given, received or taken, by an individual who was not present when the wager or bet was undertaken, or by any publicly or privately owned enterprise where such wagers or bets may be undertaken.

9. A person “*conducts*” a specified activity if that person owns, promotes, sponsors, or operates a game or activity. A natural person does not “*conduct*” a game or activity if the person is merely a participant in a game or activity which complies with section 99B.12.

10. “*Controlling shareholder*” means either of the following:

a. A person who directly or indirectly owns or controls ten percent or more of any class of stock

of a license applicant.

b. A person who directly or indirectly has an interest of ten percent or more in the ownership or profits of a license applicant.

11. “*Department*” means the department of inspections and appeals.

12. “*Eligible applicant*” means an applicant who meets all of the following requirements:

a. The applicant’s financial standing and good reputation are within the standards established by the department by rule under chapter 17A so as to satisfy the director of the department that the applicant will comply with this chapter and the rules applicable to operations under it.

b. The applicant is a citizen of the United States and a resident of this state, or a corporation licensed to do business in this state, or a business that has an established place of business in this state or that is doing business in this state.

c. The applicant has not been convicted of a felony. However, if the applicant’s conviction occurred more than five years before the date of the application for a license, and if the applicant’s rights of citizenship have been restored by the governor, the director of the department may determine that the applicant is an eligible applicant.

If the applicant is an organization, then the requirements of paragraphs “a”, “b”, and “c” apply to its officers, directors, partners and controlling shareholders.

13. “*Fair*” means an annual fair and exposition held by the Iowa state fair board and any fair held by a county or district fair or agricultural society under the provisions of chapter 174.

14. “*Game of chance*” means a game whereby the result is determined by chance and the player in order to win aligns objects or balls in a prescribed pattern or order or makes certain color patterns appear and specifically includes but is not limited to the game defined as bingo. Game of chance does not include a slot machine.

15. “*Game of skill*” means a game whereby the result is determined by the player directing or throwing objects to designated areas or targets, or by maneuvering water or an object into a designated area, or by maneuvering a dragline device to pick up particular items, or by shooting a gun or rifle.

16. “*Gross receipts*” means the total revenue received from the sale of rights to participate in a game of skill, game of chance, or raffle and admission fees or charges.

17. “*Merchandise*” includes lottery tickets or shares sold or authorized under chapter 99G. The value of the ticket or share is the price of the ticket or share as established by the Iowa lottery authority pursuant to chapter 99G.

18. “*Net receipts*” means gross receipts less amounts awarded as prizes and less state and local sales tax paid upon the gross receipts. Reasonable expenses, charges, fees, taxes other than the state and local sales tax, and deductions allowed

by the department shall not exceed twenty-five percent of net receipts.

19. “*Net rent*” means the total rental charge minus reasonable expenses, charges, fees, and deductions allowed by the department.

20. “*Posted*” means that the person conducting a game has caused to be placed near the front or playing area of the game a sign at least thirty inches by thirty inches, with permanent material and lettering, stating at the top in letters at least three inches high: “Rules of the Game”. Thereunder there shall be set forth in large, easily readable print, the name of the game, the price to play the game, the complete rules for the game and the name and permanent mailing address of the owner of the game.

21. “*Qualified organization*” means any licensed organization which dedicates the net receipts of a game of skill, game of chance or raffle as provided in section 99B.7 and meets the requirements of section 99B.7, subsection 1, paragraph “m”.

22. “*Raffle*” means a lottery in which each participant buys a ticket for a chance at a prize with the winner determined by a random method and the winner is not required to be present to win. “*Raffle*” does not include a slot machine.

23. “*Social games*” means and includes only the activities permitted by section 99B.12, subsection 2.

24. “*Unrelated entity*” means a person that has a separate and distinct state charter and tax identification number from any other person and, if the person is an individual, an individual that is not related by law or by consanguinity.

2003 Acts, ch 178, §102, 121; 2003 Acts, ch 179, §142  
Subsection 17 amended

#### **99B.6 Games where liquor or beer is sold.**

1. Except as provided in subsections 5, 6, 7, 8, and 9, gambling is unlawful on premises for which a class “A”, class “B”, class “C”, or class “D” liquor control license, or class “B” beer permit has been issued pursuant to chapter 123 unless all of the following are complied with:

*a.* The holder of the liquor control license or beer permit has submitted an application for a license and an application fee of one hundred fifty dollars, and has been issued a license, and prominently displays the license on the premises.

*b.* The holder of the liquor control license or beer permit or any agent or employee of the license or permit holder does not participate in, sponsor, conduct or promote, or act as cashier or banker for any gambling activities, except as a participant while playing on the same basis as every other participant.

*c.* Gambling other than social games is not engaged in on the premises covered by the license or permit.

*d.* Concealed numbers or conversion charts are not used to play any game, and a game is not

adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

*e.* The game must be conducted in a fair and honest manner.

*f.* No person receives or has any fixed or contingent right to receive, directly or indirectly, any amount wagered or bet or any portion of amounts wagered or bet, except an amount which the person wins as a participant while playing on the same basis as every other participant.

*g.* No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

*h.* No participant wins or loses more than a total of fifty dollars or more consideration equivalent thereto in one or more games or activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

*i.* No participant is participating as an agent of another person.

*j.* A representative of the department or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

*k.* A person under the age of twenty-one years shall not participate in the gambling except pursuant to sections 99B.3, 99B.4, 99B.5, and 99B.7. Any licensee knowingly allowing a person under the age of twenty-one to participate in the gambling prohibited by this paragraph or any person knowingly participating in gambling with a person under the age of twenty-one, is guilty of a simple misdemeanor.

2. The holder of a license issued pursuant to this section is strictly accountable for complying with subsection 1. Proof of an act constituting a violation is grounds for revocation of the license issued pursuant to this section if the holder of the license permitted the violation to occur when the licensee knew or had reasonable cause to know of the act constituting the violation.

3. A participant in a social game which is not

in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits or engages in acts or omissions which constitute a violation of subsection 1 commits a serious misdemeanor. A licensee has knowledge of acts or omissions if any agent of the licensee has knowledge of those acts or omissions.

5. Lottery tickets or shares authorized pursuant to chapter 99G may be sold on the premises of an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3.

6. A qualified organization may conduct games of skill, games of chance, or raffles pursuant to section 99B.7 in an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3 if the games or raffles are conducted pursuant to this chapter or rules adopted pursuant to this chapter.

7. The holder of a liquor control license or beer permit may conduct a sports betting pool if the game is publicly displayed and the rules of the game, including the cost per participant and the amount of the winning is conspicuously displayed on or near the pool. No participant may wager more than five dollars and the maximum winnings to all participants from the pool shall not exceed five hundred dollars. The provisions of subsection 1, except paragraphs "c" and "h" and the prohibition of the use of concealed numbers in paragraph "d", are applicable to pools conducted under this subsection. If a pool permitted by this subsection involves the use of concealed numbers, the numbers shall be selected by a random method and no person shall be aware of the numbers at the time wagers are made in the pool. All moneys wagered shall be awarded to participants. For purposes of this subsection, "pool" means a game in which the participants select a square on a grid corresponding to numbers on two intersecting sides of the grid and winners are determined by whether the square selected corresponds to numbers relating to an athletic event in the manner prescribed by the rules of the game.

8. Gambling games authorized under chapter 99F may be conducted on an excursion gambling boat which is licensed as an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3 if the gambling games are conducted pursuant to chapter 99F and rules adopted under chapter 99F. Notwithstanding section 123.3, subsection 26, paragraph "b", a person holding a federal gambling permit and licensed to conduct gambling games pursuant to chapter 99F may hold a liquor license.

9. Pari-mutuel wagering authorized under

chapter 99D may be conducted within a racetrack enclosure which is licensed as an establishment that serves or sells alcoholic beverages as defined in section 123.3 if the pari-mutuel wagering is conducted pursuant to chapter 99D and rules adopted under chapter 99D.

2003 Acts, ch 178, §103, 121; 2003 Acts, ch 179, §142  
Subsection 5 amended

### **99B.7 Games conducted by qualified organizations — penalties.**

1. Except as otherwise provided in section 99B.8, games of skill, games of chance and raffles lawfully may be conducted at a specified location meeting the requirements of subsection 2 of this section, but only if all of the following are complied with:

a. The person conducting the game or raffle has been issued a license pursuant to subsection 3 of this section and prominently displays that license in the playing area of the games.

b. No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or related to a game of skill, game of chance, or raffle, except any amount which the person may win as a participant on the same basis as the other participants. A person conducting a game or raffle shall not be a participant in the game or raffle.

c. Cash or merchandise prizes may be awarded in the game of bingo and, except as otherwise provided in this paragraph, shall not exceed one hundred dollars. Merchandise prizes may be awarded in the game of bingo, but the actual retail value of the prize, or if the prize consists of more than one item, unit or part, the aggregate retail value of all items, units or parts, shall not exceed the maximum provided by this paragraph. A jackpot bingo game may be conducted once during any twenty-four hour period in which the prize may begin at not more than three hundred dollars in cash or actual retail value of merchandise prizes and may be increased by not more than one hundred dollars after each bingo occasion. However, the cost of play in a jackpot bingo game shall not be increased and the jackpot shall not amount to more than eight hundred dollars in cash or actual retail value of merchandise prizes. A jackpot bingo game is not prohibited by paragraph "h". A bingo occasion shall not last for longer than four consecutive hours. A qualified organization shall not hold more than fourteen bingo occasions per month. Bingo occasions held under a limited license shall not be counted in determining whether a qualified organization has conducted more than fourteen bingo occasions per month, nor shall bingo occasions held under a limited license be limited to four consecutive hours. With the exception of a limited license bingo, no more than three bingo occasions per week shall be held within a structure or building and only one person licensed to conduct games under this section may hold bingo occasions

within a structure or building. A licensed qualified organization shall not conduct free games.

However, a qualified organization, which is a senior citizens' center or a residents' council at a senior citizen housing project or a group home, may hold more than fourteen bingo occasions per month and more than three bingo occasions per week within the same structure or building, and bingo occasions conducted by such a qualified organization may last for longer than four consecutive hours, if the majority of the patrons of the qualified organization's bingo occasions also participate in other activities of the senior citizens' center or are residents of the housing project. At the conclusion of each bingo occasion, the person conducting the game shall announce both the gross receipts received from the bingo occasion and the use permitted under subsection 3, paragraph "b", to which the net receipts of the bingo occasion will be dedicated and distributed.

*d.* Cash prizes shall not be awarded in games other than bingo and raffles. The value of a prize shall not exceed ten thousand dollars and merchandise prizes shall not be repurchased. If a prize consists of more than one item, unit, or part, the aggregate value of all items, units, or parts shall not exceed ten thousand dollars. However, one raffle may be conducted per calendar year at which real property or one or more merchandise prizes having a combined value of more than ten thousand dollars may be awarded.

If a raffle licensee holds a statewide raffle license, the licensee may hold not more than eight raffles per calendar year at which real property or one or more merchandise prizes having a combined value of more than ten thousand dollars may be awarded. Each such raffle held under a statewide license shall be held in a separate county.

If a prize is merchandise, its value shall be determined by the purchase price paid by the organization or donor. If a prize is real property, the department shall conduct a special audit to verify compliance with the appropriate requirements of this chapter including all of the following requirements:

(1) The licensee has submitted a real property raffle license application and a fee of one hundred dollars to the department, has been issued a license, and prominently displays the license at the drawing area of the raffle.

(2) The real property was acquired by gift or donation or has been owned by the licensee for a period of at least five years.

(3) All other requirements of this section and section 99B.2 are met.

(4) Receipts from the raffle are kept in a separate financial account.

(5) A cumulative report for the raffle on a form determined by the department and one percent of gross receipts are submitted to the department within sixty days of the raffle drawing. The one percent of the gross receipts shall be retained by

the department to pay for the cost of the special audit.

*e.* The ticket price including any discounts for each game or raffle shall be the same for each participant.

*f.* No prize is displayed which cannot be won.

*g.* Merchandise prizes are not repurchased.

*h.* A game or raffle shall not be operated on a build-up or pyramid basis.

*i.* Concealed numbers or conversion charts shall not be used to play any game and a game or raffle shall not be adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game must be attainable and possible to perform under the rules stated from the playing position of the player.

*j.* The game must be conducted in a fair and honest manner.

*k.* Each game or raffle shall be posted.

*l.* During the entire time that games permitted by this section are being engaged in, both of the following are observed:

(1) No other gambling is engaged in at the same location, except that lottery tickets or shares issued by the Iowa lottery authority may be sold pursuant to chapter 99G.

(2) A ticket, coupon, or card shall not be used as a door prize or given to a participant of a raffle, game of bingo, or game of chance if the use of the ticket, coupon, or card would change the odds of winning for participants of the raffle, game of bingo, or game of chance.

*m.* The organization conducting the game can show to the satisfaction of the department that all of the following requirements are met:

(1) The organization is exempt from federal income taxes under section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code as defined in section 422.3, the organization is an agency or instrumentality of the United States government, this state, or a political subdivision of this state, or, in lieu of an exemption from federal income taxes, the organization is a parent-teacher organization or booster club that is recognized as a fund-raiser and supporter for a school district organized pursuant to chapter 274 or for a school within the school district, in a notarized letter signed by the president of the board of directors, the superintendent of the school district, or a principal of a school within that school district.

(2) The organization has an active membership of not less than twelve persons.

(3) The organization does not have a self-perpetuating governing body and officers.

This lettered paragraph "m" does not apply to a political party, as defined in section 43.2, to a non-party political organization that has qualified to place a candidate as its nominee for statewide office pursuant to chapter 44, or to a candidate's

committee as defined in section 68A.102.

*n.* The person conducting the game does none of the following:

(1) Hold, currently, another license issued under this section.

(2) Own or control, directly or indirectly, any class of stock of another person who has been issued a license to conduct games under this section.

(3) Have, directly or indirectly, an interest in the ownership or profits of another person who has been issued a license to conduct games under this section.

*o.* A person shall not conduct, promote, administer, or assist in the conducting, promoting, or administering of a bingo occasion, unless the person regularly participates in activities of the qualified organization other than conducting bingo occasions or participates in an educational, civic, public, charitable, patriotic, or religious organization to which the net receipts are dedicated by the qualified organization.

*p.* A licensee shall keep records of all persons who serve as manager or cashier, or who are responsible for carrying out duties with respect to a bingo account. A licensee is subject to license revocation if it knowingly permits a person to serve in one of these capacities if the person was a manager, cashier, or responsible for carrying out duties with respect to a bingo account for another licensee at the time of one or more violations leading to revocation of the other licensee's license, and if the license is still revoked at the time of the subsequent service.

2. Games of skill, games of chance, and raffles may be conducted on premises owned or leased by the licensee, but shall not be conducted on rented premises unless the premises are rented from a person licensed under this section, and unless the net rent received is dedicated to one or more of the uses permitted under subsection 3 for dedication of net receipts. This subsection shall not apply where the rented premises are those upon which a qualified organization usually carries out a lawful business other than operating games of skill, games of chance or raffles. However, a qualified organization may rent premises other than from a licensed qualified organization to be used for the conduct of games of skill, games of chance and raffles, and the person from whom the premises are rented may impose and collect rent for such use of those premises, but only if all of the following are complied with:

*a.* The rent imposed and collected shall not be a percentage of or otherwise related to the amount of the receipts of the game or raffle.

*b.* The qualified organization shall have the right to terminate any rental agreement at any time without penalty and without forfeiture of any sum.

*c.* Except for purposes of bingo, the person from whom the premises are rented shall not be a liquor control licensee or beer permittee with re-

spect to those premises or with respect to adjacent premises.

The board of directors of a school district may authorize that public schools within that district, and the policymaking body of a nonpublic school, may authorize that games of skill, games of chance, bingo and raffles may be held at bona fide school functions, such as carnivals, fall festivals, bazaars and similar events. Each school shall obtain a license pursuant to this section prior to permitting the games or activities on the premises. However, the board of directors of a public school district may also be issued a license under this section. However, a board of directors of a public school shall not spend or authorize the expenditure of public funds for the purpose of purchasing a license. The department of inspections and appeals shall provide by rule a short form application for a license issued to a board of directors. Upon written approval by the board of directors, the license may be used by any school group or parent support group in the district to conduct activities authorized by this section. The board of directors shall not authorize a school group or parent support group to use the license more than twice in twelve months.

3. *a.* A person wishing to conduct games and raffles pursuant to this section as a qualified organization shall submit an application and a license fee of one hundred fifty dollars. The annual license fee for a statewide raffle license shall be one hundred fifty dollars. However, upon submission of an application accompanied by a license fee of fifteen dollars, a person may be issued a limited license to conduct all games and raffles pursuant to this section at a specified location and during a specified period of fourteen consecutive calendar days. In addition, a qualified organization may be issued a limited license to conduct raffles pursuant to this section for a period of ninety days for a license fee of forty dollars or for a period of one hundred eighty days for a license fee of seventy-five dollars. For the purposes of this paragraph, a limited license is deemed to be issued on the first day of the period for which the license is issued.

*b.* A person or the agent of a person submitting application to conduct games pursuant to this section as a qualified organization shall certify that the receipts of all games, less reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, either will be distributed as prizes to participants or will be dedicated and distributed to educational, civic, public, charitable, patriotic or religious uses in this state and that the amount dedicated and distributed will equal at least seventy-five percent of the net receipts. "*Educational, civic, public, charitable, patriotic, or religious uses*" means uses benefiting a society for the prevention of cruelty to animals or animal rescue league, or uses benefiting an indefinite number of persons either by bringing them under the influence of education or religion or relieving them

from disease, suffering, or constraint, or by erecting or maintaining public buildings or works, or otherwise lessening the burden of government, or uses benefiting any bona fide nationally chartered fraternal or military veterans' corporation or organization which operates in Iowa a clubroom, post, dining room, or dance hall, but does not include the erection, acquisition, improvement, maintenance, or repair of real, personal or mixed property unless it is used for one or more of the uses stated. "Public uses" specifically includes dedication of net receipts to political parties as defined in section 43.2. "Charitable uses" includes uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm when the loss is uncompensated by insurance, and uses benefiting a definite number of persons suffering from a seriously disabling disease or injury, causing severe loss of income or incurring extraordinary medical expense when the loss is uncompensated by insurance.

Proceeds given to another charitable organization to satisfy the seventy-five percent dedication requirement shall not be used by the donee to pay any expenses in connection with the conducting of bingo by the donor organization, or for any cause, deed, or activity that would not constitute a valid dedication under this section.

c. A qualified organization shall distribute amounts awarded as prizes on the day they are won. A qualified organization shall dedicate and distribute the balance of the net receipts received within a quarter and remaining after deduction of reasonable expenses, charges, fees, taxes, and deductions allowed by this chapter, before the quarterly report required for that quarter under section 99B.2, subsection 4, is due. The amount dedicated and distributed must equal at least seventy-five percent of the net receipts. A person desiring to hold the net receipts for a period longer than permitted under this paragraph shall apply to the department for special permission and upon good cause shown the department may grant the request.

If permission is granted to hold the net receipts, the person shall, as a part of the quarterly report required by section 99B.2, report the amount of money currently being held and all expenditures of the funds. This report shall be filed even if the person no longer holds a gambling license.

4. If a licensee derives ninety percent or more of its total income from conducting bingo, raffles, or small games of chance, at least seventy-five percent of the licensee's net receipts shall be distributed to an unrelated entity for an educational, civic, public, charitable, patriotic, or religious use.

5. It is lawful for an individual other than a person conducting games or raffles to participate in games or raffles conducted by a qualified organization, whether or not there is compliance with subsections 2 and 3: However, it is unlawful for

the individual to participate where the individual has knowledge of or reason to know facts which constitute a failure to comply with subsection 1.

6. A political party or a political party organization is a qualified organization within the meaning of this chapter. Political parties or party organizations may contract with other qualified organizations to conduct the games of skill, games of chance, and raffles which may lawfully be conducted by the political party or party organization. A licensed qualified organization may promote the games of skill, games of chance, and raffles which it may lawfully conduct.

7. Proceeds coming into the possession of a person under this section are deemed to be held in trust for payment of expenses and dedication to charitable purposes as required by this section.

A licensee or agent who willfully fails to dedicate the required amount of proceeds to charitable purposes as required by this section commits a fraudulent practice.

8. A qualified organization licensed under this section shall purchase bingo equipment and supplies only from a manufacturer or a distributor licensed by the department.

2003 Acts, ch 44, §32; 2003 Acts, ch 178, §104, 121; 2003 Acts, ch 179, §142; 2003 Acts, 1st Ex, ch 2, §38, 209

Internal reference change applied  
Subsection 1, paragraph "I", subparagraph (1) amended  
Subsection 1, paragraph o amended

### 99B.9 Gambling in public places.

1. Except as otherwise permitted by section 99B.3, 99B.5, 99B.6, 99B.7, 99B.8, 99B.11, or 99B.12A, it is unlawful to permit gambling on any premises owned, leased, rented, or otherwise occupied by a person other than a government, governmental agency or subdivision, unless all of the following are complied with:

a. The person occupying the premises as an owner or tenant has submitted an application for a license and an application fee of one hundred dollars, and has been issued a license for those premises, and prominently displays the license on the premises.

b. The holder of the license or any agent or employee of the license holder does not participate in, sponsor, conduct, or promote, or act as cashier or banker for any gambling activities.

c. Gambling other than social games is not engaged in on the premises covered by the license or permit.

d. Concealed numbers or conversion charts are not used to play any game, and a game is not adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

e. The game must be conducted in a fair and honest manner.

*f.* No person receives or has any fixed or contingent right to receive directly or indirectly any amount wagered or bet or any portion of amounts wagered or bet, except an amount which the person wins as a participant while playing on the same basis as every other participant.

*g.* No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

*h.* No participant wins or loses more than a total of fifty dollars or other consideration equivalent thereto in all games and activities at any one time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph, a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

*i.* No participant is participating as an agent of another person.

*j.* A representative of the department or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

2. The holder of a license issued pursuant to this section shall be strictly accountable for maintaining compliance with subsection 1, and proof of any violation shall constitute grounds for revocation of the license issued pursuant to this section, whether or not the holder of the license had knowledge of the facts constituting the violation.

3. A participant in a social game which is not in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits acts or omissions which constitute a violation of subsection 1 commits a serious misdemeanor. A licensee has knowledge of acts or omissions if any agent of the licensee has knowledge of those acts or omissions.

5. This section shall not apply to premises or portions of premises constituting the living quarters of the actual residence of an individual if that individual is a participant in the activities permitted by this section.

2003 Acts, ch 77, §1  
Subsection 1, unnumbered paragraph 1 amended

### **99B.10 Electrical and mechanical amusement devices.**

It is lawful to own, possess, and offer for use by any person at any location an electrical or mechanical amusement device, but only if all of the following are complied with:

1. A prize of merchandise exceeding five dollars in value or cash shall not be awarded for use of the device. However, a mechanical or amusement device may be designed or adapted to award a prize or one or more free games or portions of games without payment of additional consideration by the participant.

2. An amusement device shall not be designed or adapted to cause or to enable a person to cause the release of free games or portions of games when designated as a potential award for use of the device, and shall not contain any meter or other measurement device for recording the number of free games or portions of games which are awarded.

3. An amusement device shall not be designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than is ordinarily required to play the game.

4. Each electrical and mechanical amusement device in operation or distributed in this state that awards a prize, as provided in this section, where the outcome is not primarily determined by the skill or knowledge of the operator, is registered by the department as provided by this subsection. For an organization that meets the requirements of section 99B.7, subsection 1, paragraph "m", no more than four, and for all other persons, no more than two electrical and mechanical amusement devices registered as provided by this subsection shall be permitted or offered for use in any single location or premises. Each person owning an electrical and mechanical amusement device in this state shall obtain a registration tag for each electrical and mechanical amusement device owned that is required to be registered as provided in this subsection. Upon receipt of an application and a fee of twenty-five dollars for each device required to be registered, the department shall issue an annual registration tag which tag shall be displayed as required by rules adopted by the department. The application shall be submitted on forms designated by the department and contain the information required by rule of the department. A registration may be renewed annually upon submission of a registration application and payment of the annual registration fee and compliance with this chapter and the rules adopted pursuant to this chapter. A person owning or leasing an electrical and mechanical amusement device required to be registered under this subsection shall only own or lease an electrical and mechanical amusement device that is required to be registered that has been purchased from a manufacturer, man-

ufacturer's representative, or distributor registered with the department under section 99B.10A.

5. Any awards given for use of an amusement device shall only be redeemed on the premises where the device is located and only for merchandise sold in the normal course of business for the premises.

6. Any other requirements as determined by the department by rule. Rules adopted pursuant to this subsection shall be formulated in consultation with affected state agencies and industry and consumer groups.

It is lawful for an individual other than an owner or promoter of an amusement device to operate an amusement device, whether or not the amusement device is owned, possessed or offered for use in compliance with this section.

The use of an amusement device which complies with this section shall not be deemed gambling.

2003 Acts, ch 147, §1, 7

Fees collected in fiscal years beginning July 1, 2003, and July 1, 2004, to be deposited in special fund and used to administer this section and §99B.10A; report to general assembly; 2003 Acts, ch 147, §5, 6

NEW subsections 4 - 6

#### **99B.10A Manufacturers and distributors of electrical and mechanical amusement devices — registration.**

A person engaged in business in this state as a manufacturer, manufacturer's representative, or distributor of electrical and mechanical amusement devices required to be registered as provided in section 99B.10, subsection 4, shall register with the department. Each person who registers with the department under this section shall pay an annual registration fee of two thousand five hundred dollars. Registration shall be submitted on forms designated by the department that shall contain the information required by the department by rule. The department shall adopt rules providing for the submission of information to the department by a person registered pursuant to this section if information in the initial registration is changed, including discontinuing the business in this state.

2003 Acts, ch 147, §2, 7

Fees collected under §99B.10 in fiscal years beginning July 1, 2003, and July 1, 2004, to be deposited in special fund and used to administer this section and §99B.10; report to general assembly; 2003 Acts, ch 147, §5, 6

NEW section

#### **99B.10B Revocation of registration — electrical and mechanical amusement devices.**

The department may revoke a registration issued pursuant to section 99B.10 or 99B.10A, for a period not to exceed two years, for cause, following at least ten days' written notice and opportunity for an evidentiary hearing, pursuant to rules adopted by the department. The rules shall provide that a registration may be revoked if the registrant or agent of the registrant violates, or permits a violation, of section 99B.10 or 99B.10A, vio-

lates any rule adopted by the department under this chapter that the department determines should warrant revocation of the registration, or engages in any act or omission that would have permitted the department to refuse to issue a registration under section 99B.10 or 99B.10A.

2003 Acts, ch 147, §3, 7

NEW section

#### **99B.12 Games between individuals.**

1. Except in instances where because of the location of the game or the circumstances of the game section 99B.3, section 99B.5, section 99B.6, section 99B.7, section 99B.8, or section 99B.9 is applicable, individuals may participate in gambling specified in subsection 2, but only if all of the following are complied with:

a. The gambling is incidental to a bona fide social relationship between all participants.

b. The gambling is not participated in, either wholly or in part, on or in any property subject to chapter 297, relating to schoolhouses and schoolhouse sites.

c. All participants in the gambling are individuals, and no participant may participate as the agent of another person.

d. The gambling shall be fair and honest, and shall not be designed, devised or adapted to permit predetermination of the winner, or to prevent a participant from winning, and no concealed numbers or conversion charts may be used to determine the winner of any game.

e. No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or as a result of the gambling, except any amount which the person may win as a participant on the same basis as the other participants.

f. No person may participate in any wager, bet or pool which relates to an athletic event or contest and which is authorized or sponsored by one or more schools, educational institutions, or inter-scholastic athletic organizations if the person is a coach, official, player or contestant in the athletic event or contest.

g. No participant wins or loses more than a total of fifty dollars or other consideration equivalent thereto in one or more games or activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

h. No participant pays an entrance fee, cover charge, or other charge for the privilege of participating in gambling, or for the privilege of gaining access to the location in which gambling occurs.

i. In any game requiring a dealer or operator, the participants must have the option to take their turn at dealing or operating the game in a regular

order according to the standard rules of the game.

2. Games which are permitted by this section are limited to the following:

*a.* Card and parlor games, including but not limited to poker, pinochle, pitch, gin rummy, bridge, euchre, hearts, cribbage, dominoes, checkers, chess, backgammon, pool, and darts. However, it shall be unlawful gambling for any person to engage in bookmaking, or to play any punchboard, pushcard, pull-tab, or slot machine, or to play craps, chuck-a-luck, roulette, klondike, blackjack, chemin de fer, baccarat, faro, equality, three-card monte, or any other game, except poker, which is customarily played in gambling casinos and in which the house customarily provides a banker, dealer, or croupier to operate the game, or a specially designed table upon which to play the game.

*b.* Games of skill and games of chance, except those prohibited by paragraph “*a*” of this subsection.

*c.* Wagers or bets between two or more individuals who are physically in the presence of each other with respect to a contest specified in section 99B.11, subsection 2, except as provided in subsection 1, paragraph “*g*”, or with respect to any other event or outcome which does not depend upon gambling or the use of a gambling device unlawful in this state.

3. An individual may not be convicted of a violation of this section unless the individual had knowledge of or reason to know the facts constituting the violation.

2003 Acts, ch 44, §33

Subsection 2, paragraph a amended

#### **99B.12A Bingo — licensing exception.**

An organization that is exempt from federal income taxes under section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code as de-

defined in section 422.3, shall be authorized to conduct a bingo occasion without a license as otherwise required by this chapter if all of the following requirements are met:

1. Participants in the bingo occasion are not charged to enter the premises where bingo is conducted.

2. Participants in the bingo occasion are not charged to play.

3. Any prize awarded at the bingo occasion shall be donated.

4. The bingo occasion is conducted as an activity and not for fundraising purposes.

2003 Acts, ch 77, §2

NEW section

#### **99B.15 Applicability of chapter — penalty.**

It is the intent and purpose of this chapter to authorize gambling in this state only to the extent specifically permitted by a section of this chapter or chapter 99D, 99F, or 99G. Except as otherwise provided in this chapter, the knowing failure of any person to comply with the limitations imposed by this chapter constitutes unlawful gambling, a serious misdemeanor.

2003 Acts, ch 178, §105, 121; 2003 Acts, ch 179, §142

Section amended

#### **99B.21 Tax on prizes.**

All prizes awarded are Iowa earned income and are subject to state and federal income tax laws. A person conducting a game of skill, game of chance, or a raffle shall deduct state income taxes, pursuant to section 422.16, subsection 1, from a cash prize awarded to an individual. An amount deducted from the prize for payment of a state tax shall be remitted to the department of revenue on behalf of the prize winner.

2003 Acts, ch 145, §286

Terminology change applied

## CHAPTER 99D

### PARI-MUTUEL WAGERING

#### **99D.8A Requirements of applicant — penalty — consent to search.**

1. A person shall not be issued a license to conduct races under this chapter or an occupational license unless the person has completed and signed an application on the form prescribed and published by the commission. The application shall state the full name, social security number, residence, date of birth and other personal identifying information of the applicant that the commission deems necessary. The application shall state whether the applicant has any of the following:

*a.* A record of conviction of a felony.

*b.* An addiction to alcohol or a controlled substance.

*c.* A history of mental illness or repeated acts of violence.

2. An applicant shall submit pictures, fingerprints, and descriptions of physical characteristics to the commission in the manner prescribed on the application forms. The fingerprints may be submitted to the federal bureau of investigation by the department of public safety through the state criminal history repository for the purpose of a national criminal history check.

3. The commission shall charge the applicant a fee set by the department of public safety, division of criminal investigation and bureau of identification, to defray the costs associated with the search and classification of fingerprints required

in subsection 2. This fee is in addition to any other license fee charged by the commission.

4. A person who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

5. The licensee or a holder of an occupational license shall consent to agents of the division of criminal investigation of the department of public safety or commission employees designated by the administrator of the commission to the search without a warrant of the licensee or holder's person, personal property and effects, and premises which are located within the racetrack enclosure or adjacent facilities under control of the licensee to inspect or investigate for criminal violations of

this chapter or violations of rules adopted by the commission.

2003 Acts, ch 108, §29  
Subsection 2 amended

#### 99D.16 Withholding tax on winnings.

All winnings provided in section 99D.11 are Iowa earned income and are subject to state and federal income tax laws. An amount deducted from winnings for payment of the state tax, pursuant to section 422.16, subsection 1, shall be remitted to the department of revenue on behalf of the individual who won the wager.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 99E

### IOWA LOTTERY

Repealed by 2003 Acts, ch 178, §119, 121; 2003 Acts, ch 179, §142; see chapter 99G

For provisions relating to the transition of authority from the Iowa lottery division of the department of revenue and finance as established pursuant to 1985 Acts, ch 33, §103, to the Iowa lottery authority established in chapter 99G; see 2003 Acts, ch 178, §120

With respect to proposed amendments to former §99E.3, 99E.9, 99E.10, and 99E.14, see Code editor's note to §2.9

## CHAPTER 99F

### GAMBLING — EXCURSION BOATS AND RACETRACKS

#### 99F.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *“Adjusted gross receipts”* means the gross receipts less winnings paid to wagerers.

2. *“Applicant”* means any person applying for an occupational license or applying for a license to operate an excursion gambling boat, or the officers and members of the board of directors of a qualified sponsoring organization located in Iowa applying for a license to conduct gambling games on an excursion gambling boat.

3. *“Cheat”* means to alter the selection of criteria which determine the result of a gambling game or the amount or frequency of payment in a gambling game.

4. *“Commission”* means the state racing and gaming commission created under section 99D.5.

5. *“Distributor”* means a person who sells, markets, or otherwise distributes gambling games or implements of gambling which are usable in the lawful conduct of gambling games pursuant to this chapter, to a licensee authorized to conduct gambling games pursuant to this chapter.

6. *“Division”* means the division of criminal investigation of the department of public safety as provided in section 80.17.

7. *“Dock”* means the location where an excursion gambling boat moors for the purpose of embarking passengers for and disembarking passengers from a gambling excursion.

8. *“Excursion gambling boat”* means a self-propelled excursion boat on which lawful gambling is authorized and licensed as provided in this chapter.

9. *“Gambling excursion”* means the time during which gambling games may be operated on an excursion gambling boat whether docked or during a cruise.

10. *“Gambling game”* means any game of chance authorized by the commission. However, for racetrack enclosures, *“gambling game”* does not include table games of chance or video machines. *“Gambling game”* does not include sports betting.

11. *“Gross receipts”* means the total sums wagered under this chapter.

12. *“Holder of occupational license”* means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license to engage in excursion boat gambling in Iowa.

13. *“Licensee”* means any person licensed under section 99F.7.

14. “*Manufacturer*” means a person who designs, assembles, fabricates, produces, constructs, or who otherwise prepares a product or a component part of a product of any implement of gambling usable in the lawful conduct of gambling games pursuant to this chapter.

15. “*Qualified sponsoring organization*” means a nonprofit corporation organized under the laws of this state, whether or not it is exempt from federal income taxation, or a person or association that can show to the satisfaction of the commission that the person or association is eligible for exemption from federal income taxation under section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code as defined in section 422.3.

16. “*Racetrack enclosure*” means the grandstand, clubhouse, turf club, or other areas of a licensed racetrack which an individual may enter only upon payment of an admission fee, or upon payment by another, at any time, based upon the individual’s admittance, or upon presentation of authorized credentials. “*Racetrack enclosure*” also means any additional areas designated by the commission.

2003 Acts, ch 44, §34

NEW subsection 6 and former subsections 6 – 15 renumbered as 7 – 16

### 99F.2 Scope of provisions.

This chapter does not apply to the pari-mutuel system of wagering used or intended to be used in connection with the horse-race or dog-race meetings as authorized under chapter 99D, lottery or lotto games authorized under chapter 99G, or bingo or games of skill or chance authorized under chapter 99B.

2003 Acts, ch 178, §106, 121; 2003 Acts, ch 179, §142

Section amended

### 99F.6 Requirements of applicant — fee — penalty.

1. A person shall not be issued a license to conduct gambling games on an excursion gambling boat or a license to operate an excursion gambling boat under this chapter, an occupational license, a distributor license, or a manufacturer license unless the person has completed and signed an application on the form prescribed and published by the commission. The application shall include the full name, residence, date of birth and other personal identifying information of the applicant that the commission deems necessary. The application shall also indicate whether the applicant has any of the following:

- a. A record of conviction of a felony.
- b. An addiction to alcohol or a controlled substance.
- c. A history of mental illness.

2. An applicant shall submit pictures, fingerprints, and descriptions of physical characteristics to the commission in the manner prescribed on the application forms. The fingerprints may be sub-

mitted to the federal bureau of investigation by the department of public safety through the state criminal history repository for the purpose of a national criminal history check.

3. The commission shall charge the applicant a fee set by the department of public safety, division of criminal investigation and bureau of identification, to defray the costs associated with the search and classification of fingerprints required in subsection 2 and background investigations conducted by agents of the division of criminal investigation. This fee is in addition to any other license fee charged by the commission.

4. a. Before a license is granted, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the applicant for a license to operate a gambling game operation on an excursion gambling boat. The applicant shall provide information on a form as required by the division of criminal investigation. A qualified sponsoring organization licensed to operate gambling games under this chapter shall distribute the receipts of all gambling games, less reasonable expenses, charges, taxes, fees, and deductions allowed under this chapter, as winnings to players or participants or shall distribute the receipts for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph “b”. However, if a licensee who is also licensed to conduct pari-mutuel wagering at a horse racetrack has unpaid debt from the pari-mutuel racetrack operations, the first receipts of the gambling games operated within the racetrack enclosure less reasonable operating expenses, taxes, and fees allowed under this chapter shall be first used to pay the annual indebtedness. The commission shall authorize, subject to the debt payments for horse racetracks and the provisions of paragraph “b” for dog racetracks, a licensee who is also licensed to conduct pari-mutuel dog or horse racing to use receipts from gambling games within the racetrack enclosure to supplement purses for races particularly for Iowa-bred horses pursuant to an agreement which shall be negotiated between the licensee and representatives of the dog or horse owners. A qualified sponsoring organization shall not make a contribution to a candidate, political committee, candidate’s committee, state statutory political committee, county statutory political committee, national political party, or fund-raising event as these terms are defined in section 68A.102. The membership of the board of directors of a qualified sponsoring organization shall represent a broad interest of the communities.

b. The commission shall authorize the licensees of pari-mutuel dog racetracks located in Dubuque county and Black Hawk county to conduct gambling games as provided in section 99F.4A if the licensees schedule at least one hundred thirty

performances of twelve live races each day during a season of twenty-five weeks. For the pari-mutuel dog racetrack located in Pottawattamie county, the commission shall authorize the licensee to conduct gambling games as provided in section 99F.4A if the licensee schedules at least two hundred ninety performances of twelve live races each day during a season of fifty weeks. The commission shall approve an annual contract to be negotiated between the annual recipient of the dog racing promotion fund and each dog racetrack licensee to specify the percentage or amount of gambling game proceeds which shall be dedicated to supplement the purses of live dog races. The parties shall agree to a negotiation timetable to insure no interruption of business activity. If the parties fail to agree, the commission shall impose a timetable. If the two parties cannot reach agreement, each party shall select a representative and the two representatives shall select a third person to assist in negotiating an agreement. The two representatives may select the commission or one of its members to serve as the third party. Alternately, each party shall submit the name of the proposed third person to the commission who shall then select one of the two persons to serve as the third party. All parties to the negotiations, including the commission, shall consider that the dog racetracks were built to facilitate the development and promotion of Iowa greyhound racing dogs in this state and shall negotiate and decide accordingly.

5. Before a license is granted, an operator of an excursion gambling boat shall work with the department of economic development to promote tourism throughout Iowa. Tourism information from local civic and private persons may be submitted for dissemination.

6. A person who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

7. For the purposes of this section, applicant includes each member of the board of directors of a qualified sponsoring organization.

8. *a.* The licensee or a holder of an occupational license shall consent to the search, without a warrant, by agents of the division of criminal investigation of the department of public safety or commission employees designated by the secretary of the commission, of the licensee's or holder's person, personal property, and effects, and premises which are located on the excursion gambling boat or adjacent facilities under control of the licensee, in order to inspect or investigate for violations of this chapter or rules adopted by the commission pursuant to this chapter. The department or commission may also obtain administrative search warrants under section 808.14.

*b.* However, this subsection shall not be construed to permit a warrantless inspection of living quarters or sleeping rooms on the riverboat if all of the following are true:

(1) The licensee has specifically identified those areas which are to be used as living quarters or sleeping rooms in writing to the commission.

(2) Gaming is not permitted in the living quarters or sleeping rooms, and devices, records, or other items relating to the licensee's gaming operations are not stored, kept, or maintained in the living quarters or sleeping rooms.

(3) Alcoholic beverages are not stored, kept, or maintained in the living quarters or sleeping rooms except those legally possessed by the individual occupying the quarters or room.

*c.* The commission shall adopt rules to enforce this subsection.

2003 Acts, ch 108, §32  
Subsection 2 amended

### 99F.11 Wagering tax — rate — allocations.

A tax is imposed on the adjusted gross receipts received annually from gambling games authorized under this chapter at the rate of five percent on the first one million dollars of adjusted gross receipts, at the rate of ten percent on the next two million dollars of adjusted gross receipts, and at the rate of twenty percent on any amount of adjusted gross receipts over three million dollars. However, beginning January 1, 1997, the rate on any amount of adjusted gross receipts over three million dollars from gambling games at racetrack enclosures is twenty-two percent and shall increase by two percent each succeeding calendar year until the rate is thirty-six percent. The taxes imposed by this section shall be paid by the licensee to the treasurer of state within ten days after the close of the day when the wagers were made and shall be distributed as follows:

1. If the gambling excursion originated at a dock located in a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the city in which the dock is located and shall be deposited in the general fund of the city. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county.

2. If the gambling excursion originated at a dock located in a part of the county outside a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the Iowa city nearest to where the dock is located and shall be deposited in the general fund of the city.

3. Three-tenths of one percent of the adjusted gross receipts shall be deposited in the gambling treatment fund specified in section 99G.39, subsection 1, paragraph "a".

4. The remaining amount of the adjusted gross receipts tax shall be credited to the general fund

of the state.

2003 Acts, ch 178, §107, 121; 2003 Acts, ch 179, §142  
Subsection 3 amended

#### 99F.18 Tax on winnings.

All winnings derived from slot machines operated pursuant to this chapter are Iowa earned in-

come and are subject to state and federal income tax laws. An amount deducted from winnings for payment of the state tax, pursuant to section 422.16, subsection 1, shall be remitted to the department of revenue on behalf of the winner.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 99G

### IOWA LOTTERY AUTHORITY

For provisions relating to the transition of authority from the former Iowa lottery division of the department of revenue and finance to the Iowa lottery authority established in this chapter, see 2003 Acts, ch 178, §120

#### 99G.1 Title.

This chapter may be cited as the “*Iowa Lottery Authority Act*”.

2003 Acts, ch 178, §63, 121; 2003 Acts, ch 179, §142  
NEW section

#### 99G.2 Statement of purpose and intent.

The general assembly finds and declares the following:

1. That net proceeds of lottery games conducted pursuant to this chapter should be transferred to the general fund of the state in support of a variety of programs and services.

2. That lottery games are an entrepreneurial enterprise and that the state should create a public instrumentality of the state in the form of a nonprofit authority known as the Iowa lottery authority with comprehensive and extensive powers to operate a state lottery in an entrepreneurial and businesslike manner and which is accountable to the governor, the general assembly, and the people of the state through a system of audits, reports, legislative oversight, and thorough financial disclosure as required by this chapter.

3. That lottery games shall be operated and managed in a manner that provides continuing entertainment to the public, maximizes revenues, and ensures that the lottery is operated with integrity and dignity and free from political influence.

2003 Acts, ch 178, §64, 121; 2003 Acts, ch 179, §142  
NEW section

#### 99G.3 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. “*Administrative expenses*” includes, but is not limited to, personnel costs, travel, purchase of equipment, and all other expenses not directly associated with the operation or sale of a game.

2. “*Authority*” means the Iowa lottery authority.

3. “*Board*” means the board of directors of the authority.

4. “*Chief executive officer*” means the chief

executive officer of the authority.

5. “*Game specific rules*” means rules governing the particular features of specific games, including, but not limited to, setting the name, ticket price, prize structure, and prize claim period of the game.

6. “*Instant lottery*” or “*instant ticket*” means a game that offers preprinted tickets such that when a protective coating is scratched or scraped away, it indicates immediately whether the player has won.

7. “*Lottery*”, “*lotteries*”, “*lottery game*”, “*lottery games*” or “*lottery products*” means any game of chance approved by the board and operated pursuant to this chapter and games using mechanical or electronic devices, provided that the authority shall not authorize a player-activated gaming machine that utilizes an internal randomizer to determine winning and nonwinning plays and that upon random internal selection of a winning play dispenses coins, currency, or a ticket, credit, or token to the player that is redeemable for cash or a prize, and excluding gambling or gaming conducted pursuant to chapter 99B, 99D, or 99F.

8. “*Major procurement contract*” means a consulting agreement or a contract with a business organization for the printing of tickets or the purchase or lease of equipment or services essential to the operation of a lottery game.

9. “*Net proceeds*” means all revenue derived from the sale of lottery tickets or shares and all other moneys derived from the lottery, less operating expenses.

10. “*On-line lotto*” means a lottery game connected to a central computer via telecommunications in which the player selects a specified group of numbers, symbols, or characters out of a predetermined range.

11. “*Operating expenses*” means all costs of doing business, including, but not limited to, prizes and associated prize reserves, computerized gaming system vendor expense, instant and pull-tab ticket expense, and other expenses directly associated with the operation or sale of any game, com-

pensation paid to retailers, advertising and marketing costs, and administrative expenses.

12. “*Pull-tab ticket*” or “*pull-tab*” means a game that offers preprinted paper tickets with the play data hidden beneath a protective tab or seal that when opened reveals immediately whether the player has won.

13. “*Retailer*” means a person, licensed by the authority, who sells lottery tickets or shares on behalf of the authority pursuant to a contract.

14. “*Share*” means any intangible evidence of participation in a lottery game.

15. “*Ticket*” means any tangible evidence issued by the lottery to provide participation in a lottery game.

16. “*Vendor*” means a person who provides or proposes to provide goods or services to the authority pursuant to a major procurement contract, but does not include an employee of the authority, a retailer, or a state agency or instrumentality thereof.

2003 Acts, ch 178, §65, 121; 2003 Acts, ch 179, §142  
NEW section

#### 99G.4 Iowa lottery authority created.

1. An Iowa lottery authority is created, effective September 1, 2003, which shall administer the state lottery. The authority shall be deemed to be a public authority and an instrumentality of the state, and not a state agency. However, the authority shall be considered a state agency for purposes of chapters 17A, 21, 22, 28E, 68B, 91B, 97B, 509A, and 669.

2. The income and property of the authority shall be exempt from all state and local taxes, and the sale of lottery tickets and shares issued and sold by the authority and its retail licensees shall be exempt from all state and local sales taxes.

2003 Acts, ch 178, §66, 121; 2003 Acts, ch 179, §142  
Transition from Iowa lottery division to Iowa lottery authority; initial board and chief executive; transfer of personnel; assumption of assets and obligations; appropriations; budget; 2003 Acts, ch 178, §120  
NEW section

#### 99G.5 Chief executive officer.

The chief executive officer of the authority shall be appointed by the governor subject to confirmation by the senate and shall serve a four-year term of office beginning and ending as provided in section 69.19. The chief executive officer shall be qualified by training and experience to manage a lottery. The governor may remove the chief executive officer for malfeasance in office, or for any cause that renders the chief executive officer ineligible, incapable, or unfit to discharge the duties of the office. Compensation and employment terms of the chief executive officer shall be set by the governor, taking into consideration the officer’s level of education and experience, as well as the success of the lottery. The chief executive officer shall be an employee of the authority and shall direct the day-to-day operations and management of the authority and be vested with such powers and duties

as specified by the board and by law.

2003 Acts, ch 178, §67, 121; 2003 Acts, ch 179, §142  
Confirmation, see §2.32  
Iowa lottery commissioner to serve as initial chief executive; initial term of office; 2003 Acts, ch 178, §120  
NEW section

#### 99G.6 Power to administer oaths and take testimony — subpoena.

The chief executive officer or the chief executive officer’s designee if authorized to conduct an inquiry, investigation, or hearing under this chapter may administer oaths and take testimony under oath relative to the matter of inquiry, investigation, or hearing. At a hearing ordered by the chief executive officer, the chief executive officer or the designee may subpoena witnesses and require the production of records, paper, or documents pertinent to the hearing.

2003 Acts, ch 178, §68, 121; 2003 Acts, ch 179, §142  
NEW section

#### 99G.7 Duties of the chief executive officer.

1. The chief executive officer of the authority shall direct and supervise all administrative and technical activities in accordance with the provisions of this chapter and with the administrative rules, policies, and procedures adopted by the board. The chief executive officer shall do all of the following:

a. Facilitate the initiation and supervise and administer the operation of the lottery games.

b. Employ an executive vice president, who shall act as chief executive officer in the absence of the chief executive officer, and employ and direct other such personnel as deemed necessary.

c. Contract with and compensate such persons and firms as deemed necessary for the operation of the lottery.

d. Promote or provide for promotion of the lottery and any functions related to the authority.

e. Prepare a budget for the approval of the board.

f. Require bond from such retailers and vendors in such amounts as required by the board.

g. Report semiannually to the legislative government oversight committees regarding the operations of the authority.

h. Report quarterly and annually to the board, the governor, the auditor of state, and the general assembly a full and complete statement of lottery revenues and expenses for the preceding quarter, and with respect to the annual report, for the preceding year, and transfer proceeds to the general fund within thirty days following the end of the quarter.

i. Perform other duties generally associated with a chief executive officer of an authority of an entrepreneurial nature.

2. The chief executive officer shall conduct an ongoing study of the operation and administration of lottery laws similar to this chapter in other states or countries, of available literature on the

subject, of federal laws and regulations which may affect the operation of the lottery and of the reaction of citizens of this state to existing or proposed features of lottery games with a view toward implementing improvements that will tend to serve the purposes of this chapter.

3. The chief executive officer may for good cause suspend, revoke, or refuse to renew any contract entered into in accordance with the provisions of this chapter or the administrative rules, policies, and procedures of the board.

4. The chief executive officer or the chief executive officer's designee may conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations or to determine the qualifications of or compliance by vendors and retailers.

2003 Acts, ch 178, §69, 121; 2003 Acts, ch 179, §142  
NEW section

#### **99G.8 Board of directors.**

1. The authority shall be administered by a board of directors comprised of five members appointed by the governor subject to confirmation by the senate. Board members appointed when the senate is not in session shall serve only until the end of the next regular session of the general assembly, unless confirmed by the senate.

2. Board members shall serve staggered terms of four years beginning and ending as provided in section 69.19. No more than three board members shall be from the same political party.

3. Board members may be removed by the governor for neglect of duty, misfeasance, or nonfeasance in office.

4. No officer or employee of the authority shall be a member of the board.

5. Board members shall be residents of the state of Iowa, shall be prominent persons in their respective businesses or professions, and shall not have been convicted of any felony offense. Of the members appointed, the governor shall appoint to the board an attorney admitted to the practice of law in Iowa, an accountant, a person who is or has been a law enforcement officer, and a person having expertise in marketing.

6. A majority of members in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the authority.

7. Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of a majority of present and voting board members.

8. No vacancy in the membership of the board shall impair the right of the members to exercise all the powers and perform all the duties of the board.

9. Board members shall be considered to hold public office and shall give bond as such as required in chapter 64.

10. Board members shall be entitled to receive

a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of their official duties as members. No person who serves as a member of the board shall by reason of such membership be eligible for membership in the Iowa public employees' retirement system and service on the board shall not be eligible for service credit for any public retirement system.

11. The board shall meet at least quarterly and at such other times upon call of the chairperson or the president. Notice of the time and place of each board meeting shall be given to each member. The board shall also meet upon call of three or more of the board members. The board shall keep accurate and complete records of all its meetings.

12. Meetings of the board shall be governed by the provisions of chapter 21.

13. Board members shall not have any direct or indirect interest in an undertaking that puts their personal interest in conflict with that of the authority including but not limited to an interest in a major procurement contract or a participating retailer.

14. The members shall elect from their membership a chairperson and vice chairperson.

15. The board of directors may delegate to the chief executive officer of the authority such powers and duties as it may deem proper to the extent such delegation is not inconsistent with the Constitution of this state.

2003 Acts, ch 178, §70, 121; 2003 Acts, ch 179, §142

Confirmation, see §2.32

Iowa lottery board members to serve as initial board of directors of authority throughout remainder of members' Iowa lottery board terms; 2003 Acts, ch 178, §120  
NEW section

#### **99G.9 Board duties.**

The board shall provide the chief executive officer with private-sector perspectives of a large marketing enterprise. The board shall do all of the following:

1. Approve, disapprove, amend, or modify the budget recommended by the chief executive officer for the operation of the authority.

2. Approve, disapprove, amend, or modify the terms of major lottery procurements recommended by the chief executive officer.

3. Adopt policies and procedures and promulgate administrative rules pursuant to chapter 17A relating to the management and operation of the authority. The administrative rules promulgated pursuant to this subsection may include but shall not be limited to the following:

a. The type of games to be conducted.

b. The sale price of tickets or shares and the manner of sale, including but not limited to authorization of sale of tickets or shares at a discount for marketing purposes; provided, however, that a retailer may accept payment by cash, check, money order, debit card, or electronic funds transfer and

shall not extend or arrange credit for the purchase of a ticket or share. As used in this section, “cash” means United States currency.

c. The number and amount of prizes, including but not limited to prizes of free tickets or shares in lottery games conducted by the authority and merchandise prizes. The authority shall maintain and make available for public inspection at its offices during regular business hours a detailed listing of the estimated number of prizes of each particular denomination that are expected to be awarded in any game that is on sale or the estimated odds of winning the prizes and, after the end of the claim period, shall maintain and make available a listing of the total number of tickets or shares sold in a game and the number of prizes of each denomination that were awarded.

d. The method and location of selecting or validating winning tickets or shares.

e. The manner and time of payment of prizes, which may include lump-sum payments or installments over a period of years.

f. The manner of payment of prizes to the holders of winning tickets or shares after performing validation procedures appropriate to the game and as specified by the board.

g. The frequency of games and drawings or selection of winning tickets or shares.

h. The means of conducting drawings, provided that drawings shall be open to the public and witnessed by an independent certified public accountant. Equipment used to select winning tickets or shares or participants for prizes shall be examined by an independent certified public accountant prior to and after each drawing.

i. The manner and amount of compensation to lottery retailers.

j. Any and all other matters necessary, desirable, or convenient toward ensuring the efficient and effective operation of lottery games, the continued entertainment and convenience of the public, and the integrity of the lottery.

4. Adopt game specific rules. The promulgation of game specific rules shall not be subject to the requirements of chapter 17A. However, game specific rules shall be made available to the public prior to the time the games go on sale and shall be kept on file at the office of the authority.

5. Perform such other functions as specified by this chapter.

2003 Acts, ch 178, §71, 121; 2003 Acts, ch 179, §108, 142  
NEW section

#### **99G.10 Authority personnel.**

1. All employees of the authority shall be considered public employees.

2. Subject to the approval of the board, the chief executive officer shall have the sole power to designate particular employees as key personnel, but may take advice from the department of administrative services in making any such designations. All key personnel shall be exempt from the

merit system described in chapter 8A, subchapter IV. The chief executive officer and the board shall have the sole power to employ, classify, and fix the compensation of key personnel. All other employees shall be employed, classified, and compensated in accordance with chapter 8A, subchapter IV, and chapter 20.

3. The chief executive officer and the board shall have the exclusive power to determine the number of full-time equivalent positions, as defined in chapter 8, necessary to carry out the provisions of this chapter.

4. The chief executive officer shall have the sole responsibility to assign duties to all authority employees.

5. The authority may establish incentive programs for authority employees.

6. An employee of the authority shall not have a financial interest in any vendor doing business or proposing to do business with the authority. However, an employee may own shares of a mutual fund which may hold shares of a vendor corporation provided the employee does not have the ability to influence the investment functions of the mutual fund.

7. An employee of the authority with decision-making authority shall not participate in any decision involving a retailer with whom the employee has a financial interest.

8. A background investigation shall be conducted by the department of public safety, division of criminal investigation, on each applicant who has reached the final selection process prior to employment by the authority. For positions not designated as sensitive by the board, the investigation may consist of a state criminal history background check, work history, and financial review. The board shall identify those sensitive positions of the authority which require full background investigations, which positions shall include, at a minimum, any officer of the authority, and any employee with operational management responsibilities, security duties, or system maintenance or programming responsibilities related to the authority's data processing or network hardware, software, communication, or related systems. In addition to a work history and financial review, a full background investigation may include a national criminal history record check through the federal bureau of investigation. The screening of employees through the federal bureau of investigation shall be conducted by submission of fingerprints through the state criminal history record repository to the federal bureau of investigation. The results of background investigations conducted pursuant to this section shall not be considered public records under chapter 22.

9. A person who has been convicted of a felony or bookmaking or other form of illegal gambling or of a crime involving moral turpitude shall not be employed by the authority.

10. The authority shall bond authority em-

employees with access to authority funds or lottery revenue in such an amount as provided by the board and may bond other employees as deemed necessary.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §72, 121; 2003 Acts, ch 179, §60, 84, 142

NEW section

Terminology change applied

#### 99G.11 Conflicts of interest.

1. A member of the board, any officer, or other employee of the authority shall not directly or indirectly, individually, as a member of a partnership or other association, or as a shareholder, director, or officer of a corporation have an interest in a business that contracts for the operation or marketing of the lottery as authorized by this chapter, unless the business is controlled or operated by a consortium of lotteries in which the authority has an interest.

2. Notwithstanding the provisions of chapter 68B, a person contracting or seeking to contract with the state to supply gaming equipment or materials for use in the operation of the lottery, an applicant for a license to sell tickets or shares in the lottery, or a retailer shall not offer a member of the board, any officer, or other employee of the authority, or a member of their immediate family a gift, gratuity, or other thing having a value of more than the limits established in chapter 68B, other than food and beverage consumed at a meal. For purposes of this subsection, “*member of their immediate family*” means a spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or step-parent of the board member, the officer, or other employee who resides in the same household in the same principal residence of the board member, officer, or other employee.

3. If a board member, officer, or other employee of the authority violates a provision of this section, the board member, officer, or employee shall be immediately removed from the office or position.

4. Enforcement of this section against a board member, officer, or other employee shall be by the attorney general who upon finding a violation shall initiate an action to remove the board member, officer, or employee.

5. A violation of this section is a serious misdemeanor.

2003 Acts, ch 178, §73, 121; 2003 Acts, ch 179, §142

NEW section

#### 99G.12 through 99G.20 Reserved.

#### 99G.21 Authority powers, transfer of assets, liabilities, and obligations.

1. Funds of the state shall not be used or obligated to pay the expenses or prizes of the authority.

2. The authority shall have any and all powers necessary or convenient to carry out and effectuate

the purposes and provisions of this chapter which are not in conflict with the Constitution of this state, including, but without limiting the generality of the foregoing, the following powers:

a. To sue and be sued and to complain and defend in all courts.

b. To adopt and alter a seal.

c. To procure or to provide insurance.

d. To hold copyrights, trademarks, and service marks and enforce its rights with respect thereto.

e. To initiate, supervise, and administer the operation of the lottery in accordance with the provisions of this chapter and administrative rules, policies, and procedures adopted pursuant thereto.

f. To enter into written agreements with one or more other states or territories of the United States, or one or more political subdivisions of another state or territory of the United States, or any entity lawfully operating a lottery outside the United States for the operation, marketing, and promotion of a joint lottery or joint lottery game. For the purposes of this subsection, any lottery with which the authority reaches an agreement or compact shall meet the criteria for security, integrity, and finance set by the board.

g. To conduct such market research as is necessary or appropriate, which may include an analysis of the demographic characteristics of the players of each lottery game, and an analysis of advertising, promotion, public relations, incentives, and other aspects of communication.

h. Subject to the provisions of subsection 3, to acquire or lease real property and make improvements thereon and acquire by lease or by purchase, personal property, including but not limited to computers; mechanical, electronic, and on-line equipment and terminals; and intangible property, including but not limited to computer programs, systems, and software.

i. Subject to the provisions of subsection 3, to enter into contracts to incur debt in its own name and enter into financing agreements with the state, agencies or instrumentalities of the state, or with any commercial bank or credit provider.

j. To select and contract with vendors and retailers.

k. To enter into contracts or agreements with state or local law enforcement agencies for the performance of law enforcement, background investigations, and security checks.

l. To enter into contracts of any and all types on such terms and conditions as the authority may determine necessary.

m. To establish and maintain banking relationships, including but not limited to establishment of checking and savings accounts and lines of credit.

n. To advertise and promote the lottery and lottery games.

o. To act as a retailer, to conduct promotions

which involve the dispensing of lottery tickets or shares, and to establish and operate a sales facility to sell lottery tickets or shares and any related merchandise.

*p.* Notwithstanding any other provision of law to the contrary, to purchase meals for attendees at authority business meetings.

*q.* To exercise all powers generally exercised by private businesses engaged in entrepreneurial pursuits, unless the exercise of such a power would violate the terms of this chapter or of the Constitution of this state.

3. Notwithstanding any other provision of law, any purchase of real property and any borrowing of more than one million dollars by the authority shall require written notice from the authority to the legislative government oversight committees and the prior approval of the executive council.

4. The powers enumerated in this section are cumulative of and in addition to those enumerated elsewhere in this chapter and no such powers limit or restrict any other powers of the authority.

5. Departments, boards, commissions, or other agencies of this state shall provide reasonable assistance and services to the authority upon the request of the chief executive officer.

2003 Acts, ch 178, §74, 121; 2003 Acts, ch 179, §142  
NEW section

#### **99G.22 Vendor background review.**

1. The authority shall investigate the financial responsibility, security, and integrity of any lottery system vendor who is a finalist in submitting a bid, proposal, or offer as part of a major procurement contract. Before a major procurement contract is awarded, the division of criminal investigation of the department of public safety shall conduct a background investigation of the vendor to whom the contract is to be awarded. The chief executive officer and board shall consult with the division of criminal investigation and shall provide for the scope of the background investigation and due diligence to be conducted in connection with major procurement contracts. At the time of submitting a bid, proposal, or offer to the authority on a major procurement contract, the authority shall require that each vendor submit to the division of criminal investigation appropriate investigation authorization to facilitate this investigation, together with an advance of funds to meet the anticipated investigation costs. If the division of criminal investigation determines that additional funds are required to complete an investigation, the vendor will be so advised. The background investigation by the division of criminal investigation may include a national criminal history check through the federal bureau of investigation. The screening of vendors or their employees through the federal bureau of investigation shall be conducted by submission of fingerprints through the state criminal history repository to the federal bu-

reau of investigation.

2. If at least twenty-five percent of the cost of a vendor's contract is subcontracted, the vendor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a vendor.

3. A major procurement contract shall not be entered into with any lottery system vendor who has not complied with the disclosure requirements described in this section, and any contract with such a vendor is voidable at the option of the authority. Any contract with a vendor that does not comply with the requirements for periodically updating such disclosures during the tenure of the contract as may be specified in such contract may be terminated by the authority. The provisions of this section shall be construed broadly and liberally to achieve the ends of full disclosure of all information necessary to allow for a full and complete evaluation by the authority of the competence, integrity, background, and character of vendors for major procurements.

4. A major procurement contract shall not be entered into with any vendor who has been found guilty of a felony related to the security or integrity of the lottery in this or any other jurisdiction.

5. A major procurement contract shall not be entered into with any vendor if such vendor has an ownership interest in an entity that had supplied consultation services under contract to the authority regarding the request for proposals pertaining to those particular goods or services.

6. If, based on the results of a background investigation, the board determines that the best interests of the authority, including but not limited to the authority's reputation for integrity, would be served thereby, the board may disqualify a potential vendor from contracting with the authority for a major procurement contract or from acting as a subcontractor in connection with a contract for a major procurement contract.

2003 Acts, ch 178, §75, 121; 2003 Acts, ch 179, §61, 142  
NEW section

#### **99G.23 Vendor bonding, tax filing, and competitive bidding.**

1. The authority may purchase, lease, or lease-purchase such goods or services as are necessary for effectuating the purposes of this chapter. The authority may make procurements that integrate functions such as lottery game design, lottery ticket distribution to retailers, supply of goods and services, and advertising. In all procurement decisions, the authority shall take into account the particularly sensitive nature of the lottery and shall act to promote and ensure security, honesty, fairness, and integrity in the operation and administration of the lottery and the objectives of raising net proceeds for state programs.

2. Each vendor shall, at the execution of the contract with the authority, post a performance bond or letter of credit from a bank or credit pro-

vider acceptable to the authority in an amount as deemed necessary by the authority for that particular bid or contract.

3. Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state.

4. All major procurement contracts must be competitively bid pursuant to policies and procedures approved by the board unless there is only one qualified vendor and that vendor has an exclusive right to offer the service or product.

2003 Acts, ch 178, §76, 121; 2003 Acts, ch 179, §142  
NEW section

#### **99G.24 Retailer compensation — licensing.**

1. The general assembly recognizes that to conduct a successful lottery, the authority must develop and maintain a statewide network of lottery retailers that will serve the public convenience and promote the sale of tickets or shares and the playing of lottery games while ensuring the integrity of the lottery operations, games, and activities.

2. The board shall determine the compensation to be paid to licensed retailers. Compensation may include provision for variable payments based on sales volume or incentive considerations.

3. The authority shall issue a license certificate to each person with whom it contracts as a retailer for purposes of display as provided in this section. Every lottery retailer shall post its license certificate, or a facsimile thereof, and keep it conspicuously displayed in a location on the premises accessible to the public. No license shall be assignable or transferable. Once issued, a license shall remain in effect until canceled, suspended, or terminated by the authority.

4. A licensee shall cooperate with the authority by using point-of-purchase materials, posters, and other marketing material when requested to do so by the authority. Lack of cooperation is sufficient cause for revocation of a retailer's license.

5. The board shall develop a list of objective criteria upon which the qualification of lottery retailers shall be based. Separate criteria shall be developed to govern the selection of retailers of instant tickets and on-line retailers. In developing these criteria, the board shall consider such factors as the applicant's financial responsibility, security of the applicant's place of business or activity, accessibility to the public, integrity, and reputation. The criteria shall include but not be limited to the volume of expected sales and the sufficiency of existing licensees to serve the public convenience.

6. The applicant shall be current in filing all applicable tax returns to the state of Iowa and in payment of all taxes, interest, and penalties owed to the state of Iowa, excluding items under formal appeal pursuant to applicable statutes. The de-

partment of revenue is authorized and directed to provide this information to the authority.

7. A person, partnership, unincorporated association, authority, or other business entity shall not be selected as a lottery retailer if the person or entity meets any of the following conditions:

a. Has been convicted of a criminal offense related to the security or integrity of the lottery in this or any other jurisdiction.

b. Has been convicted of any illegal gambling activity, false statements, perjury, fraud, or a felony in this or any other jurisdiction.

c. Has been found to have violated the provisions of this chapter or any regulation, policy, or procedure of the authority or of the lottery division unless either ten years have passed since the violation or the board finds the violation both minor and unintentional in nature.

d. Is a vendor or any employee or agent of any vendor doing business with the authority.

e. Resides in the same household as an officer of the authority.

f. Is less than eighteen years of age.

g. Does not demonstrate financial responsibility sufficient to adequately meet the requirements of the proposed enterprise.

h. Has not demonstrated that the applicant is the true owner of the business proposed to be licensed and that all persons holding at least a ten percent ownership interest in the applicant's business have been disclosed.

i. Has knowingly made a false statement of material fact to the authority.

8. Persons applying to become lottery retailers may be charged a uniform application fee for each lottery outlet.

9. Any lottery retailer contract executed pursuant to this section may, for good cause, be suspended, revoked, or terminated by the chief executive officer or the chief executive officer's designee if the retailer is found to have violated any provision of this chapter or objective criteria established by the board. Cause for suspension, revocation, or termination may include, but is not limited to, sale of tickets or shares to a person under the age of twenty-one and failure to pay for lottery products in a timely manner.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §77, 121; 2003 Acts, ch 179, §142

NEW section

Terminology change applied

#### **99G.25 License not assignable.**

Any lottery retailer license certificate or contract shall not be transferable or assignable. The authority may issue a temporary license when deemed in the best interests of the state. A lottery retailer shall not contract with any person for lottery goods or services, except with the approval of the board.

2003 Acts, ch 178, §78, 121; 2003 Acts, ch 179, §142

NEW section

**99G.26 Retailer bonding.**

The authority may require any retailer to post an appropriate bond, as determined by the authority, using a cash bond or an insurance company acceptable to the authority.

2003 Acts, ch 178, §79, 121; 2003 Acts, ch 179, §142  
NEW section

**99G.27 Lottery retail licenses — cancellation, suspension, revocation, or termination.**

1. A lottery retail license issued by the authority pursuant to this chapter may be canceled, suspended, revoked, or terminated by the authority for reasons including, but not limited to, any of the following:

- a. A violation of this chapter, a regulation, or a policy or procedure of the authority.
- b. Failure to accurately or timely account or pay for lottery products, lottery games, revenues, or prizes as required by the authority.
- c. Commission of any fraud, deceit, or misrepresentation.
- d. Insufficient sales.
- e. Conduct prejudicial to public confidence in the lottery.
- f. The retailer filing for or being placed in bankruptcy or receivership.
- g. Any material change as determined in the sole discretion of the authority in any matter considered by the authority in executing the contract with the retailer.
- h. Failure to meet any of the objective criteria established by the authority pursuant to this chapter.
- i. Other conduct likely to result in injury to the property, revenue, or reputation of the authority.

2. A lottery retailer license may be temporarily suspended by the authority without prior notice if the chief executive officer or designee determines that further sales by the licensed retailer are likely to result in immediate injury to the property, revenue, or reputation of the authority.

3. The board shall adopt administrative rules governing appeals of lottery retailer licensing disputes.

2003 Acts, ch 178, §80, 121; 2003 Acts, ch 179, §142  
NEW section

**99G.28 Proceeds held in trust.**

All proceeds from the sale of the lottery tickets or shares shall constitute a trust fund until paid to the authority directly, through electronic funds transfer to the authority, or through the authority's authorized collection representative. A lottery retailer and officers of a lottery retailer's business shall have a fiduciary duty to preserve and account for lottery proceeds and lottery retailers shall be personally liable for all proceeds. Proceeds shall include unsold products received but not paid for by a lottery retailer and cash proceeds of the sale of any lottery products net of allowable

sales commissions and credit for lottery prizes paid to winners by lottery retailers. Sales proceeds of pull-tab tickets shall include the sales price of the lottery product net of allowable sales commission and prizes contained in the product. Sales proceeds and unused instant tickets shall be delivered to the authority or its authorized collection representative upon demand.

2003 Acts, ch 178, §81, 121; 2003 Acts, ch 179, §142  
NEW section

**99G.29 Retailer rental calculations — lottery ticket sales treatment.**

If a lottery retailer's rental payments for the business premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales and such computation of retail sales is not explicitly defined to include sales of tickets or shares in a state-operated or state-managed lottery, only the compensation received by the lottery retailer from the authority may be considered the amount of the lottery retail sale for purposes of computing the rental payment.

2003 Acts, ch 178, §82, 121; 2003 Acts, ch 179, §142  
NEW section

**99G.30 Ticket sales requirements — penalties.**

1. Lottery tickets or shares may be distributed by the authority for promotional purposes.

2. A ticket or share shall not be sold at a price other than that fixed by the authority and a sale shall not be made other than by a retailer or an employee of the retailer who is authorized by the retailer to sell tickets or shares. A person who violates a provision of this subsection is guilty of a simple misdemeanor.

3. A ticket or share shall not be sold to a person who has not reached the age of twenty-one. Any person who knowingly sells a lottery ticket or share to a person under the age of twenty-one shall be guilty of a simple misdemeanor. It shall be an affirmative defense to a charge of a violation under this section that the retailer reasonably and in good faith relied upon presentation of proof of age in making the sale. A prize won by a person who has not reached the age of twenty-one but who purchases a winning ticket or share in violation of this subsection shall be forfeited. This section does not prohibit the lawful purchase of a ticket or share for the purpose of making a gift to a person who has not reached the age of twenty-one. The board shall adopt administrative rules governing the payment of prizes to persons who have not reached the age of twenty-one.

4. Except for the authority, a retailer shall only sell lottery products on the licensed premises and not through the mail or by technological means except as the authority may provide or authorize.

5. The retailer may accept payment by cash, check, money order, debit card, or electronic funds transfer. The retailer shall not extend or arrange credit for the purchase of a ticket or share. As used

in this subsection, “cash” means United States currency.

6. Nothing in this chapter shall be construed to prohibit the authority from designating certain of its agents and employees to sell or give lottery tickets or shares directly to the public.

7. No elected official’s name shall be printed on tickets.

2003 Acts, ch 178, §83, 121; 2003 Acts, ch 179, §142  
NEW section

### 99G.31 Prizes.

1. The chief executive officer shall award the designated prize to the ticket or shareholder upon presentation of the winning ticket or confirmation of a winning share. The prize shall be given to only one person; however, a prize shall be divided between holders of winning tickets if there is more than one winning ticket.

2. The authority shall adopt administrative rules, policies, and procedures to establish a system of verifying the validity of tickets or shares claimed to win prizes and to effect payment of such prizes, subject to the following requirements:

*a.* The prize shall be given to the person who presents a winning ticket. A prize may be given to only one person per winning ticket. However, a prize shall be divided between holders of winning tickets if there is more than one winning ticket. Payment of a prize may be made to the estate of a deceased prize winner or to another person pursuant to an appropriate judicial order issued by an Iowa court of competent jurisdiction.

*b.* A prize shall not be paid arising from claimed tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received, or not recorded by the authority within applicable deadlines; lacking in captions that conform and agree with the play symbols as appropriate to the particular lottery game involved; or not in compliance with such additional specific administrative rules, policies, and public or confidential validation and security tests of the authority appropriate to the particular lottery game involved.

*c.* No particular prize in any lottery game shall be paid more than once, and in the event of a determination that more than one claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them of an equal share in the prize.

*d.* Unclaimed prize money for the prize on a winning ticket or share shall be retained for a period deemed appropriate by the chief executive officer, subject to approval by the board. If a valid claim is not made for the money within the applicable period, the unclaimed prize money shall be added to the pool from which future prizes are to be awarded or used for special prize promotions. Notwithstanding this subsection, the disposition

of unclaimed prize money from multijurisdictional games shall be made in accordance with the rules of the multijurisdictional game.

*e.* No prize shall be paid upon a ticket or share purchased or sold in violation of this chapter. Any such prize shall constitute an unclaimed prize for purposes of this section.

*f.* The authority is discharged of all liability upon payment of a prize pursuant to this section.

*g.* No ticket or share issued by the authority shall be purchased by and no prize shall be paid to any member of the board of directors; any officer or employee of the authority; or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of any such person.

*h.* No ticket or share issued by the authority shall be purchased by and no prize shall be paid to any officer, employee, agent, or subcontractor of any vendor or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of any such person if such officer, employee, agent, or subcontractor has access to confidential information which may compromise the integrity of the lottery.

*i.* The proceeds of any lottery prize shall be subject to state and federal income tax laws. An amount deducted from the prize for payment of a state tax, pursuant to section 422.16, subsection 1, shall be transferred by the authority to the department of revenue on behalf of the prize winner.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §84, 121; 2003 Acts, ch 179, §142

NEW section  
Terminology change applied

### 99G.32 Authority legal representation.

The authority shall retain the services of legal counsel to advise the authority and the board and to provide representation in legal proceedings. The authority may retain the attorney general or a full-time assistant attorney general in that capacity and provide reimbursement for the cost of advising and representing the board and the authority.

2003 Acts, ch 178, §85, 121; 2003 Acts, ch 179, §142  
NEW section

### 99G.33 Law enforcement investigations.

The department of public safety, division of criminal investigation, shall be the primary state agency responsible for investigating criminal violations under this chapter. The chief executive officer shall contract with the department of public safety for investigative services, including the employment of special agents and support personnel, and procurement of necessary equipment to carry out the responsibilities of the division of criminal investigation under the terms of the agreement and this chapter.

2003 Acts, ch 178, §86, 121; 2003 Acts, ch 179, §142  
NEW section

**99G.34 Open records — exceptions.**

The records of the authority shall be governed by the provisions of chapter 22, provided that, in addition to records that may be kept confidential pursuant to section 22.7, the following records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

1. Marketing plans, research data, and proprietary intellectual property owned or held by the authority under contractual agreements.
2. Personnel, vendor, and player social security or tax identification numbers.
3. Computer system hardware, software, functional and system specifications, and game play data files.
4. Security records pertaining to investigations and intelligence-sharing information between lottery security officers and those of other lotteries and law enforcement agencies, the security portions or segments of lottery requests for proposals, proposals by vendors to conduct lottery operations, and records of the security division of the authority pertaining to game security data, ticket validation tests, and processes.
5. Player name and address lists, provided that the names and addresses of prize winners shall not be withheld.
6. Operational security measures, systems, or procedures and building plans.
7. Security reports and other information concerning bids or other contractual data, the disclosure of which would impair the efforts of the authority to contract for goods or services on favorable terms.
8. Information that is otherwise confidential obtained pursuant to investigations.

2003 Acts, ch 178, §87, 121; 2003 Acts, ch 179, §142  
NEW section

**99G.35 Security.**

1. The authority's chief security officer and investigators shall be qualified by training and experience in law enforcement to perform their respective duties in support of the activities of the security office. The chief security officer and investigators shall not have sworn peace officer status. The lottery security office shall perform all of the following activities in support of the authority mission:

- a. Supervise ticket or share validation and lottery drawings, provided that the authority may enter into cooperative agreements with multijurisdictional lottery administrators for shared security services at drawings and game show events involving more than one participating lottery.
- b. Inspect at times determined solely by the authority the facilities of any vendor or lottery retailer in order to determine the integrity of the vendor's product or the operations of the retailer

in order to determine whether the vendor or the retailer is in compliance with its contract.

c. Report any suspected violations of this chapter to the appropriate county attorney or the attorney general and to any law enforcement agencies having jurisdiction over the violation.

d. Upon request, provide assistance to any county attorney, the attorney general, the department of public safety, or any other law enforcement agency.

e. Upon request, provide assistance to retailers in meeting their licensing contract requirements and in detecting retailer employee theft.

f. Monitor authority operations for compliance with internal security requirements.

g. Provide physical security at the authority's central operations facilities.

h. Conduct on-press product production surveillance, testing, and quality approval for printed scratch and pull-tab tickets.

i. Coordinate employee and retailer background investigations conducted by the department of public safety, division of criminal investigation.

2. The authority may enter into intelligence-sharing, reciprocal use, or restricted use agreements with the federal government, law enforcement agencies, lottery regulation agencies, and gaming enforcement agencies of other jurisdictions which provide for and regulate the use of information provided and received pursuant to the agreement.

3. Records, documents, and information in the possession of the authority received pursuant to an intelligence-sharing, reciprocal use, or restricted use agreement entered into by the authority with a federal department or agency, any law enforcement agency, or the lottery regulation or gaming enforcement agency of any jurisdiction shall be considered investigative records of a law enforcement agency and are not subject to chapter 22 and shall not be released under any condition without the permission of the person or agency providing the record or information.

2003 Acts, ch 178, §88, 121; 2003 Acts, ch 179, §142  
NEW section

**99G.36 Forgery — fraud — penalties.**

1. A person who, with intent to defraud, falsely makes, alters, forges, utters, passes, redeems, or counterfeits a lottery ticket or share or attempts to falsely make, alter, forge, utter, pass, redeem, or counterfeit a lottery ticket or share, or commits theft or attempts to commit theft of a lottery ticket or share, is guilty of a class "D" felony.

2. Any person who influences or attempts to influence the winning of a prize through the use of coercion, fraud, deception, or tampering with lottery equipment or materials shall be guilty of a class "D" felony.

3. No person shall knowingly or intentionally make a material false statement in any application for a license or proposal to conduct lottery activities or make a material false entry in any book or record which is compiled or maintained or submitted to the board pursuant to the provisions of this chapter. Any person who violates the provisions of this section shall be guilty of a class “D” felony.

2003 Acts, ch 178, §89, 121; 2003 Acts, ch 179, §142  
NEW section

### 99G.37 Competitive bidding.

1. The authority shall enter into a major procurement contract pursuant to competitive bidding. The requirement for competitive bidding does not apply in the case of a single vendor having exclusive rights to offer a particular service or product. The board shall adopt procedures for competitive bidding. Procedures adopted by the board shall be designed to allow the selection of proposals that provide the greatest long-term benefit to the state, the greatest integrity for the authority, and the best service and products for the public.

2. In any bidding process, the authority may administer its own bidding and procurement or may utilize the services of the department of administrative services or other state agency.

2003 Acts, ch 178, §90, 121; 2003 Acts, ch 179, §62, 84, 142  
NEW section

### 99G.38 Authority finance — self-sustaining.

1. The authority may borrow, or accept and expend, in accordance with the provisions of this chapter, such moneys as may be received from any source, including income from the authority’s operations, for effectuating its business purposes, including the payment of the initial expenses of initiation, administration, and operation of the authority and the lottery.

2. The authority shall be self-sustaining and self-funded. Moneys in the general fund of the state shall not be used or obligated to pay the expenses of the authority or prizes of the lottery, and no claim for the payment of an expense of the lottery or prizes of the lottery may be made against any moneys other than moneys credited to the authority operating account.

3. The state of Iowa offset program, as provided in section 8A.504, shall be available to the authority to facilitate receipt of funds owed to the authority.

2003 Acts, ch 178, §91, 121; 2003 Acts, ch 179, §63, 84, 142  
NEW section

### 99G.39 Allocation, appropriation, transfer, and reporting of funds.

1. Upon receipt of any revenue, the chief

executive officer shall deposit the moneys in the lottery fund created pursuant to section 99G.40. At least fifty percent of the projected annual revenue accruing from the sale of tickets or shares shall be allocated for payment of prizes to the holders of winning tickets. After the payment of prizes, the following shall be deducted from the authority’s revenue prior to disbursement:

a. An amount equal to three-tenths of one percent of the gross lottery revenue for the year shall be deposited in a gambling treatment fund in the office of the treasurer of state.

b. The expenses of conducting the lottery. Expenses for advertising production and media purchases shall not exceed four percent of the authority’s gross revenue for the year.

2. The director of management shall not include lottery revenues in the director’s fiscal year revenue estimates.

3. a. Notwithstanding subsection 1, if gaming revenues under sections 99D.17 and 99F.11 are insufficient in a fiscal year to meet the total amount of such revenues directed to be deposited in the vision Iowa fund and the school infrastructure fund during the fiscal year pursuant to section 8.57, subsection 5, paragraph “e”, the difference shall be paid from lottery revenues prior to deposit of the lottery revenues in the general fund. If lottery revenues are insufficient during the fiscal year to pay the difference, the remaining difference shall be paid from lottery revenues in subsequent fiscal years as such revenues become available.

b. The treasurer of state shall, each quarter, prepare an estimate of the gaming revenues and lottery revenues that will become available during the remainder of the appropriate fiscal year for the purposes described in paragraph “a”. The department of management and the department of revenue shall take appropriate actions to provide that the amount of gaming revenues and lottery revenues that will be available during the remainder of the appropriate fiscal year is sufficient to cover any anticipated deficiencies.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §92, 121; 2003 Acts, ch 179, §142

NEW section  
Terminology change applied

### 99G.40 Audits and reports — lottery fund.

1. To ensure the financial integrity of the lottery, the authority shall do all of the following:

a. Submit quarterly and annual reports to the governor, state auditor, and the general assembly disclosing the total lottery revenues, prize disbursements, and other expenses of the authority during the reporting period. The fourth quarter report shall be included in the annual report made pursuant to this section. The annual report shall include a complete statement of lottery revenues, prize disbursements, and other expenses, and recommendations for changes in the law that the

chief executive officer deems necessary or desirable. The annual report shall be submitted within one hundred twenty days after the close of the fiscal year. The chief executive officer shall report immediately to the governor, the treasurer of state, and the general assembly any matters that require immediate changes in the law in order to prevent abuses or evasions of this chapter or rules adopted or to rectify undesirable conditions in connection with the administration or operation of the lottery.

b. Maintain weekly or more frequent records of lottery transactions, including the distribution of tickets or shares to retailers, revenues received, claims for prizes, prizes paid, prizes forfeited, and other financial transactions of the authority.

c. The authority shall deposit in the lottery fund created in subsection 2 any moneys received by retailers from the sale of tickets or shares less the amount of any compensation due the retailers. The chief executive officer may require licensees to file with the authority reports of receipts and transactions in the sale of tickets or shares. The reports shall be in the form and contain the information the chief executive officer requires.

2. A lottery fund is created in the office of the treasurer of state and shall exist as the recipient fund for authority receipts. The fund consists of all revenues received from the sale of lottery tickets or shares and all other moneys lawfully credited or transferred to the fund. The chief executive officer shall certify quarterly that portion of the fund that has been transferred to the general fund of the state under this chapter and shall cause that portion to be transferred to the general fund of the state. However, upon the request of the chief executive officer and subject to the approval by the treasurer of state, an amount sufficient to cover the foreseeable administrative expenses of the lottery for a period of twenty-one days may be retained from the lottery fund. Prior to the quarterly transfer to the general fund of the state, the chief executive officer may direct that lottery revenue shall be deposited in the lottery fund and in interest-bearing accounts designated by the treasurer of state. Interest or earnings paid on the deposits or investments is considered lottery revenue and shall be transferred to the general fund of the state in the same manner as other lottery revenue.

3. The chief executive officer shall certify before the last day of the month following each quarter that portion of the lottery fund resulting from the previous quarter's sales to be transferred to the general fund of the state.

4. For informational purposes only, the chief executive officer shall submit to the department of management by October 1 of each year a proposed operating budget for the authority for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the net proceeds to be deposited into the general fund during the

succeeding fiscal year. This budget shall be on forms prescribed by the department of management.

5. The authority shall adopt the same fiscal year as that used by state government and shall be audited annually by the auditor of state or a certified public accounting firm appointed by the auditor. The auditor of state or a designee conducting an audit under this chapter shall have access and authority to examine any and all records of licensees necessary to determine compliance with this chapter and the rules adopted pursuant to this chapter. The cost of audits and examinations conducted by the auditor of state or a designee shall be paid for by the authority.

2003 Acts, ch 178, §93, 121; 2003 Acts, ch 179, §109, 142  
NEW section

#### **99G.41 Prize offsets — garnishments.**

1. Any claimant agency may submit to the authority a list of the names of all persons indebted to such claimant agency or to persons on whose behalf the claimant agency is acting. The full amount of the debt shall be collectable from any lottery winnings due the debtor without regard to limitations on the amounts that may be collectable in increments through garnishment or other proceedings. Such list shall constitute a valid lien upon and claim of lien against the lottery winnings of any debtor named in such list. The list shall contain the names of the debtors, their social security numbers if available, and any other information that assists the authority in identifying the debtors named in the list.

2. The authority is authorized and directed to withhold any winnings paid out directly by the authority subject to the lien created by this section and send notice to the winner. However, if the winner appears and claims winnings in person, the authority shall notify the winner at that time by hand delivery of such action. The authority shall pay the funds over to the agency administering the offset program.

3. Notwithstanding the provisions of section 99G.34 which prohibit disclosure by the authority of certain portions of the contents of prize winner records or information, and notwithstanding any other confidentiality statute, the authority may provide to a claimant agency all information necessary to accomplish and effectuate the intent of this section.

4. The information obtained by a claimant agency from the authority in accordance with this section shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices. Any employee or prior employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized disclosure of confidential information by an agent or em-

ployee of the authority.

5. Except as otherwise provided in this chapter, attachments, garnishments, or executions authorized and issued pursuant to law shall be withheld if timely served upon the authority.

6. The provisions of this section shall only apply to prizes paid directly by the authority and shall not apply to any retailers authorized by the board to pay prizes of up to six hundred dollars after deducting the price of the ticket or share.

2003 Acts, ch 178, §94, 121; 2003 Acts, ch 179, §142  
NEW section

#### **99G.42 Compulsive gamblers — treatment program information.**

The authority shall cooperate with the gambling treatment program administered by the Iowa department of public health to incorporate information regarding the gambling treatment program and its toll-free telephone number in printed materials distributed by the authority.

2003 Acts, ch 178, §95, 121; 2003 Acts, ch 179, §142  
NEW section

## CHAPTER 100

### STATE FIRE MARSHAL

#### **100.1 Fire marshal.**

The chief officer of the division of fire protection in the department of public safety shall be known as the state fire marshal.

The fire marshal's duties shall be as follows:

1. To enforce all laws of the state relating to the suppression of arson, and to apprehend those persons suspected of arson;
2. To investigate into the cause, origin and circumstances of fires;
3. To promote fire safety and reduction of loss by fire through educational methods;
4. To enforce all laws, and the rules and regulations of the Iowa department of public safety, concerned with:
  - a. The prevention of fires;
  - b. The storage, transportation, handling, and use of flammable liquids, combustibles, and explosives;
  - c. The storage, transportation, handling and use of liquid petroleum gas;
  - d. The electric wiring and heating, and adequate means of exit in case of fire, from churches, schools, hotels, theaters, amphitheaters, asylums, hospitals, health care facilities as defined in section 135C.1, college buildings, lodge halls, public meeting places, and all other structures in which persons congregate from time to time, whether publicly or privately owned;
5. To promulgate fire safety rules. The state fire marshal shall have exclusive right to promulgate fire safety rules as they apply to enforcement or inspection requirements by the state fire marshal, but the rules shall be promulgated only after

public hearing. Wherever by any statute the fire marshal or the department of public safety is authorized or required to promulgate, proclaim, or amend rules and minimum standards regarding fire hazards or fire safety or protection in any establishment, building or structure, the rules and standards shall promote and enforce fire safety, fire protection and the elimination of fire hazards as the rules may relate to the use, occupancy and construction of the buildings, establishments or structures. The word "*construction*" shall include, but is not limited to, electrical wiring, plumbing, heating, lighting, ventilation, construction materials, entrances and exits, and all other physical conditions of the building which may affect fire hazards, safety or protection. The rules and minimum standards shall be in substantial compliance except as otherwise specifically provided in this chapter, with the standards of the national fire protection association relating to fire safety as published in the national fire codes.

6. To adopt rules designating a fee to be assessed to each building, structure, or facility for which a fire safety inspection or plan review by the state fire marshal is required by law. The fee designated by rule shall be set in an amount that is reasonably related to the costs of conducting the applicable inspection or plan review. The fees collected by the state fire marshal shall be deposited in the general fund of the state.

2003 Acts, ch 165, §17; 2003 Acts, ch 166, §1  
See Code editor's note to §2.9  
Subsection 6 amended

## CHAPTER 100B

### STATE FIRE SERVICE AND EMERGENCY RESPONSE COUNCIL

#### **100B.8 Employees.**

Employees of the fire service institute at Iowa state university on July 1, 2000, may elect to

transfer to the department of public safety in a position and at a pay range commensurate with their duties as determined by the department of

administrative services,\* the department of public safety, and the employee's certified collective bargaining representative.

2003 Acts, ch 145, §286

\*The department of administrative services became the successor agency to the department of personnel effective July 1, 2003; 2003 Acts, ch 145, §286

Terminology change applied

### 100B.9 Facilities and equipment.

The building known as the fire service institute at Iowa state university, the land upon which the building is located, and parking space associated with the building shall, until July 1, 2010, be leased by Iowa state university to the department of public safety at a cost not to exceed the actual cost of heating, lighting, and maintaining the building and parking space. All equipment owned by Iowa state university and used exclusively to conduct fire service training, classes, or business shall transfer on July 1, 2000, to the department of public safety unless such transfer is prohibited or restricted by law or agreement. This equipment includes, but is not limited to, breathing apparatus, fire suppression gear, mobile equipment, office furniture, computers, copying machines, library, file cabinets, and training records.

The department of public safety and the state board of regents shall enter into a written agreement pursuant to chapter 28E regarding payment of debt obligations incurred by the state board of regents on behalf of the Iowa cooperative extension service for agriculture and home economics for the lease-purchase of a mobile burn unit which is to be used by the department of public safety for fire fighter training. The written agreement shall also provide for storage of any of the equipment covered in this section at a facility owned by Iowa state university for as long as the lease for the building, land, and associated parking is in effect.

2003 Acts, ch 174, §16

Unnumbered paragraph 1 amended

### 100B.11 Volunteer emergency services provider death benefit — eligibility.

1. There is appropriated annually from the general fund of the state to the department of administrative services an amount sufficient to pay death benefit claims under this section. The director of the department of administrative services shall issue warrants for payment of death benefit claims approved for payment by the department of public safety under subsection 2.

2. *a.* If the department of public safety determines, upon the receipt of evidence and proof from the fire chief or supervising officer, that the death of a volunteer emergency services provider was the direct and proximate result of a traumatic personal injury incurred in the line of duty as a volunteer, a line of duty death benefit in an amount of

one hundred thousand dollars shall be paid in a lump sum to the volunteer emergency services provider's beneficiary. A line of duty death benefit payable under this subsection shall be in addition to any other death benefit payable to the volunteer emergency services provider.

*b.* A line of duty death benefit shall not be payable under this subsection if any of the following applies:

(1) The death resulted from stress, strain, occupational illness, or a chronic, progressive, or congenital illness, including, but not limited to, a disease of the heart, lungs, or respiratory system, unless a traumatic personal injury was a substantial contributing factor to the volunteer emergency services provider's death.

(2) The death was caused by the intentional misconduct of the volunteer emergency services provider or by such provider's intent to cause the provider's own death.

(3) The volunteer emergency services provider was voluntarily intoxicated at the time of death.

(4) The volunteer emergency services provider was performing the provider's duties in a grossly negligent manner at the time of death.

(5) A beneficiary who would otherwise be entitled to a benefit under this subsection was, through the beneficiary's actions, a substantial contributing factor to the volunteer emergency services provider's death.

3. For purposes of this section, "*volunteer emergency services provider*" means a volunteer fire fighter as defined in section 85.61, a volunteer emergency medical care provider or volunteer emergency rescue technician defined in section 147A.1 who is not covered as a volunteer emergency services provider under chapter 97A, 97B, or 411, or a reserve peace officer as defined in section 80D.1A.

2003 Acts, ch 145, §286

Terminology change applied

### 100B.12 Paul Ryan memorial fire fighter safety training fund.

A Paul Ryan memorial fire fighter safety training fund is created in the state treasury under the control of the department of public safety. The fund shall consist of fees transferred by the treasurer of state from the sale of special fire fighter license plates pursuant to section 321.34, subsection 10. Moneys in the fund shall be used exclusively by the fire service training bureau to offset fire fighter training costs. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund of the state at the end of the fiscal year, but shall remain available for expenditure by the fire service training bureau for fire fighter training in future fiscal years.

2003 Acts, ch 105, §1

NEW section

## CHAPTER 103A

### STATE BUILDING CODE

#### 103A.6 Merit system.

Employees of the commissioner, if required by federal statutes, are covered by the merit system provisions of chapter 8A, subchapter IV.

2003 Acts, ch 145, §184  
Section amended

#### 103A.25 Prior resolutions.

A resolution accepting the state building code as provided in section 103A.7, which was adopted before July 1, 1989, is an ordinance for the purpose of this chapter.

2003 Acts, ch 108, §33  
Section amended

## CHAPTER 123

### ALCOHOLIC BEVERAGE CONTROL

#### 123.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Administrator*” means the administrator of the division, appointed pursuant to the provisions of this chapter, or the administrator’s designee.

2. “*Air common carrier*” means a person engaged in transporting passengers for hire in interstate or foreign commerce by aircraft and operating regularly scheduled flights under a certificate of public convenience issued by the civil aeronautics board.

3. “*Alcohol*” means the product of distillation of any fermented liquor rectified one or more times, whatever may be the origin thereof, and includes synthetic ethyl alcohol.

4. “*Alcoholic beverage*” means any beverage containing more than one-half of one percent of alcohol by volume including alcoholic liquor, wine, and beer.

5. “*Alcoholic liquor*” or “*intoxicating liquor*” means the varieties of liquor defined in subsections 3 and 33 which contain more than five percent of alcohol by weight, beverages made as described in subsection 7 which beverages contain more than five percent of alcohol by weight but which are not wine as defined in subsection 37, and every other liquid or solid, patented or not, containing spirits and every beverage obtained by the process described in subsection 37 containing more than seventeen percent alcohol by weight, and susceptible of being consumed by a human being, for beverage purposes. Alcohol manufactured in this state for use as fuel pursuant to an experimental distilled spirits plant permit or its equivalent issued by the federal bureau of alcohol, tobacco and firearms is not an “*alcoholic liquor*”.

6. “*Application*” means a formal written request for the issuance of a permit or license supported by a verified statement of facts.

7. “*Beer*” means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt,

and hops, with or without unmalted grains or degerminated and degerminated grains or made by the fermentation of or by distillation of the fermented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than five percent of alcohol by weight but not including mixed drinks or cocktails mixed on the premises.

8. “*Brewer*” means any person who manufactures beer for the purpose of sale, barter, exchange, or transportation.

8A. “*Broker*” means a person who represents or promotes alcoholic liquor within the state on behalf of the holder of a distiller’s certificate of compliance through an agreement with the distiller, and whose name is disclosed on a distiller’s current certificate of compliance as its representative in the state. An employee of the holder of a distiller’s certificate of compliance is not a broker.

9. “*City*” means a municipal corporation but not including a county, township, school district, or any special purpose district or authority.

10. “*Club*” means any nonprofit corporation or association of individuals, which is the owner, lessee, or occupant of a permanent building or part thereof, membership in which entails the prepayment of regular dues and is not operated for a profit other than such profits as would accrue to the entire membership.

11. “*Commercial establishment*” means a place of business which is at all times equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and the licensed premises of which conform to the standards and specifications of the division.

12. “*Commission*” means the alcoholic beverages commission established by this chapter.

12A. “*Designated security employee*” means an agent or employee of a licensee or permittee who is primarily employed for security purposes at a commercial establishment licensed or permitted under this chapter.

13. “*Distillery*”, “*winery*”, and “*brewery*” mean not only the premises where alcohol or spirits are distilled, wine is fermented, or beer is brewed, but in addition mean a person owning, representing, or in charge of such premises and the operations conducted there, including the blending and bottling or other handling and preparation of alcoholic liquor, wine, or beer in any form.

14. “*Division*” means the alcoholic beverages division of the department of commerce established by this chapter.

15. “*Hotel*” or “*motel*” means premises licensed by the department of inspections and appeals and regularly or seasonally kept open in a bona fide manner for the lodging of transient guests, and with twenty or more sleeping rooms.

16. “*Import*” means the transporting or ordering or arranging the transportation of alcoholic liquor, wine, or beer into this state whether by a resident of this state or not.

17. “*Importer*” means the person who transports or orders, authorizes, or arranges the transportation of alcoholic liquor, wine, or beer into this state whether the person is a resident of this state or not.

18. The terms “*in accordance with the provisions of this chapter*”, “*pursuant to the provisions of this title*”, or similar terms shall include all rules and regulations of the division adopted to aid in the administration or enforcement of those provisions.

19. “*Legal age*” means twenty-one years of age or more.

20. “*Licensed premises*” or “*premises*” means all rooms, enclosures, contiguous areas, or places susceptible of precise description satisfactory to the administrator where alcoholic beverages, wine, or beer is sold or consumed under authority of a liquor control license, wine permit, or beer permit. A single licensed premises may consist of multiple rooms, enclosures, areas or places if they are wholly within the confines of a single building or contiguous grounds.

21. “*Local authority*” means the city council of any incorporated city in this state, or the county board of supervisors of any county in this state, which is empowered by this chapter to approve or deny applications for retail beer or wine permits and liquor control licenses; empowered to recommend that such permits or licenses be granted and issued by the division; and empowered to take other actions reserved to them by this chapter.

22. “*Manufacture*” means to distill, rectify, ferment, brew, make, mix, concoct, or process any substance capable of producing a beverage containing more than one-half of one percent of alcohol by volume and includes blending, bottling, or the preparation for sale.

22A. “*Native wine*” means wine manufactured in this state.

23. “*Package*” means any container or receptacle used for holding alcoholic liquor.

24. “*Permit*” or “*license*” means an express written authorization issued by the division for the manufacture or sale, or both, of alcoholic liquor, wine, or beer.

25. “*Person*” means any individual, association, partnership, corporation, club, hotel or motel, or municipal corporation owning or operating a bona fide airport, marina, park, coliseum, auditorium, or recreational facility in or at which the sale of alcoholic liquor, wine, or beer is only an incidental part of the ownership or operation.

26. “*Person of good moral character*” means any person who meets all of the following requirements:

a. The person has such financial standing and good reputation as will satisfy the administrator that the person will comply with this chapter and all laws, ordinances, and regulations applicable to the person’s operations under this chapter. However, the administrator shall not require the person to post a bond to meet the requirements of this paragraph.

b. The person is not prohibited by section 123.40 from obtaining a liquor control license or a wine or beer permit.

c. Notwithstanding paragraph “e”, the applicant is a citizen of the United States and a resident of this state, or licensed to do business in this state in the case of a corporation. Notwithstanding paragraph “e”, in the case of a partnership, only one general partner need be a resident of this state.

d. The person has not been convicted of a felony. However, if the person’s conviction of a felony occurred more than five years before the date of the application for a license or permit, and if the person’s rights of citizenship have been restored by the governor, the administrator may determine that the person is of good moral character notwithstanding such conviction.

e. The requirements of this subsection apply to the following:

(1) Each of the officers, directors, and partners of such person.

(2) A person who directly or indirectly owns or controls ten percent or more of any class of stock of such person.

(3) A person who directly or indirectly has an interest of ten percent or more in the ownership or profits of such person.

27. “*Public place*” means any place, building, or conveyance to which the public has or is permitted access.

28. “*Residence*” means the place where a person resides, permanently or temporarily.

29. “*Retail beer permit*” means a class “B” or class “C” beer permit issued under the provisions of this chapter.

30. “*Retail wine permit*” means a class “B” wine permit, class “B” native wine permit, or class “C” native wine permit issued under this chapter.

31. “*Retailer*” means any person who shall sell,

barter, exchange, offer for sale, or have in possession with intent to sell any alcoholic liquor, wine, or beer for consumption either on or off the premises where sold.

32. The prohibited “*sale*” of alcoholic liquor, wine, or beer under this chapter includes soliciting for sales, taking orders for sales, keeping or exposing for sale, delivery or other trafficking for a valuable consideration promised or obtained, and procuring or allowing procurement for any other person.

33. “*Spirits*” means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, but not limited to, brandy, rum, whisky, and gin.

34. “*Unincorporated town*” means a compactly populated area recognized as a distinct place with a distinct place-name which is not itself incorporated or within the corporate limits of a city.

35. “*Warehouse*” means any premises or place primarily constructed or used or provided with facilities for the storage in transit or other temporary storage of perishable goods or for the conduct of normal warehousing business.

36. “*Wholesaler*” means any person, other than a vintner, brewer or bottler of beer or wine, who shall sell, barter, exchange, offer for sale, have in possession with intent to sell, deal or traffic in alcoholic liquor, wine, or beer. A wholesaler shall not sell for consumption upon the premises.

37. “*Wine*” means any beverage containing more than five percent but not more than seventeen percent of alcohol by weight obtained by the fermentation of the natural sugar contents of fruits or other agricultural products but excluding any product containing alcohol derived from malt or by the distillation process from grain, cereal, molasses or cactus.

2003 Acts, ch 143, §1, 2, 17  
NEW subsection 22A  
Subsection 30 amended

### 123.20 Powers.

The administrator, in executing divisional functions, shall have the following duties and powers:

1. To receive alcoholic liquors on a bailment system for resale by the division in the manner set forth in this chapter.

2. To rent, lease, or equip any building or any land necessary to carry out the provisions of this chapter.

3. To lease all plants and lease or buy equipment necessary to carry out the provisions of this chapter.

4. To appoint clerks, agents, or other employees required for carrying out the provisions of this chapter; to dismiss employees for cause; to assign employees to bureaus as created by the administrator within the division; and to designate their title, duties, and powers. All employees of the division are subject to chapter 8A, subchapter

IV, unless exempt under section 8A.412.

5. To grant and issue beer permits, special permits, liquor control licenses, and other licenses; and to suspend or revoke all such permits and licenses for cause under this chapter.

6. To license, inspect, and control the manufacture of beer, wine, and alcoholic liquors and regulate the entire beer, wine, and liquor industry in the state.

7. To accept intoxicating liquors ordered delivered to the alcoholic beverages division pursuant to chapter 809A, and offer for sale and deliver the intoxicating liquors to class “E” liquor control licenses, unless the administrator determines that the intoxicating liquors may be adulterated or contaminated. If the administrator determines that the intoxicating liquors may be adulterated or contaminated, the administrator shall order their destruction.

2003 Acts, ch 145, §185  
Subsection 4 amended

### 123.32 Action by local authorities and division on applications for liquor control licenses and wine and beer permits.

1. *Filing of application.* An application for a class “A”, class “B”, class “C”, or class “E” liquor control license, for a retail beer permit as provided in sections 123.128 and 123.129, or for a class “B”, class “B” native, or class “C” native retail wine permit as provided in section 123.178, 123.178A, or 123.178B, accompanied by the necessary fee and bond, if required, shall be filed with the appropriate city council if the premises for which the license or permit is sought are located within the corporate limits of a city, or with the board of supervisors if the premises for which the license or permit is sought are located outside the corporate limits of a city. An application for a class “D” liquor control license and for a class “A” beer or class “A” wine permit, accompanied by the necessary fee and bond, if required, shall be filed with the division, which shall proceed in the same manner as in the case of an application approved by local authorities.

2. *Action by local authorities.* The local authority shall either approve or disapprove the issuance of a liquor control license, retail wine permit, or retail beer permit, shall endorse its approval or disapproval on the application and shall forward the application with the necessary fee and bond, if required, to the division. There is no limit upon the number of liquor control licenses, retail wine permits, or retail beer permits which may be approved for issuance by local authorities.

3. *Licensed premises for local events.* A local authority may define, by motion of the local authority, licensed premises which shall be used by holders of liquor control licenses, beer permits, and wine permits at festivals, fairs, or celebrations which are sponsored or authorized by the local authority. The licensed premises defined by

motion of the local authority shall be used by the holders of five-day or fourteen-day liquor control licenses, or five-day or fourteen-day beer permits only.

4. *Security employee training.* A local authority, as a condition of obtaining a license or permit for on-premises consumption, may require a designated security employee as defined in section 123.3 to be trained and certified in security methods. The training shall include but is not limited to mediation techniques, civil rights or unfair practices awareness as provided in section 216.7, and providing instruction on the proper physical restraint methods used against a person who has become combative.

5. *Action by administrator.*

a. Upon receipt of an application having been disapproved by the local authority, the administrator shall notify the applicant that the applicant may appeal the disapproval of the application to the administrator. The applicant shall be notified by certified mail, and the application, the fee, and any bond shall be returned to the applicant.

b. Upon receipt of an application having been approved by the local authority, the division shall make an investigation as the administrator deems necessary to determine that the applicant complies with all requirements for holding a license or permit, and may require the applicant to appear to be examined under oath to demonstrate that the applicant complies with all of the requirements to hold a license or permit. If the administrator requires the applicant to appear and to testify under oath, a record shall be made of all testimony or evidence and the record shall become a part of the application. The administrator may appoint a member of the division or may request an administrative law judge of the department of inspections and appeals to receive the testimony under oath and evidence, and to issue a proposed decision to approve or disapprove the application for a license or permit. The administrator may affirm, reverse, or modify the proposed decision to approve or disapprove the application for the license or permit. If the application is approved by the administrator, the license or permit shall be issued. If the application is disapproved by the administrator, the applicant and the appropriate local authority shall be so notified by certified mail.

6. *Appeal to administrator.* An applicant for a liquor control license, wine permit, or beer permit may appeal from the local authority's disapproval of an application for a license or permit to the administrator. In the appeal the applicant shall be allowed the opportunity to demonstrate in an evidentiary hearing conducted pursuant to chapter 17A that the applicant complies with all of the requirements for holding the license or permit. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and ap-

peals to conduct the evidentiary hearing and to render a proposed decision to approve or disapprove the issuance of the license or permit. The administrator may affirm, reverse, or modify the proposed decision. If the administrator determines that the applicant complies with all of the requirements for holding a license or permit, the administrator shall order the issuance of the license or permit. If the administrator determines that the applicant does not comply with the requirements for holding a license or permit, the administrator shall disapprove the issuance of the license or permit.

7. *Judicial review.* The applicant or the local authority may seek judicial review of the action of the administrator in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A, petitions for judicial review may be filed in the district court of the county where the premises covered by the application are situated.

8. *Suspension by local authority.* A liquor control licensee or a wine or beer permittee whose license or permit has been suspended or revoked or a civil penalty imposed by a local authority for a violation of this chapter or suspended by a local authority for violation of a local ordinance may appeal the suspension, revocation, or civil penalty to the administrator. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to hear the appeal which shall be conducted in accordance with chapter 17A and to issue a proposed decision. The administrator may review the proposed decision upon the motion of a party to the appeal or upon the administrator's own motion in accordance with chapter 17A. Upon review of the proposed decision, the administrator may affirm, reverse, or modify the proposed decision. A liquor control licensee, wine or beer permittee, or a local authority aggrieved by a decision of the administrator may seek judicial review of the decision pursuant to chapter 17A.

2003 Acts, ch 44, §114; 2003 Acts, ch 143, §3, 17

Code chapter reference added

Subsection 1 amended

#### **123.49 Miscellaneous prohibitions.**

1. A person shall not sell, dispense, or give to an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.

a. A person other than a person required to hold a license or permit under this chapter who dispenses or gives an alcoholic beverage, wine, or beer in violation of this subsection is not civilly liable to an injured person or the estate of a person for injuries inflicted on that person as a result of intoxication by the consumer of the alcoholic beverage, wine, or beer.

b. The general assembly declares that this subsection shall be interpreted so that the holding

of *Clark v. Mincks*, 364 N.W.2d. 226 (Iowa 1985) is abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages, wine, or beer rather than the serving of alcoholic beverages, wine, or beer as the proximate cause of injury inflicted upon another by an intoxicated person.

2. A person or club holding a liquor control license or retail wine or beer permit under this chapter, and the person's or club's agents or employees, shall not do any of the following:

*a.* Knowingly permit any gambling, except in accordance with chapter 99B, 99D, 99F, or 99G, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.

*b.* Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense alcoholic liquor or beer between the hours of eight a.m. on Sunday and two a.m. on the following Monday.

*c.* Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members nor to sales by a hotel or motel to bona fide registered guests.

*d.* Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the division, and except mixed drinks or cocktails mixed on the premises for immediate consumption. This prohibition does not apply to common carriers holding a class "D" liquor control license.

*e.* Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been so reused or adulterated.

*f.* Employ a person under eighteen years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.

*g.* Allow any person other than the licensee, permittee, or employees of the licensee or permittee, to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as permitted in section 123.95. This paragraph does not apply to the lodging quarters of a class "B" liquor control licensee or wine or beer permittee, or to common carriers holding a class "D" liquor control license.

*h.* Sell, give, or otherwise supply any alcoholic

beverage, wine, or beer to any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, or permit any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, to consume any alcoholic beverage, wine, or beer.

*i.* In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, or any other beverage in or about the permittee's place of business.

*j.* Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.

*k.* Sell or dispense any wine on the premises covered by the permit or permit the consumption on the premises between the hours of two a.m. and six a.m. on a weekday, and between the hours of two a.m. on Sunday and six a.m. on the following Monday, however, a holder of a wine permit authorized to sell wine on Sunday may sell or dispense wine between the hours of eight a.m. on Sunday and two a.m. on the following Monday.

3. A person under legal age shall not misrepresent the person's age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee. If any person under legal age misrepresents the person's age, and the licensee or permittee establishes that the licensee or permittee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee or permittee is not guilty of selling alcoholic liquor, wine, or beer to a person under legal age.

4. No privilege of selling alcoholic liquor, wine, or beer on Sunday as provided in sections 123.36, subsection 6, and 123.134, subsection 5, shall be granted to a club or other organization which places restrictions on admission or membership in the club or organization on the basis of sex, race, religion, or national origin. However, the privilege may be granted to a club or organization which places restrictions on membership on the basis of sex, if the club or organization has an auxiliary organization open to persons of the other sex.

2003 Acts, ch 178, §108, 121; 2003 Acts, ch 179, §142

Civil liability for dispensing or sale and service to intoxicated persons; see §123.92

For scheduled fines applicable to violations of subsection 2, paragraph h, see §805.8C, subsection 2

Subsection 2, paragraph a amended

### **123.53 Beer and liquor control fund — allocations to substance abuse — use of civil penalties.**

1. There shall be established within the office of the treasurer of state a fund to be known as the beer and liquor control fund. The fund shall consist of any moneys appropriated by the general assembly for deposit in the fund and moneys received from the sale of alcoholic liquors by the divi-

sion, from the issuance of permits and licenses, and of moneys and receipts received by the division from any other source.

2. The director of the department of administrative services shall periodically transfer from the beer and liquor control fund to the general fund of the state those revenues of the division which are not necessary for the purchase of liquor for resale by the division, or for remittances to local authorities or other sources as required by this chapter, or for other obligations and expenses of the division which are paid from such fund.

All moneys received by the division from the issuance of vintner's certificates of compliance and wine permits shall be transferred by the director of the department of administrative services to the general fund of the state.

3. The treasurer of state shall transfer into a special revenue account in the general fund of the state, a sum of money at least equal to seven percent of the gross amount of sales made by the division from the beer and liquor control fund on a monthly basis but not less than nine million dollars annually, and any amounts so transferred shall be used by the substance abuse division of the Iowa department of public health for substance abuse treatment and prevention programs in an amount determined by the general assembly and any amounts received in excess of the amounts appropriated to the substance abuse division of the Iowa department of public health shall be considered part of the general fund balance.

4. The treasurer of state, after making the transfer provided for in subsection 3, shall transfer to the division from the beer and liquor control fund and before any other transfer to the general fund, an amount sufficient to pay the costs incurred by the division for collecting and properly disposing of the liquor containers.

5. Civil penalties imposed and collected by the division shall be credited to the general fund of the state. The moneys from the civil penalties shall be used by the division, subject to appropriation by the general assembly, for the purposes of providing educational programs, information and publications for alcoholic beverage licensees and permittees, local authorities, and law enforcement agencies regarding the laws and rules which govern the alcoholic beverages industry, and for promoting compliance with alcoholic beverage laws and rules.

2003 Acts, ch 145, §286  
Terminology change applied

### 123.56 Native wines.

1. Subject to rules of the division, manufacturers of native wines from grapes, cherries, other fruits or other fruit juices, vegetables, vegetable juices, dandelions, clover, honey, or any combination of these ingredients, holding a class "A" wine permit as required by this chapter, may sell, keep,

or offer for sale and deliver the wine. Sales may be made at retail for off-premises consumption when sold on the premises of the manufacturer, or in a retail establishment operated by the manufacturer. Sales may also be made to class "A" or retail wine permittees or liquor control licensees as authorized by the class "A" wine permit.

2. A manufacturer of native wines shall not sell the wines other than as permitted in this chapter and shall not allow wine sold to be consumed upon the premises of the manufacturer. However, prior to sale native wines may be sampled on the premises where made, when no charge is made for the sampling. A person may manufacture native wine for consumption on the manufacturer's premises, when the wine or any part of it is not manufactured for sale.

3. A manufacturer of native wines may ship wine in closed containers to individual purchasers inside and outside this state. The manufacturer shall label the package containing the wine with the words "deliver to adults only".

4. Notwithstanding section 123.179, subsection 1, a class "A" wine permit for a native wine manufacturer shall be issued and renewed annually upon payment of a fee of twenty-five dollars which shall be in lieu of any other license fee required by this chapter. The class "A" permit shall only allow the native wine manufacturer to sell, keep, or offer for sale and deliver the manufacturer's native wines as provided under this section.

5. Notwithstanding any other provision of this chapter, a person engaged in the business of manufacturing native wine may sell native wine at retail for consumption on the premises of the manufacturing facility by applying for a class "C" native wine permit as provided in section 123.178B. A manufacturer of native wine may be granted not more than one class "C" native wine permit.

6. For the purposes of this section, "manufacturer" includes only those persons who process in Iowa the fruit, vegetables, dandelions, clover, honey, or any combination of these ingredients, by fermentation into wines.

2003 Acts, ch 143, §4, 5, 17  
Subsection 1 amended  
NEW subsection 5 and former subsection 5 renumbered as 6

### 123.127 Class "A" and special class "A" application.

A class "A" permit shall be issued by the administrator to any person who:

1. Submits a written application for such permit, which application shall state under oath:
  - a. The name and place of residence of the applicant and the length of time the applicant has lived at such place of residence.
  - b. That the applicant is a citizen of the state of Iowa.
  - c. That the applicant is a person of good moral character as defined by this chapter.
  - d. The location of the premises where the ap-

applicant intends to operate.

e. The name of the owner of the premises and if such owner is not the applicant, that such applicant is the actual lessee of the premises.

2. Establishes:

a. That the applicant is a person of good moral character as defined by this chapter.

b. That the premises where the applicant intends to operate conform to all laws and health and fire regulations applicable thereto.

3. Furnishes a bond in the form prescribed and to be furnished by the division, with good and sufficient sureties to be approved by the administrator conditioned upon the faithful observance of this chapter, in the penal sum of five thousand dollars, payable to the state.

4. Gives consent to a person, pursuant to section 123.30, subsection 1, to enter upon the premises without a warrant during the business hours of the permittee to inspect for violations of the provisions of this chapter or ordinances and regulations that local authorities may adopt.

An applicant for a special class "A" permit shall comply with the requirements for a class "A" permit and shall also state on the application that the applicant holds or has applied for a class "C" liquor control license or class "B" beer permit.

2003 Acts, ch 143, §6, 17

Subsection 1, paragraph c stricken and rewritten

### 123.173 Wine permits — classes — authority.

1. Permits exclusively for the sale or manufacture and sale of wine shall be divided into four classes, and shall be known as class "A", "B", "B" native, or "C" native wine permits.

2. A class "A" wine permit allows the holder to manufacture and sell, or sell at wholesale, in this state, wine as defined in section 123.3, subsection 37. The holder of a class "A" wine permit may manufacture in this state wine having an alcoholic content greater than seventeen percent by weight for shipment outside this state. All class "A" premises shall be located within the state. A class "B" or class "B" native wine permit allows the holder to sell wine at retail for consumption off the premises. A class "B" or class "B" native wine permittee who also holds a class "E" liquor control license may sell wine to class "A", class "B", and class "C" liquor control licensees for resale for consumption on the premises. Such wine sales shall be in quantities of less than one case of any wine brand but not more than one such sale shall be made to the same liquor control licensee in a twenty-four-hour period. A class "B" or class "B" native wine permittee shall not sell wine to other class "B", or class "B" native wine permittees. A class "C" native wine permit allows the holder to sell wine for consumption on or off the premises.

3. A class "A" wine permittee shall be required to deliver wine to a retail wine permittee, and a retail wine permittee shall be required to accept de-

livery of wine from a class "A" wine permittee, only at the licensed premises of the retail wine permittee. Except as specifically permitted by the division upon good cause shown, delivery or transfer of wine from an unlicensed premises to a licensed retail wine permittee's premises, or from one licensed retail wine permittee's premises to another licensed retail wine permittee's premises, even if there is common ownership of all of the premises by one retail permittee, is prohibited. A class "B" or class "B" native wine permittee who also holds a class "E" liquor control license shall keep and maintain records for each sale of wine to liquor control licensees showing the name of the establishment to which wine was sold, the date of sale, and the brands and number of bottles sold to the liquor control licensee.

4. When a class "B" or class "B" native wine permittee who also holds a class "E" liquor control license sells wine to a class "A", class "B", or class "C" liquor control licensee, the liquor control licensee shall sign a report attesting to the purchase. The class "B" or class "B" native wine permittee who also holds a class "E" liquor control license shall submit to the division, on forms supplied by the division, not later than the tenth of each month a report stating each sale of wine to class "A", class "B", and class "C" liquor control licensees during the preceding month, the date of each sale, and the brands and numbers of bottles with each sale. A class "B" permittee who holds a class "E" liquor control license may sell to class "A", class "B", or class "C" liquor control licensees only if the licensed premises of the liquor control licensee is located within the geographic territory of the class "A" wine permittee from which the wine was originally purchased by the class "B" wine permittee.

2003 Acts, ch 143, §7, 17

Section amended and unnumbered paragraphs 1 – 4 editorially designated as subsections 1 – 4

### 123.174 Issuance of wine permits.

The administrator shall issue wine permits as provided in this chapter, and may suspend or revoke a wine permit for cause as provided in this chapter.

2003 Acts, ch 143, §8, 17

Section amended

### 123.175 Application contents.

Except as otherwise provided in this chapter, a class "A" or retail wine permit shall be issued to a person who complies with all of the following:

1. Submits a written application for the permit and states on the application under oath:

a. The name and place of residence of the applicant and the length of time the applicant has lived at the place of residence.

b. That the applicant is a citizen of the state of Iowa, or if a corporation, that the applicant is authorized to do business in Iowa.

c. That the applicant is a person of good moral

character as defined by this chapter.

d. The location of the premises where the applicant intends to use the permit.

e. The name of the owner of the premises, and if that owner is not the applicant, that the applicant is the actual lessee of the premises.

2. Establishes all of the following:

a. That the applicant meets the test of good moral character as provided in section 123.3, subsection 26.

b. That the premises where the applicant intends to use the permit conform to all applicable laws, health regulations, and fire regulations, and constitute a safe and proper place or building.

3. Submits, in the case of a class "A" wine permit, a bond in the amount of five thousand dollars in the form prescribed and furnished by the division with good and sufficient sureties to be approved by the division conditioned upon compliance with this chapter.

4. Consents to inspection as required in section 123.30, subsection 1.

2003 Acts, ch 143, §9, 17  
Section amended

**123.176 Class "B" application.** Repealed by 2003 Acts, ch 143, § 15, 17. See § 123.175.

**123.177 Authority under class "A" permit.**

1. A person holding a class "A" wine permit may manufacture and sell, or sell at wholesale, wine for consumption off the premises. Sales within the state may be made only to persons holding a class "A" or "B" wine permit and to persons holding a retail liquor control license. However, if the person holding the class "A" permit is a manufacturer of native wine, the person may sell only native wine to a person holding a retail wine permit or a retail liquor control license. A class "A" wine permittee having more than one place of business shall obtain a separate permit for each place of business where wine is to be stored, warehoused, or sold.

2. A class "A" wine permit holder may purchase and resell only those brands of wine which are manufactured, fermented, bottled, shipped, or imported by a person holding a certificate of compliance issued pursuant to section 123.180.

2003 Acts, ch 143, §10, 17  
Subsection 1 amended

**123.178A Authority under class "B" native permit.**

1. A person holding a class "B" native wine permit may sell native wine only at retail for consumption off the premises. Native wine shall be sold for consumption off the premises in original containers only.

2. A class "B" native wine permittee having more than one place of business where wine is sold shall obtain a separate permit for each place of business.

3. A person holding a class "B" native wine permit may purchase wine for resale only from a native winery holding a class "A" wine permit.

2003 Acts, ch 143, §11, 17  
NEW section

**123.178B Authority under class "C" native permit.**

1. A person holding a class "C" native wine permit may sell native wine only at retail for consumption on or off the premises.

2. A class "C" native wine permittee having more than one place of business where wine is sold and served shall obtain a separate permit for each place of business.

3. A person holding a class "C" native wine permit may purchase wine for resale only from a native winery holding a class "A" wine permit.

2003 Acts, ch 143, §12, 17  
NEW section

**123.179 Permit fees.**

1. The annual permit fee for a class "A" wine permit is seven hundred fifty dollars.

2. The annual permit fee for a class "B" wine permit is five hundred dollars.

3. The annual permit fee for a class "B" native wine permit is twenty-five dollars.

4. The annual permit fee for a class "C" native wine permit is twenty-five dollars.

2003 Acts, ch 143, §13, 17  
NEW subsections 3 and 4

**123.183 Wine gallonage tax and related funds.**

1. In addition to the annual permit fee to be paid by each class "A" wine permittee, a wine gallonage tax shall be levied and collected from each class "A" wine permittee on all wine manufactured for sale and sold in this state at wholesale and on all wine imported into this state for sale at wholesale and sold in this state at wholesale. The rate of the wine gallonage tax is one dollar and seventy-five cents for each wine gallon. The same rate shall apply for the fractional parts of a wine gallon. The wine gallonage tax shall not be levied or collected on wine sold by one class "A" wine permittee to another class "A" wine permittee.

2. a. Revenue collected from the wine gallonage tax on wine manufactured for sale and sold in this state shall be deposited in the wine gallonage tax fund as created in this section.

b. A wine gallonage tax fund is created in the office of the treasurer of state. Moneys deposited in the fund are appropriated to the department of economic development as provided in section 15E.117. Moneys in the fund are not subject to section 8.33.

3. The revenue collected from the wine gallonage tax on wine imported into this state for sale at wholesale and sold in this state at wholesale shall be deposited as follows:

a. The revenue collected during each fiscal

year from the wine gallonage tax on wine imported into this state at wholesale and sold in this state at wholesale that is in excess of the revenue collected from such tax during the previous fiscal year as provided in section 8.22A shall be deposited in the grape and wine development fund as created in section 175A.5. However, not more than seventy-five thousand dollars from such tax shall be deposited into the grape and wine development fund during any fiscal year.

b. The remaining revenue collected from the wine gallonage tax on wine imported into this state for sale at wholesale and sold in this state at wholesale shall be deposited in the beer and liquor control fund created in section 123.53.

2003 Acts, ch 143, §14, 17  
2003 amendment to subsection 3, paragraph a, applies retroactively to July 1, 2002; deposit of fiscal year 2002-2003 revenue in excess of fiscal year 2001-2002 revenue; 2003 Acts, ch 143, §17  
Subsection 3, paragraph a amended

### 123.187 Reciprocal shipment of wines.

1. *“Equal reciprocal shipping privilege”* means allowing wineries located in this state to ship into another state, wine, not for resale, but for con-

sumption or use by a person twenty-one years of age or older.

2. A winery licensed or permitted pursuant to laws regulating alcoholic beverages in a state which affords this state an equal reciprocal shipping privilege may ship into this state by private common carrier, to a person twenty-one years of age or older, not more than eighteen liters of wine per month, for consumption or use by the person. Such wine shall not be resold. Shipment of wine pursuant to this subsection is not subject to sales tax under section 422.43, use tax under section 423.2, or the wine gallonage tax under section 123.183, and does not require a refund value for beverage container control purposes under chapter 455C.

3. The holder of a class “A” or “B” wine permit in this state may ship out of this state by private common carrier, to a person twenty-one years of age or older, not more than eighteen liters of wine per month, for consumption or use by the person.

For future amendments to subsection 2 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §158, 205  
Section not amended; footnote added

## CHAPTER 124

### CONTROLLED SUBSTANCES

#### 124.204 Schedule I — substances included.

1. Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Opiates*. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- a. Acetylmethadol.
- b. Allylprodine.
- c. Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
- d. Alphameprodine.
- e. Alphamethadol.
- f. Alpha-Methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine).
- g. Benzethidine.
- h. Betacetylmethadol.
- i. Betameprodine.
- j. Betamethadol.
- k. Betaprodine.

- l. Clonitazene.
- m. Dextromoramide.
- n. Difenoxin.
- o. Diampromide.
- p. Diethylthiambutene.
- q. Dimenoxadol.
- r. Dimpheptanol.
- s. Dimethylthiambutene.
- t. Dioxaphetyl butyrate.
- u. Dipipanone.
- v. Ethylmethylthiambutene.
- w. Etonitazene.
- x. Etoxeridine.
- y. Furethidine.
- z. Hydroxypethidine.
- aa. Ketobemidone.
- ab. Levomoramide.
- ac. Levophenacymorphan.
- ad. Morpheridine.
- ae. Noracymethadol.
- af. Norlevorphanol.
- ag. Normethadone.
- ah. Norpipanone.
- ai. Phenadoxone.
- aj. Phenampromide.
- ak. Phenomorphan.
- al. Phenoperidine.
- am. Piritramide.
- an. Proheptazine.

- ao. Properidine.
- ap. Propiram.
- aq. Racemoramide.
- ar. Tilidine.
- as. Trimeperidine.
- at. Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
- au. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
- av. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
- aw. Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
- ax. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
- ay. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
- az. MPPP (1-methyl-4-phenyl-4-propionoxy-piperidine).
- ba. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide).
- bb. PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine).
- bc. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).
- 3. *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers and salts of isomers, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:
  - a. Acetorphine.
  - b. Acetyldihydrocodeine.
  - c. Benzylmorphine.
  - d. Codeine methylbromide.
  - e. Codeine-N-Oxide.
  - f. Cyrenorphine.
  - g. Desomorphine.
  - h. Dihydromorphine.
  - i. Etorphine (except hydrochloride salt).
  - j. Heroin.
  - k. Hydromorphinol.
  - l. Methyldesorphine.
  - m. Methyl-dihydromorphine.
  - n. Morphine methylbromide.
  - o. Morphine methylsulfonate.
  - p. Morphine-N-Oxide.
  - q. Myrophine.
  - r. Nicocodeine.
  - s. Nicomorphine.
  - t. Normorphine.
  - u. Pholcodine.
  - v. Thebacon.
  - w. Drotebanol.

4. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term “*isomer*” includes the optical, position and geometric isomers):

- a. 4-bromo-2,5-dimethoxy-amphetamine. Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA.
- b. 2,5-dimethoxyamphetamine. Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA.
- c. 4-methoxyamphetamine. Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA.
- d. 5-methoxy-3,4-methylenedioxy-amphetamine.
- e. 4-methyl-2,5-dimethoxy-amphetamine. Some trade or other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; “DOM”; and “STP”.
- f. 3,4-methylenedioxy amphetamine, also known as MDA.
- g. 3,4,5-trimethoxy amphetamine.
- h. Bufotenine. Some trade or other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.
- i. Diethyltryptamine. Some trade and other names: N, N-Diethyltryptamine; DET.
- j. Dimethyltryptamine. Some trade or other names: DMT.
- k. Ibogaine. Some trade or other names: 7-Ethyl-6,6B,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2)azepino (5,4-b) indole; Tabernanthe iboga.
- l. Lysergic acid diethylamide.
- m. Marijuana, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes.
- n. Mescaline.
- o. Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo (b,d) pyran; synhexyl.
- p. Peyote, except as otherwise provided in subsection 8. Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or extracts.

- q. N-ethyl-3-piperidyl benzilate.  
 r. N-methyl-3-piperidyl benzilate.  
 s. Psilocybin.  
 t. Psilocyn.  
 u. Tetrahydrocannabinols, except as otherwise provided by rules of the board of pharmacy examiners for medicinal purposes. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis* sp., and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
- (1) 1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States food and drug administration.
  - (2) 6 cis or trans tetrahydrocannabinol, and their optical isomers.
  - (3) 3,4 cis or trans tetrahydrocannabinol, and their optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- v. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
- w. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.
- x. Thiophene analog of phencyclidine. Some trade or other names: 1-(1-(2-thienyl)-cyclohexyl)-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.
- y. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. Some other names: TCPy.
- z. 3,4-methylenedioxyamphetamine (MDMA).
- aa. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA).
- ab. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA).
- ac. 2,5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.
- ad. Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl)indole; alpha-ET; and AET.
- ae. 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane;

alpha-desmethyl DOB; 2C-B, Nexus.

5. *Depressants*. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Mecloqualone.
- b. Methaqualone.
- c. Gamma-hydroxybutyric acid. Some trade or other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.

6. *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- a. Fenethylamine.
- b. N-ethylamphetamine.
- c. (+-)-cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).
- d. N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzenethanamine; N,N-alpha-trimethylphenethylamine).
- e. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.
- f. Aminorex. Some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine.
- g. Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propiofenone; alpha-(methylamino)propiofenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432.

7. *Exclusions*. This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the state board of pharmacy examiners.

8. *Peyote*. Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto.

9. *Other materials.* Any material, compound, mixture, or preparation which contains any quantity of the following substances:

*a.* N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers.

*b.* N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

2003 Acts, ch 53, §1 - 3  
Subsection 3, paragraph u stricken and rewritten  
Subsection 6, paragraph g amended  
Subsection 9, paragraph a amended

#### 124.206 Schedule II — substances included.

1. Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Substances, vegetable origin or chemical synthesis.* Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

*a.* Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

- (1) Raw opium.
- (2) Opium extracts.
- (3) Opium fluid extracts.
- (4) Powdered opium.
- (5) Granulated opium.
- (6) Tincture of opium.
- (7) Codeine.
- (8) Ethylmorphine.
- (9) Etorphine hydrochloride.
- (10) Hydrocodone, also known as dihydrocodeinone.
- (11) Hydromorphone, also known as dihydromorphanone.
- (12) Metopon.
- (13) Morphine.
- (14) Oxycodone.
- (15) Oxymorphone.
- (16) Thebaine.

*b.* Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph “a”, subparagraph (1), except that these substances shall not include the isoquinoline alkaloids of opium.

*c.* Opium poppy and poppy straw.

*d.* Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized

coca leaves or extractions which do not contain cocaine or ecgonine are excluded from this paragraph. The following substances and their salts, isomers, derivatives, and salts of isomers and derivatives, if salts, isomers, derivatives, or salts of isomers and derivatives exist under the specific chemical designation, are included in this paragraph:

- (1) Cocaine.
- (2) Ecgonine.

*e.* Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

3. *Opiates.* Unless specifically excepted or unless listed in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

- a.* Alphaprodine.
- b.* Alfentanil.
- c.* Anileridine.
- d.* Bezitramide.
- e.* Bulk dextropropoxyphene (nondosage forms).
- f.* Carfentanil.
- g.* Dihydrocodeine.
- h.* Diphenoxylate.
- i.* Fentanil.
- j.* Isomethadone.
- k.* Levomethorphan.
- l.* Levorphanol.
- m.* Metazocine.
- n.* Methadone.
- o.* Methadone – intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.
- p.* Moramide – intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.
- q.* Pethidine (meperidine).
- r.* Pethidine – intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- s.* Pethidine – intermediate-B, ethyl-4-phenylpiperidine-carboxylate.
- t.* Pethidine – intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- u.* Phenazocine.
- v.* Piminodine.
- w.* Racemethorphan.
- x.* Racemorphan.
- y.* Sufentanil.
- z.* Levo-alpha-acetylmethadol. Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM.
- aa.* Remifentanil.

4. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which con-

tains any quantity of the following substances having a stimulant effect on the central nervous system:

*a.* Amphetamine, its salts, optical isomers, and salts of its optical isomers.  
*b.* Methamphetamine, its salts, isomers, and salts of its isomers.

*c.* Phenmetrazine and its salts.

*d.* Methylphenidate and its salts.

5. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

*a.* Amobarbital.

*b.* Glutethimide.

*c.* Pentobarbital.

*d.* Phencyclidine.

*e.* Secobarbital.

6. *Immediate precursors.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

*a.* Immediate precursor to amphetamine and methamphetamine:

(1) Phenylacetone. Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

*b.* Immediate precursors to phencyclidine (PCP):

(1) 1-phenylcyclohexylamine.

(2) 1-piperidinocyclohexanecarbonitrile (PCC).

7. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

*a.* Marijuana when used for medicinal purposes pursuant to rules of the board of pharmacy examiners.

*b.* Nabilone [another name for nabilone: (+)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

8. The board of pharmacy examiners, by rule, may except any compound, mixture, or preparation containing any stimulant listed in subsection 4 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system, and if the admixtures are included in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depres-

sant effect on the central nervous system.

2003 Acts, ch 53, §4, 5

Subsection 2, paragraph d, unnumbered paragraph 1 amended

Subsection 4, paragraph a amended

### 124.208 Schedule III — substances included.

1. Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

*a.* Benzphetamine.

*b.* Chlorphentermine.

*c.* Clortermine.

*d.* Phendimetrazine.

3. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

*a.* Any compound, mixture or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedules.

*b.* Any suppository dosage form containing amobarbital, secobarbital, pentobarbital or any salt of any of these drugs and approved by the federal food and drug administration for marketing only as a suppository.

*c.* Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

*d.* Chlorhexadol.

*e.* Lysergic acid.

*f.* Lysergic acid amide.

*g.* Methyprylon.

*h.* Sulfondiethylmethane.

*i.* Sulfonethylmethane.

*j.* Sulfonmethane.

*k.* Tiletamine and zolazepam or any salt thereof, including the following:

(1) Some trade or other names for a tiletamine-zolazepam combination product: Telazol.

(2) Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.

(3) Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyraxolo-[3,4-e] [1,4]-diazepin-7(1H)-one flupyrzapon.

*l.* Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone.

*m.* Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal Food, Drug, and Cosmetic Act.

4. *Nalorphine.*

5. *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule:

*a.* Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than three hundred milligrams of dihydrocodeinone (another name: hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than three hundred milligrams of dihydrocodeinone (another name: hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than one point eight grams of dihydrocodeine (another name: hydrocodone) per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

*b.* Any material, compound, mixture, or preparation containing the narcotic drug buprenorphine, or its salts.

6. *Anabolic steroids.* Any product containing an anabolic steroid which product is expressly intended for administration through implants to cattle or other nonhuman species is excluded from all schedules, unless such steroid is prescribed, dispensed, or distributed for human use. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation, and including any salt, ester, or isomer of the following drugs or substances if that salt, ester, or isomer promotes muscle growth:

- a.* Boldenone.
- b.* Chlorotestosterone (4-chlorotestosterone).
- c.* Clostebol.
- d.* Dehydrochlormethyltestosterone.
- e.* Dihydrotestosterone

(4-dihydrotestosterone).

- f.* Drostanolone.
- g.* Ethylestrenol.
- h.* Fluoxymesterone.
- i.* Formebolone (formebolone).
- j.* Mesterolone.
- k.* Methandienone.
- l.* Methandranone.
- m.* Methandriol.
- n.* Methandrostenolone.
- o.* Methenolone.
- p.* Methyltestosterone.
- q.* Mibolerone.
- r.* Nandrolone.
- s.* Norethandrolone.
- t.* Oxandrolone.
- u.* Oxymesterone.
- v.* Oxymetholone.
- w.* Stanolone.
- x.* Stanozolol.
- y.* Testolactone.
- z.* Testosterone.
- aa.* Trenbolone.

7. The board by rule may except any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 2 and 3 of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

8. *Hallucinogenic substances.* Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved product. Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

2003 Acts, ch 53, §6, 7

Subsection 5 stricken and rewritten

Subsection 6, unnumbered paragraph 1 amended

**124.212 Schedule V — substances included.**

1. Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

a. Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams.

b. Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams.

c. Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams.

d. Not more than two point five milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.

e. Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

f. Not more than point five milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

3. *Stimulants.* Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of pyrovalerone, including its salts, isomers, and salts of isomers.

4. *Ephedrine.* Unless specifically excepted in paragraph "b" or "c", or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers:

a. Ephedrine.

b. The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers are excepted from this sched-

ule if they may lawfully be sold over the counter without a prescription under the federal Food, Drug and Cosmetic Act; are labeled and marketed in a manner consistent with the pertinent over-the-counter tentative final or final monograph; are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and are not marketed, advertised, or labeled for the indication of stimulation, mental alertness, weight loss, muscle enhancement, appetite control, or energy:

(1) Solid oral dosage forms, including soft gelatin capsules, that combine active ingredients in the following range for each dosage unit of not less than twelve and five-tenths milligrams but not more than twenty-five milligrams of ephedrine and not less than four hundred milligrams of guaifenesin packaged in blister packs of not more than two tablets per blister.

(2) Anorectal preparations containing less than five percent ephedrine.

c. A dietary supplement is also excepted from this schedule if the dietary supplement is not otherwise prohibited by any other law and is a naturally occurring ephedrine alkaloid or associated salts, isomers, salts of isomers, or a combination of these substances that are contained in a matrix of organic material and do not exceed fifteen percent of the total weight of the natural product.

2003 Acts, ch 53, §8

Subsection 3 stricken and former subsections 4 and 5 renumbered as 3 and 4

**124.304 Revocation, suspension, or restriction of registration.**

1. The board may suspend, revoke, or restrict a registration under section 124.303 to manufacture, distribute, or dispense a controlled substance upon a finding that any of the following apply to the registrant:

a. The registrant has furnished false or fraudulent material information in any application filed under this chapter.

b. The registrant has had the registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended, revoked, or restricted.

c. The registrant has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this section only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even though the entry of the judgment or sentence has been withheld and the individual placed on probation.

d. The registrant has committed such acts as would render the registrant's registration under section 124.303 inconsistent with the public interest as determined under that section.

e. If the registrant is a licensed health care

professional, the registrant has had the registrant's professional license revoked or suspended or has been otherwise disciplined in a way that restricts the registrant's authority to handle or prescribe controlled substances.

2. The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

3. If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be forfeited to the state.

4. The board shall promptly notify the bureau and the department of all orders suspending or revoking registration and all forfeitures of controlled substances.

2003 Acts, ch 53, §9  
Subsection 1 amended

**124.401 Prohibited acts — manufacturers — possessors — counterfeit substances — simulated controlled substances — penalties.**

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

a. Violation of this subsection, with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and notwithstanding section 902.9, subsection 2, shall be punished by confinement for no more than fifty years and a fine of not more than one million dollars:

(1) More than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five hundred grams of a mixture or substance containing a detectable amount of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) More than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than one hundred grams of phencyclidine (PCP) or one kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one thousand kilograms of a mixture or substance containing a detectable amount of marijuana.

(7) More than five kilograms of a mixture or substance containing a detectable amount of any of the following:

(a) Methamphetamine, its salts, isomers, or salts of isomers.

(b) Amphetamine, its salts, isomers, and salts of isomers.

(c) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) and (b).

b. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and in addition to the provisions of section 902.9, subsection 2, shall be punished by a fine of not less than five thousand dollars nor more than one hundred thousand dollars:

(1) More than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than one hundred grams but not more than five hundred grams of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) More than ten grams but not more than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than ten grams but not more than one hundred grams of phencyclidine (PCP) or more than one hundred grams but not more than one kilogram of a mixture or substance containing a de-

tectable amount of phencyclidine (PCP).

(5) Not more than ten grams of a mixture or substance containing a detectable amount of lys-  
ergic acid diethylamide (LSD).

(6) More than one hundred kilograms but not  
more than one thousand kilograms of marijuana.

(7) More than five grams but not more than  
five kilograms of methamphetamine, its salts, iso-  
mers, or salts of isomers, or analogs of metham-  
phetamine, or any compound, mixture, or prepa-  
ration which contains any quantity or detectable  
amount of methamphetamine, its salts, isomers,  
or salts of isomers, or analogs of methamphet-  
amine.

(8) More than five grams but not more than  
five kilograms of amphetamine, its salts, isomers,  
or salts of isomers, or any compound, mixture, or  
preparation which contains any quantity of de-  
tectable amount of amphetamine, its salts, iso-  
mers, and salts of isomers.

c. Violation of this subsection with respect to  
the following controlled substances, counterfeit  
substances, or simulated controlled substances is  
a class "C" felony, and in addition to the provisions  
of section 902.9, subsection 4, shall be punished by  
a fine of not less than one thousand dollars nor  
more than fifty thousand dollars:

(1) One hundred grams or less of a mixture or  
substance containing a detectable amount of her-  
oin.

(2) One hundred grams or less of any of the fol-  
lowing:

(a) Coca leaves, except coca leaves and ex-  
tracts of coca leaves from which cocaine, ecgonine,  
and derivatives of ecgonine or their salts have  
been removed.

(b) Cocaine, its salts, optical and geometric  
isomers, and salts of isomers.

(c) Ecgonine, its derivatives, their salts, iso-  
mers, and salts of isomers.

(d) Any compound, mixture, or preparation  
which contains any quantity of any of the sub-  
stances referred to in subparagraph subdivisions  
(a) through (c).

(3) Ten grams or less of a mixture or substance  
described in subparagraph (2) which contains co-  
caine base.

(4) Ten grams or less of phencyclidine (PCP) or  
one hundred grams or less of a mixture or sub-  
stance containing a detectable amount of phency-  
clidine (PCP).

(5) More than fifty kilograms but not more  
than one hundred kilograms of marijuana.

(6) Five grams or less of methamphetamine,  
its salts, isomers, or salts of isomers, or analogs  
of methamphetamine, or any compound, mixture,  
or preparation which contains any quantity or de-  
tectable amount of methamphetamine, its salts,  
isomers, or salts of isomers, or analogs of metham-  
phetamine.

(7) Five grams or less of amphetamine, its  
salts, isomers, or salts of isomers, or any com-

pound, mixture, or preparation which contains  
any quantity or detectable amount of amphet-  
amine, its salts, isomers, and salts of isomers.

(8) Any other controlled substance, counter-  
feit substance, or simulated controlled substance  
classified in schedule I, II, or III.

d. Violation of this subsection, with respect to  
any other controlled substances, counterfeit sub-  
stances, or simulated controlled substances classi-  
fied in schedule IV or V is an aggravated misde-  
meanor. However, violation of this subsection in-  
volving fifty kilograms or less of marijuana or in-  
volving flunitrazepam is a class "D" felony.

e. A person in the immediate possession or  
control of a firearm while participating in a viola-  
tion of this subsection shall be sentenced to two  
times the term otherwise imposed by law, and no  
such judgment, sentence, or part thereof shall be  
deferred or suspended.

f. A person in the immediate possession or con-  
trol of an offensive weapon, as defined in section  
724.1, while participating in a violation of this  
subsection, shall be sentenced to three times the  
term otherwise imposed by law, and no such judg-  
ment, sentence, or part thereof shall be deferred or  
suspended.

2. If the same person commits two or more acts  
which are in violation of subsection 1 and the acts  
occur in approximately the same location or time  
period so that the acts can be attributed to a single  
scheme, plan, or conspiracy, the acts may be con-  
sidered a single violation and the weight of the  
controlled substances, counterfeit substances, or  
simulated controlled substances involved may be  
combined for purposes of charging the offender.

3. It is unlawful for any person to sell, distrib-  
ute, or make available any product containing  
ephedrine, its salts, optical isomers, salts of opti-  
cal isomers, or analogs of ephedrine, or pseudo-  
ephedrine, its salts, optical isomers, salts of opti-  
cal isomers, or analogs of pseudoephedrine, if the  
person knows, or should know, that the product  
may be used as a precursor to any illegal substance  
or an intermediary to any controlled substance. A  
person who violates this subsection commits a se-  
rious misdemeanor.

4. A person who possesses any product con-  
taining any of the following commits a class "D"  
felony, if the person possesses with the intent to  
use the product to manufacture any controlled  
substance:

a. Ephedrine, its salts, optical isomers, salts of  
optical isomers, or analogs of ephedrine.

b. Pseudoephedrine, its salts, optical isomers,  
salts of optical isomers, or analogs of pseudo-  
ephedrine.

c. Ethyl ether.

d. Anhydrous ammonia.

e. Red phosphorous.

f. Lithium.

g. Iodine.

h. Thionyl chloride.

- i. Chloroform.
- j. Palladium.
- k. Perchloric acid.
- l. Tetrahydrofuran.
- m. Ammonium chloride.
- n. Magnesium sulfate.

5. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. A person who commits a violation of this subsection and who has previously been convicted of violating this chapter or chapter 124A, 124B, or 453B is guilty of an aggravated misdemeanor. A person who commits a violation of this subsection and has previously been convicted two or more times of violating this chapter or chapter 124A, 124B, or 453B is guilty of a class "D" felony.

If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense. If the controlled substance is marijuana and the person has been previously convicted of a violation of this subsection in which the controlled substance was marijuana, the punishment shall be as provided in section 903.1, subsection 1, paragraph "b". If the controlled substance is marijuana and the person has been previously convicted two or more times of a violation of this subsection in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor.

All or any part of a sentence imposed pursuant to this subsection may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treatment, rehabilitation or education program approved by the court.

If a person commits a violation of this subsection, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. If the person is not sentenced to confinement under the custody of the director of the department of corrections, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

If the controlled substance is amphetamine, its

salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. The court may place the person on intensive probation. However, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

2003 Acts, ch 16, §1; 2003 Acts, ch 156, §1 - 7  
 Subsection 1, paragraph a, subparagraph (2), unnumbered paragraph 1 amended  
 Subsection 1, paragraph a, subparagraph (2), subparagraph subdivisions (d) and (e) stricken and subparagraph subdivision (f) relettered as (d)  
 Subsection 1, paragraph a, NEW subparagraph (7)  
 Subsection 1, paragraph b, subparagraph (2), unnumbered paragraph 1 amended  
 Subsection 1, paragraph b, subparagraph (3) amended  
 Subsection 1, paragraph c, subparagraph (2), unnumbered paragraph 1 amended  
 Subsection 1, paragraph c, subparagraph (3) amended  
 Subsection 1, paragraph d amended

**124.401E Certain penalties for manufacturing or delivery of amphetamine or methamphetamine.**

1. If a court sentences a person for the person's first conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

2. If a court sentences a person for a conviction of manufacturing of a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced, or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

3. If a court sentences a person for the person's second or subsequent conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, and the controlled substance is amphetamine, its

salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court, in addition to any other authorized penalties, shall sentence the person to imprisonment in accordance with section 124.401, subsection 1, and the person shall serve the mini-

imum period of confinement as required by section 124.413.

Continuation of drug court pilot programs; 2002 Acts, ch 1174, §1; 2002 Acts, 2nd Ex, ch 1003, §157, 171, 172; 2003 Acts, ch 183, §1  
Section not amended; footnote revised

## CHAPTER 124B

### PRECURSOR SUBSTANCES

#### 124B.2 Reporting required.

1. Effective July 1, 1990, a report to the board shall be submitted in accordance with this chapter by a manufacturer, retailer, or other person who sells, transfers, or otherwise furnishes to any person in this state any of the following substances:

- a. Anthranilic acid, its esters, and its salts.
- b. Benzyl cyanide.
- c. Ethylamine and its salts.
- d. Ergonovine and its salts.
- e. Ergotamine and its salts.
- f. 3,4 - methylenedioxyphenyl-2-propanone.
- g. N-acetylanthranilic acid, its esters, and its salts.
- h. Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- i. Phenylacetic acid, its esters, and its salts.
- j. Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.
- k. Piperidine and its salts.
- l. Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- m. Methylamine and its salts.
- n. Propionic anhydride.
- o. Isosafrole.
- p. Safrole.
- q. Piperonal.
- r. N-methylephedrine, its salts, optical isomers, and salts of optical isomers.
- s. N-methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- t. Hydriodic acid.
- u. Benzaldehyde.
- v. Nitroethane.

w. Gamma-Butyrolactone (also known as GBL; Dihydro-2(3H)-furanone; 1,2-Butanolide; 1,4-Butanolide; 4-Hydroxybutanoic acid lactone; or gamma-hydroxy-butyric acid lactone).

x. Red phosphorus.

y. White phosphorus (another name: yellow phosphorus).

z. Hypophosphorous acid and its salts (including ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, and sodium hypophosphite).

2. The board shall administer the regulatory provisions of this chapter and may, by rule adopted pursuant to chapter 17A, add a substance to or remove a substance from the list in subsection 1. In determining whether to add or remove a substance from the list, the board shall consider the following:

a. The likelihood that the substance may be used as a precursor in the illegal production of a controlled substance.

b. The availability of the substance.

c. The appropriateness of including the substance under this chapter or under chapter 124.

d. The extent and nature of legitimate uses for the substance.

3. On or before November 1 of each year, the board shall inform the general assembly of any substances added, deleted, or changed in the list contained in this section and shall provide an explanation of any addition, deletion, or change.

2003 Acts, ch 53, §10

Subsection 1, NEW paragraphs x - z

## CHAPTER 124C

### CLEANUP OF CLANDESTINE LABORATORY SITES

#### 124C.1 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

1. "*Clandestine laboratory site*" means a location or operation, including but not limited to buildings or vehicles equipped with glassware, heating devices, and precursors or related re-

agents and solvents needed to unlawfully prepare or manufacture controlled substances defined in chapter 124.

2. "*Cleanup*" means actions necessary to contain, collect, control, identify, analyze, disassemble, treat, remove, or otherwise disperse all substances and materials, including but not limit-

ed to those found to be hazardous waste as defined in section 455B.411 and controlled substances defined in chapter 124, including contamination caused by those chemicals or substances.

3. “*Commissioner*” means the commissioner of public safety.

4. “*Department*” means the department of public safety.

5. “*Hazardous substance*” means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, and other substances defined in rules adopted pursuant to section 455B.381 and controlled substances as defined in chapter 124.

6. “*Person having control over a clandestine*

*laboratory site*” means a person who at any time possesses, produces, handles, stores, uses, transports, or disposes of a hazardous substance or controlled substance used or intended for use at a clandestine laboratory site. A person having control over a clandestine laboratory site does not include persons performing duties listed in section 124C.2 at the direction of the commissioner and does not include a person who is the owner of the property or a person holding a security interest in the property in or upon which the clandestine laboratory site is located unless the person knew that a clandestine laboratory existed in or upon the person’s property.

2003 Acts, ch 44, §35  
Subsection 1 stricken and former subsections 2 – 7 renumbered as 1 – 6

## CHAPTER 125

### CHEMICAL SUBSTANCE ABUSE

#### 125.91 Emergency detention.

1. The procedure prescribed by this section shall only be used for an intoxicated person who has threatened, attempted, or inflicted physical self-harm or harm on another, and is likely to inflict physical self-harm or harm on another immediately detained, or who is incapacitated by a chemical substance, if that person cannot be taken into immediate custody under sections 125.75 and 125.81 because immediate access to the court is not possible.

2. *a.* A peace officer who has reasonable grounds to believe that the circumstances described in subsection 1 are applicable, may, without a warrant, take or cause that person to be taken to the nearest available facility referred to in section 125.81, subsection 2 or 3. Such an intoxicated or incapacitated person may also be delivered to a facility by someone other than a peace officer upon a showing of reasonable grounds. Upon delivery of the person to a facility under this section, the examining physician may order treatment of the person, but only to the extent necessary to preserve the person’s life or to appropriately control the person’s behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue. The peace officer or other person who delivered the person to the facility shall describe the circumstances of the matter to the examining physician. If the person is a peace officer, the peace officer may do so either in person or by written report. If the examining physician has reasonable grounds to believe that the circumstances in subsection 1 are applicable, the examining physician shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 10. The magistrate

shall, based upon the circumstances described by the examining physician, give the examining physician oral instructions either directing that the person be released forthwith, or authorizing the person’s detention in an appropriate facility. The magistrate may also give oral instructions and order that the detained person be transported to an appropriate facility.

*b.* If the magistrate orders that the person be detained, the magistrate shall, by the close of business on the next working day, file a written order with the clerk in the county where it is anticipated that an application may be filed under section 125.75. The order may be filed by facsimile if necessary. The order shall state the circumstances under which the person was taken into custody or otherwise brought to a facility and the grounds supporting the finding of probable cause to believe that the person is a chronic substance abuser likely to result in physical injury to the person or others if not detained. The order shall confirm the oral order authorizing the person’s detention including any order given to transport the person to an appropriate facility. The clerk shall provide a copy of that order to the chief medical officer of the facility to which the person was originally taken, any subsequent facility to which the person was transported, and to any law enforcement department or ambulance service that transported the person pursuant to the magistrate’s order.

3. The chief medical officer of the facility shall examine and may detain the person pursuant to the magistrate’s order for a period not to exceed forty-eight hours from the time the order is dated, excluding Saturdays, Sundays, and holidays, unless the order is dismissed by a magistrate. The facility may provide treatment which is necessary to

preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue or is otherwise deemed medically necessary by the chief medical officer, but shall not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility and released from detention no later than the expiration of the forty-eight-hour period, unless an application for involuntary commitment is filed with the clerk pursuant to section 125.75. The detention of a person by the procedure in this section, and not in excess of the period of time prescribed by this section,

shall not render the peace officer, physician, or facility detaining the person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician, or facility had reasonable grounds to believe that the circumstances described in subsection 1 were applicable.

4. The cost of detention in a facility under the procedure prescribed in this section shall be paid in the same way as if the person had been committed to the facility pursuant to an application filed under section 125.75.

2003 Acts, ch 68, §1, 2  
Subsection 2 amended  
Subsection 3 stricken and former subsections 4 and 5 renumbered as 3 and 4

## CHAPTER 126

### DRUGS, DEVICES, AND COSMETICS

**126.24 Anthrax.** Transferred to § 708B.1; 2003 Acts, ch 44, § 115.

## CHAPTER 135

### DEPARTMENT OF PUBLIC HEALTH

Obstetrical and newborn indigent patient care program; chapter 255A  
Council on chemically exposed infants and children;  
see chapter 235C

Professional licensure; pilot project utilizing  
scope of practice review committee; duration;  
see 97 Acts, ch 203, §6; 2000 Acts, ch 1222, §11;  
2002 Acts, 2nd Ex, ch 1003, §107, 109;  
2003 Acts, ch 175, §5

Health care access partnership pilot  
project; 2003 Acts, ch 175, §6

#### **135.2 Appointment of director.**

The governor shall appoint the director of the department, subject to confirmation by the senate. The director shall serve at the pleasure of the governor. The director is exempt from the merit system provisions of chapter 8A, subchapter IV. The governor shall set the salary of the director within the range established by the general assembly.

The director shall possess education and experience in public health.

2003 Acts, ch 145, §186  
Confirmation; §2.32  
Unnumbered paragraph 1 amended

#### **135.11 Duties of department.**

The director of public health shall be the head of the "Iowa Department of Public Health", which shall:

1. Exercise general supervision over the public health, promote public hygiene and sanitation, prevent substance abuse and unless otherwise provided, enforce the laws relating to the same.

2. Conduct campaigns for the education of the people in hygiene and sanitation.

3. Issue monthly health bulletins containing fundamental health principles and other health data deemed of public interest.

4. Make investigations and surveys in respect to the causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health. For this purpose the department may use the services of the experts connected with the state hygienic laboratory at the state university of Iowa.

5. Establish, publish, and enforce a code of rules governing the installation of plumbing in cities and amend the same when deemed necessary.

6. Exercise general supervision over the administration of the housing law and give aid to the local authorities in the enforcement of the same, and it shall institute in the name of the state such legal proceedings as may be necessary in the enforcement of said law.

7. Establish stations throughout the state for the distribution of antitoxins and vaccines to physicians, druggists, and other persons, at cost. All antitoxin and vaccine thus distributed shall be la-

beled “Iowa Department of Public Health”.

8. Exercise general supervision over the administration and enforcement of the sexually transmitted diseases and infections law, chapter 139A, subchapter II.

9. Exercise sole jurisdiction over the disposal and transportation of the dead bodies of human beings and prescribe the methods to be used in preparing such bodies for disposal and transportation. However, the department may approve a request for an exception to the application of specific embalming and disposition rules adopted pursuant to this subsection if such rules would otherwise conflict with tenets and practices of a recognized religious denomination to which the deceased individual adhered or of which denomination the deceased individual was a member. The department shall inform the board of mortuary science examiners of any such approved exception which may affect services provided by a funeral director licensed pursuant to chapter 156.

10. Establish, publish, and enforce rules which require companies, corporations, and other entities to obtain a permit from the department prior to scattering cremated human remains.

11. Exercise general supervision over the administration and enforcement of the vital statistics law, chapter 144.

12. Enforce the law relative to chapter 146 and “Health-related Professions”, Title IV, subtitle 3, excluding chapter 155.

13. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it, including a division of contagious and infectious diseases, a division of venereal diseases, a division of housing, a division of sanitary engineering, and a division of vital statistics, but the various services of the department shall be so consolidated as to eliminate unnecessary personnel and make possible the carrying on of the functions of the department under the most economical methods.

14. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of chapters 125 and 155, and Title IV, subtitle 2, excluding chapters 142B, 145B, and 146 and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

15. Establish standards for, issue permits for, and exercise control over the distribution of venereal disease prophylactics distributed by methods not under the direct supervision of a physician licensed under chapter 148, 150 or 150A, or a pharmacist licensed under chapter 147. Any person selling, offering for sale, or giving away any venereal disease prophylactics in violation of the standards established by the department shall be fined not exceeding five hundred dollars, and the department shall revoke their permit.

16. Administer the statewide public health nursing, homemaker-home health aide, and se-

nior health programs by approving grants of state funds to the local boards of health and the county boards of supervisors and by providing guidelines for the approval of the grants and allocation of the state funds. Program direction, evaluation requirements, and formula allocation procedures for each of the programs shall be established by the department by rule, consistent with 1997 Iowa Acts, chapter 203, section 5.

17. Administer chapters 125, 136A, 136C, 139A, 142, 142A, 144, and 147A.

18. Issue an annual report to the governor as provided in section 7E.3, subsection 4.

19. Consult with the office of statewide clinical education programs at the university of Iowa college of medicine and annually submit a report to the general assembly by January 15 verifying the number of physicians in active practice in Iowa by county who are engaged in providing obstetrical care. To the extent data are readily available, the report shall include information concerning the number of deliveries per year by specialty and county, the age of physicians performing deliveries, and the number of current year graduates of the university of Iowa college of medicine and the Des Moines university — osteopathic medical center entering into residency programs in obstetrics, gynecology, and family practice. The report may include additional data relating to access to obstetrical services that may be available.

20. Administer the statewide maternal and child health program and the program for children with disabilities by conducting mobile and regional child health specialty clinics and conducting other activities to improve the health of low-income women and children and to promote the welfare of children with actual or potential conditions which may cause disabilities and children with chronic illnesses in accordance with the requirements of Title V of the federal Social Security Act. The department shall provide technical assistance to encourage the coordination and collaboration of state agencies in developing outreach centers which provide publicly supported services for pregnant women, infants, and children. The department shall also, through cooperation and collaborative agreements with the department of human services and the mobile and regional child health specialty clinics, establish common intake proceedings for maternal and child health services. The department shall work in cooperation with the legislative services agency in monitoring the effectiveness of the maternal and child health centers, including the provision of transportation for patient appointments and the keeping of scheduled appointments.

21. Establish, publish, and enforce rules requiring prompt reporting of methemoglobinemia, pesticide poisoning, and the reportable poisonings and illnesses established pursuant to section 139A.21.

22. Collect and maintain reports of pesticide

poisonings and other poisonings, illnesses, or injuries caused by selected chemical or physical agents, including methemoglobinemia and pesticide and fertilizer hypersensitivity; and compile and publish, annually, a statewide and county-by-county profile based on the reports.

23. Adopt rules which require personnel of a licensed hospice, of a homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or of an agency which provides respite care services and receives funds to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions through a program approved by the department. The rules shall require that new employees complete the training within six months of initial employment and existing employees complete the training on or before January 1, 1989.

24. Adopt rules which require all emergency medical services personnel, firefighters, and law enforcement personnel to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions and the prevention of human immunodeficiency virus infection.

25. Adopt rules which provide for the testing of a convicted or alleged offender for the human immunodeficiency virus pursuant to sections 915.40 through 915.43. The rules shall provide for the provision of counseling, health care, and support services to the victim.

26. Establish ad hoc and advisory committees to the director in areas where technical expertise is not otherwise readily available. Members may be compensated for their actual and necessary expenses incurred in the performance of their duties. To encourage health consumer participation, public members may also receive a per diem as specified in section 7E.6 if funds are available and the per diem is determined to be appropriate by the director. Expense moneys paid to the members shall be paid from funds appropriated to the department. A majority of the members of such a committee constitutes a quorum.

27. Establish an abuse education review panel for review and approval of mandatory reporter training curricula for those persons who work in a position classification that under law makes the persons mandatory reporters of child or dependent adult abuse and the position classification does not have a mandatory reporter training curriculum approved by a licensing or examining board.

28. Establish and administer a substance abuse treatment facility pursuant to section 135.130.

2003 Acts, ch 33, §8, 11; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 44, §36  
Laboratory tests, §263.7, 263.8

Oversight and administration of local programs for private rural water wells and cisterns, §455E.11

Establishment and funding of state poison control center; 2000 Acts, ch

1221, §1; 2001 Acts, ch 184, §1; 2002 Acts, ch 1174, §1; 2003 Acts, ch 183, §1  
Terminology change applied  
Subsection 17 amended  
Subsection 29 stricken

### **135.24 Volunteer health care provider program established — immunity from civil liability.**

1. The director shall establish within the department a program to provide to eligible hospitals, clinics, free clinics, or other health care facilities, health care referral programs, or charitable organizations, free medical, dental, and chiropractic services given on a voluntary basis by health care providers. A participating health care provider shall register with the department and obtain from the department a list of eligible, participating hospitals, clinics, free clinics, or other health care facilities, health care referral programs, or charitable organizations.

2. The department, in consultation with the department of human services, shall adopt rules to implement the volunteer health care provider program which shall include the following:

a. Procedures for registration of health care providers deemed qualified by the board of medical examiners, the board of physician assistant examiners, the board of dental examiners, the board of nursing, the board of chiropractic examiners, the board of psychology examiners, the board of social work examiners, the board of behavioral science examiners, and the board of pharmacy examiners.

b. Procedures for registration of free clinics.

c. Criteria for and identification of hospitals, clinics, free clinics, or other health care facilities, health care referral programs, or charitable organizations, eligible to participate in the provision of free medical, dental, or chiropractic services through the volunteer health care provider program. A free clinic, a health care facility, a health care referral program, a charitable organization, or a health care provider participating in the program shall not bill or charge a patient for any health care provider service provided under the volunteer health care provider program.

d. Identification of the services to be provided under the program. The services provided may include, but shall not be limited to, obstetrical and gynecological medical services, psychiatric services provided by a physician licensed under chapter 148, 150, or 150A, or services provided under chapter 151.

3. A health care provider providing free care under this section shall be considered an employee of the state under chapter 669 and shall be afforded protection as an employee of the state under section 669.21, provided that the health care provider has done all of the following:

a. Registered with the department pursuant to subsection 1.

b. Provided medical, dental, or chiropractic services through a hospital, clinic, free clinic, or other health care facility, health care referral program, or charitable organization listed as eligible and participating by the department pursuant to subsection 1.

4. A free clinic providing free care under this section shall be considered a state agency solely for the purposes of this section and chapter 669 and shall be afforded protection under chapter 669 as a state agency for all claims arising from the provision of free care by a health care provider registered under subsection 3 who is providing services at the free clinic in accordance with this section, if the free clinic has registered with the department pursuant to subsection 1.

5. For the purposes of this section, “*charitable organization*” means a charitable organization within the meaning of section 501(c)(3) of the Internal Revenue Code which has as its primary purpose the sponsorship or support of programs designed to improve the quality, awareness, and availability of chiropractic, dental, or medical services to children and to serve as a funding mechanism for provision of chiropractic, dental, or medical services, including but not limited to immunizations, to children in this state.

6. For the purposes of this section:

a. “*Free clinic*” means a facility, other than a hospital or health care provider’s office which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code and which has as its sole purpose the provision of health care services without charge to individuals who are otherwise unable to pay for the services.

b. “*Health care provider*” means a physician licensed under chapter 148, 150, 150A, or 151, a physician assistant licensed and practicing under a supervising physician pursuant to chapter 148C, a licensed practical nurse, a registered nurse, a dentist, dental hygienist, or dental assistant registered or licensed to practice under chapter 153, a psychologist licensed pursuant to chapter 154B, a social worker licensed pursuant to chapter 154C, a mental health counselor licensed pursuant to chapter 154D, or a pharmacist licensed pursuant to chapter 155A.

2003 Acts, ch 89, §1  
Section amended

#### 135.78 Data to be compiled.

The department shall compile all relevant financial and utilization data in order to have available the statistical information necessary to properly monitor hospital and health care facility charges and costs. Such data shall include necessary operating expenses, appropriate expenses incurred for rendering services to patients who cannot or do not pay, all properly incurred interest charges, and reasonable depreciation expenses based on the expected useful life of the property and equipment involved. The department shall

also obtain from each hospital and health care facility a current rate schedule as well as any subsequent amendments or modifications of that schedule as it may require. In collection of the data required by this section and sections 135.74 through 135.76, the department and other state agencies shall coordinate their reporting requirements.

2003 Acts, ch 108, §34  
Section amended

#### DIVISION XV

#### NEWBORN AND INFANT HEARING SCREENING

#### 135.131 Universal newborn and infant hearing screening.

1. For the purposes of this section, unless the context otherwise requires:

a. “*Birth center*” means birth center as defined in section 135.61.

b. “*Birthing hospital*” means a private or public hospital licensed pursuant to chapter 135B that has a licensed obstetric unit or is licensed to provide obstetric services.

2. Beginning January 1, 2004, all newborns and infants born in this state shall be screened for hearing loss in accordance with this section. The person required to perform the screening shall use at least one of the following procedures:

a. Automated or diagnostic auditory brainstem response.

b. Otoacoustic emissions.

c. Any other technology approved by the department.

3. Beginning January 1, 2004, a birthing hospital shall screen every newborn delivered in the hospital for hearing loss prior to discharge of the newborn from the birthing hospital. A birthing hospital that transfers a newborn for acute care prior to completion of the hearing screening shall notify the receiving facility of the status of the hearing screening. The receiving facility shall be responsible for completion of the newborn hearing screening. The birthing hospital or other facility completing the hearing screening under this subsection shall report the results of the screening to the parent or guardian of the newborn and to the department in a manner prescribed by rule of the department.

4. Beginning January 1, 2004, a birth center shall refer the newborn to a licensed audiologist, physician, or hospital for screening for hearing loss prior to discharge of the newborn from the birth center. The hearing screening shall be completed within thirty days following discharge of the newborn. The person completing the hearing screening shall report the results of the screening to the parent or guardian of the newborn and to the department in a manner prescribed by rule of the department.

5. Beginning January 1, 2004, if a newborn is

delivered in a location other than a birthing hospital or a birth center, the physician or other health care professional who undertakes the pediatric care of the newborn or infant shall ensure that the hearing screening is performed within three months of the date of the newborn's or infant's birth. The physician or other health care professional shall report the results of the hearing screening to the parent or guardian of the newborn or infant and to the department in a manner prescribed by rule of the department.

6. A birthing hospital, birth center, physician, or other health care professional required to report information under subsection 3, 4, or 5 shall report all of the following information to the department relating to a newborn's or infant's hearing screening, as applicable:

- a. The name, address, and telephone number, if available, of the mother of the newborn or infant.
- b. The primary care provider at the birthing hospital or birth center for the newborn or infant.
- c. The results of the hearing screening.
- d. Any rescreenings and the diagnostic audiological assessment procedures used.

7. The department may share information with agencies and persons involved with newborn and infant hearing screenings, follow-up, and intervention services, including the local birth-to-three coordinator or similar agency, the local area education agency, and local health care providers. The department shall adopt rules to protect the confidentiality of the individuals involved.

8. An area education agency with which information is shared pursuant to subsection 7 shall report all of the following information to the department relating to a newborn's or infant's hearing, follow-up, and intervention services, as applicable:

- a. The name, address, and telephone number, if available, of the mother of the newborn or infant.
- b. The results of the hearing screening and any rescreenings, including the diagnostic audiological assessment procedures used.
- c. The nature of any follow-up or other intervention services provided to the newborn or infant.

9. This section shall not apply if the parent objects to the screening. If a parent objects to the screening, the birthing hospital, birth center, physician, or other health care professional required to report information under subsection 3, 4, or 5 to the department shall obtain a written refusal from the parent, shall document the refusal in the newborn's or infant's medical record, and shall report the refusal to the department in the manner prescribed by rule of the department.

10. A person who acts in good faith in complying with this section shall not be civilly or criminally liable for reporting the information required

to be reported by this section.

2003 Acts, ch 102, §1  
NEW section

#### DIVISION XVI

#### INTERAGENCY PHARMACEUTICALS BULK PURCHASING COUNCIL

#### **135.132 Interagency pharmaceuticals bulk purchasing council.**

1. For the purposes of this section, "*interagency pharmaceuticals bulk purchasing council*" or "*council*" means the interagency pharmaceuticals bulk purchasing council created in this section.

2. An interagency pharmaceuticals bulk purchasing council is created within the Iowa department of public health. The department shall provide staff support to the council and the department of pharmaceutical care of the university of Iowa hospitals and clinics shall act in an advisory capacity to the council. The council shall be composed of all of the following members:

- a. The director of public health, or the director's designee.
- b. The director of human services, or the director's designee.
- c. The director of the department of administrative services, or the director's designee.
- d. A representative of the state board of regents.
- e. The director of the department of corrections, or the director's designee.
- f. The director, or the director's designee, of any other agency that purchases pharmaceuticals designated to be included as a member by the director of public health.

3. The council shall select a chairperson annually from its membership. A majority of the members of the council shall constitute a quorum.

4. The council shall do all of the following:

a. Develop procedures that member agencies must follow in purchasing pharmaceuticals. However, a member agency may elect not to follow the council's procedures if the agency is able to purchase the pharmaceuticals for a lower price than the price available through the council. An agency that does not follow the council's procedures shall report all of the following to the council:

(1) The purchase price for the pharmaceuticals.

(2) The name of the wholesaler, retailer, or manufacturer selling the pharmaceuticals.

b. Designate a member agency as the central purchasing agency for purchasing of pharmaceuticals.

c. Use existing distribution networks, including wholesale and retail distributors, to distribute the pharmaceuticals.

d. Investigate options that maximize purchas-

ing power, including expanding purchasing under the medical assistance program, qualifying for participation in purchasing programs under 42 U.S.C. § 256b, as amended, and utilizing rebate programs, hospital disproportionate share purchasing, multistate purchasing alliances, and health department and federally qualified health center purchasing.

e. In collaboration with the department of pharmaceutical care of the university of Iowa hospitals and clinics, make recommendations to member agencies regarding drug utilization review, prior authorization, the use of restrictive formularies, the use of mail order programs, and co-payment structures. This paragraph shall not apply to the medical assistance program but only to the operations of the member agencies.

5. The central purchasing agency may enter into agreements with a local governmental entity to purchase pharmaceuticals for the local governmental entity.

6. The council shall develop procedures under which the council may disclose information relating to the prices manufacturers or wholesalers charge for pharmaceuticals by category of pharmaceutical. The procedure shall prohibit the council from disclosing information that identifies a specific manufacturer or wholesaler or the prices charged by a specific manufacturer or wholesaler for a specific pharmaceutical.

2003 Acts, ch 112, §1; 2003 Acts, ch 145, §286  
NEW section  
Terminology change applied

**135.133 through 135.139** Reserved.

DIVISION XVII

DISASTER PREPAREDNESS

**135.140 Definitions.**

As used in this division, unless the context otherwise requires:

1. *"Bioterrorism"* means the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism.

2. *"Department"* means the Iowa department of public health.

3. *"Director"* means the director of public health or the director's designee.

4. *"Disaster"* means disaster as defined in section 29C.2.

5. *"Disaster medical assistance team"* or *"DMAT"* means a team of professionals, including

licensed health care providers, nonmedical professionals skilled and trained in disaster or emergency response, and public health practitioners, which is sponsored by a hospital or other entity and approved by the department to provide disaster medical assistance in the event of a disaster or threatened disaster.

6. *"Division"* means the division of epidemiology, emergency medical services, and disaster operations of the department.

7. *"Public health disaster"* means a state of disaster emergency proclaimed by the governor in consultation with the department pursuant to section 29C.6 for a disaster which specifically involves an imminent threat of an illness or health condition that meets any of the following conditions of paragraphs "a" and "b":

a. Is reasonably believed to be caused by any of the following:

- (1) Bioterrorism or other act of terrorism.
- (2) The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin.
- (3) A chemical attack or accidental release.
- (4) An intentional or accidental release of radioactive material.
- (5) A nuclear or radiological attack or accident.

b. Poses a high probability of any of the following:

- (1) A large number of deaths in the affected population.
- (2) A large number of serious or long-term disabilities in the affected population.
- (3) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of the affected population.

2003 Acts, ch 33, §1, 11; 2003 Acts, ch 179, §64  
NEW section

**135.141 Division of epidemiology, emergency medical services, and disaster operations — establishment — duties of department.**

1. A division of epidemiology, emergency medical services, and disaster operations is established within the department. The division shall coordinate the administration of this division of this chapter with other administrative divisions of the department and with federal, state, and local agencies and officials.

2. The department shall do all of the following:

a. Coordinate with the homeland security and emergency management division of the department of public defense the administration of emergency planning matters which involve the public health, including development, administration, and execution of the public health components of the comprehensive plan and emergency manage-

ment program pursuant to section 29C.8.

*b.* Coordinate with federal, state, and local agencies and officials, and private agencies, organizations, companies, and persons, the administration of emergency planning matters that involve the public health.

*c.* Conduct and maintain a statewide risk assessment of any present or potential danger to the public health from biological agents.

*d.* If a public health disaster exists, or if there is reasonable cause to believe that a public health disaster is imminent, conduct a risk assessment of any present or potential danger to the public health from chemical, radiological, or other potentially dangerous agents.

*e.* For the purpose of paragraphs “*c*” and “*d*”, an employee or agent of the department may enter into and examine any premises containing potentially dangerous agents with the consent of the owner or person in charge of the premises or, if the owner or person in charge of the premises refuses admittance, with an administrative search warrant obtained under section 808.14. Based on findings of the risk assessment and examination of the premises, the director may order reasonable safeguards or take any other action reasonably necessary to protect the public health pursuant to rules adopted to administer this subsection.

*f.* Coordinate the location, procurement, storage, transportation, maintenance, and distribution of medical supplies, drugs, antidotes, and vaccines to prepare for or in response to a public health disaster, including receiving, distributing, and administering items from the strategic national stockpile program of the centers for disease control and prevention of the United States department of health and human services.

*g.* Conduct or coordinate public information activities regarding emergency and disaster planning matters that involve the public health.

*h.* Apply for and accept grants, gifts, or other funds to be used for programs authorized by this division of this chapter.

*i.* Establish and coordinate other programs or activities as necessary for the prevention, detection, management, and containment of public health disasters.

*j.* Adopt rules pursuant to chapter 17A for the administration of this division of this chapter including rules adopted in cooperation with the Iowa pharmacy association and the Iowa hospital association for the development of a surveillance system to monitor supplies of drugs, antidotes, and vaccines to assist in detecting a potential public health disaster.

Prior to adoption, the rules shall be approved by the state board of health and the administrator of the homeland security and emergency management division of the department of public defense.

2003 Acts, ch 33, §2, 11; 2003 Acts, ch 179, §157  
NEW section  
Terminology change applied

### 135.142 Health care supplies.

1. The department may purchase and distribute antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies as deemed advisable in the interest of preparing for or controlling a public health disaster.

2. If a public health disaster exists or there is reasonable cause to believe that a public health disaster is imminent and if the public health disaster or belief that a public health disaster is imminent results in a statewide or regional shortage or threatened shortage of any product described under subsection 1, whether such product has been purchased by the department, the department may control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of the relevant product necessary to protect the public health, safety, and welfare of the people of this state. The department shall collaborate with persons who have control of the products when reasonably possible.

3. In making rationing or other supply and distribution decisions, the department shall give preference to health care providers, disaster response personnel, and mortuary staff.

4. During a public health disaster, the department may procure, store, or distribute any antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies located within the state as may be reasonable and necessary to respond to the public health disaster, and may take immediate possession of these pharmaceutical agents and supplies. If a public health disaster affects more than one state, this section shall not be construed to allow the department to obtain antitoxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies for the primary purpose of hoarding such items or preventing the fair and equitable distribution of these pharmaceutical and medical supplies among affected states. The department shall collaborate with affected states and persons when reasonably possible.

5. The state shall pay just compensation to the owner of any product lawfully taken or appropriated by the department for the department's temporary or permanent use in accordance with this section. The amount of compensation shall be limited to the costs incurred by the owner to procure the item.

2003 Acts, ch 33, §3, 11  
NEW section

### 135.143 Disaster medical assistance teams.

1. The department shall approve disaster medical assistance teams to supplement and sup-

port disrupted or overburdened local medical and public health personnel, hospitals, and resources at or near the site of a disaster or threatened disaster by providing direct medical care to victims or by providing other support services.

2. A member of a disaster medical assistance team acting pursuant to this division of this chapter shall be considered an employee of the state under chapter 669, shall be afforded protection as an employee of the state under section 669.21, and shall be considered an employee of the state for purposes of workers' compensation and death benefits, provided that the member has done all of the following:

a. Registered with and received approval to serve on a disaster medical assistance team from the department.

b. Provided direct medical care to a victim of a disaster or provided other support services during a disaster.

3. The department shall provide the department of administrative services with a list of individuals who have registered with and received approval from the department to serve on a disaster medical assistance team. The department shall update the list on a quarterly basis, or as necessary for the department of administrative services to determine eligibility for coverage.

4. Upon notification of a compensable loss, the department of administrative services shall seek funding from the executive council for those costs associated with covered workers' compensation benefits.

2003 Acts, ch 33, §4, 11; 2003 Acts, ch 145, §286  
NEW section  
Terminology change applied

#### **135.144 Additional duties of the department related to a public health disaster.**

If a public health disaster exists, the department, in conjunction with the governor, may do any of the following:

1. Decontaminate or cause to be decontaminated, to the extent reasonable and necessary to address the public health disaster, any facility or material if there is cause to believe the contaminated facility or material may endanger the public health.

2. Adopt and enforce measures to provide for the identification and safe disposal of human remains, including performance of postmortem examinations, transportation, embalming, burial, cremation, interment, disinterment, and other disposal of human remains. To the extent possible, religious, cultural, family, and individual beliefs of the deceased person or the deceased person's family shall be considered when disposing of any human remains.

3. Take reasonable measures as necessary to prevent the transmission of infectious disease and to ensure that all cases of communicable disease are properly identified, controlled, and treated.

4. Take reasonable measures as necessary to

ensure that all cases of chemical, biological, and radiological contamination are properly identified, controlled, and treated.

5. Order physical examinations and tests and collect specimens as necessary for the diagnosis or treatment of individuals, to be performed by any qualified person authorized to do so by the department. An examination or test shall not be performed or ordered if the examination or test is reasonably likely to lead to serious harm to the affected individual. The department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any individual whose refusal of medical examination or testing results in uncertainty regarding whether the individual has been exposed to or is infected with a communicable or potentially communicable disease or otherwise poses a danger to public health.

6. Vaccinate or order that individuals be vaccinated against an infectious disease and to prevent the spread of communicable or potentially communicable disease. Vaccinations shall be administered by any qualified person authorized to do so by the department. The vaccination shall not be provided or ordered if it is reasonably likely to lead to serious harm to the affected individual. To prevent the spread of communicable or potentially communicable disease, the department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any person who is unable or unwilling to undergo vaccination pursuant to this subsection.

7. Treat or order that individuals exposed to or infected with disease receive treatment or prophylaxis. Treatment or prophylaxis shall be administered by any qualified person authorized to do so by the department. Treatment or prophylaxis shall not be provided or ordered if the treatment or prophylaxis is reasonably likely to lead to serious harm to the affected individual. To prevent the spread of communicable or potentially communicable disease, the department may isolate or quarantine, pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter, any individual who is unable or unwilling to undergo treatment or prophylaxis pursuant to this section.

8. Isolate or quarantine individuals or groups of individuals pursuant to chapter 139A and the rules implementing chapter 139A and this division of this chapter.

9. Inform the public when a public health disaster has been declared or terminated, about protective measures to take during the disaster, and about actions being taken to control the disaster.

10. Accept grants and loans from the federal government pursuant to section 29C.6 or available provisions of federal law.

2003 Acts, ch 33, §5, 11; 2003 Acts, ch 179, §65  
NEW section

**135.145 Information sharing.**

1. When the department of public safety or other federal, state, or local law enforcement agency learns of a case of a reportable disease or health condition, unusual cluster, or a suspicious event that may be the cause of a public health disaster, the department or agency shall immediately notify the department, the administrator of the homeland security and emergency management division of the department of public defense, the department of agriculture and land stewardship, and the department of natural resources as appropriate.

2. When the department learns of a case of a reportable disease or health condition, an unusual cluster, or a suspicious event that the department reasonably believes could potentially be caused by bioterrorism or other act of terrorism, the department shall immediately notify the department of

public safety, the homeland security and emergency management division of the department of public defense, and other appropriate federal, state, and local agencies and officials.

3. Sharing of information on reportable diseases, health conditions, unusual clusters, or suspicious events between the department and public safety authorities and other governmental agencies shall be restricted to sharing of only the information necessary for the prevention, control, and investigation of a public health disaster.

4. Release of information pursuant to this section shall be consistent with the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

2003 Acts, ch 33, §6, 11; 2003 Acts, ch 179, §157  
Reportable disease; §139A.3  
NEW section  
Terminology change applied

**CHAPTER 135B****LICENSURE AND REGULATION OF HOSPITALS****135B.18A Universal newborn and infant hearing screening.**

Beginning January 1, 2004, a birthing hospital as defined in section 135.131 shall comply with

section 135.131 relating to universal newborn and infant hearing screening.

2003 Acts, ch 102, §2  
NEW section

**CHAPTER 135C****HEALTH CARE FACILITIES**

Cost-related systems, §249.12  
Modified price-based case-mix reimbursement for nursing facilities; three-year phase-in period; 2001 Acts, ch 192, §4;  
2002 Acts, ch 1172, §2; 2003 Acts, ch 112, §9;  
2003 Acts, ch 175, §50; 2003 Acts, ch 179, §165

**135C.1 Definitions.**

1. “*Adult day services*” means adult day services as defined in section 231D.1 that are provided in a licensed health care facility.

2. “*Department*” means the department of inspections and appeals.

3. “*Direction*” means authoritative policy or procedural guidance for the accomplishment of a function or activity.

4. “*Director*” means the director of the department of inspections and appeals, or the director’s designee.

5. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.

6. “*Health care facility*” or “*facility*” means a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons

with mental retardation.

7. “*House physician*” means a physician who has entered into a two-party contract with a health care facility to provide services in that facility.

8. “*Intermediate care facility for persons with mental illness*” means an institution, place, building, or agency designed to provide accommodation, board, and nursing care for a period exceeding twenty-four consecutive hours to three or more individuals, who primarily have mental illness and who are not related to the administrator or owner within the third degree of consanguinity.

9. “*Intermediate care facility for persons with mental retardation*” means an institution or distinct part of an institution with a primary purpose to provide health or rehabilitative services to three or more individuals, who primarily have mental retardation or a related condition and who are not related to the administrator or owner with-

in the third degree of consanguinity, and which meets the requirements of this chapter and federal standards for intermediate care facilities for persons with mental retardation established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1936d, which are contained in 42 C.F.R. pt. 483, subpt. D, § 410 – 480.

10. “*Licensee*” means the holder of a license issued for the operation of a facility, pursuant to this chapter.

11. “*Mental illness*” means a substantial disorder of thought or mood which significantly impairs judgment, behavior, or the capacity to recognize reality or the ability to cope with the ordinary demands of life.

12. “*Nursing care*” means those services which can be provided only under the direction of a registered nurse or a licensed practical nurse.

13. “*Nursing facility*” means an institution or a distinct part of an institution housing three or more individuals not related to the administrator or owner within the third degree of consanguinity, which is primarily engaged in providing health-related care and services, including rehabilitative services, but which is not engaged primarily in providing treatment or care for mental illness or mental retardation, for a period exceeding twenty-four consecutive hours for individuals who, because of a mental or physical condition, require nursing care and other services in addition to room and board.

14. “*Person*” means any individual, firm, partnership, corporation, company, association or joint stock association; and includes trustee, receiver, assignee or other similar representative thereof.

15. “*Physician*” has the meaning assigned that term by section 135.1, subsection 4.

16. “*Rehabilitative services*” means services to encourage and assist restoration of optimum mental and physical capabilities of the individual resident of a health care facility.

17. “*Residential care facility*” means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, personal assistance and other essential daily living activities to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis.

18. “*Resident*” means an individual admitted to a health care facility in the manner prescribed by section 135C.23.

19. “*Respite care services*” means an organized program of temporary supportive care provided for twenty-four hours or more to a person in order to relieve the usual caregiver of the person from providing continual care to the person.

20. “*Social services*” means services relating to the psychological and social needs of the individual in adjusting to living in a health care facility, and minimizing stress arising from that circumstance.

21. “*Supervision*” means direct oversight and inspection of the act of accomplishing a function or activity.

2003 Acts, ch 165, §18  
Subsection 1 amended

### 135C.2 Purpose — rules — special classifications — protection and advocacy agency.

1. The purpose of this chapter is to promote and encourage adequate and safe care and housing for individuals who are aged or who, regardless of age, are infirm, convalescent, or mentally or physically dependent, by both public and private agencies by providing for the adoption and enforcement of rules and standards:

a. For the housing, care, and treatment of individuals in health care facilities, and

b. For the location, construction, maintenance, renovation, and sanitary operation of such health care facilities which will promote safe and adequate care of individuals in such homes so as to further the health, welfare, and safety of such individuals.

2. Rules and standards prescribed, promulgated, and enforced under this chapter shall not be arbitrary, unreasonable, or confiscatory and the department or agency prescribing, promulgating, or enforcing such rules or standards shall have the burden of proof to establish that such rules or standards meet such requirements and are consistent with the economic problems and conditions involved in the care and housing of persons in health care facilities.

3. a. The department shall establish by administrative rule the following special classifications:

(1) Within the residential care facility category, a special license classification for residential facilities intended to serve persons with mental illness.

(2) Within the nursing facility category, a special license classification for nursing facilities which designate and dedicate the facility or a special unit within the facility to provide care for persons who suffer from chronic confusion or a dementing illness. A nursing facility which designates and dedicates the facility or a special unit within the facility for the care of persons who suffer from chronic confusion or a dementing illness shall be specially licensed. For the purposes of this subsection, “*designate*” means to identify by a distinctive title or label and “*dedicate*” means to set apart for a definite use or purpose and to promote that purpose.

b. The department may also establish by administrative rule special classifications within the residential care facility, intermediate care facility

for persons with mental illness, intermediate care facility for persons with mental retardation, or nursing facility categories, for facilities intended to serve individuals who have special health care problems or conditions in common. Rules establishing a special classification shall define the problem or condition to which the special classification is relevant and establish requirements for an approved program of care commensurate with the problem or condition. The rules may grant special variances or considerations to facilities licensed within the special classification.

c. The rules adopted for intermediate care facilities for persons with mental retardation shall be consistent with, but no more restrictive than, the federal standards for intermediate care facilities for persons with mental retardation established pursuant to the federal Social Security Act, § 1905(c)(d), as codified in 42 U.S.C. § 1396d, in effect on January 1, 1989. However, in order for an intermediate care facility for persons with mental retardation to be licensed, the state fire marshal must certify to the department that the facility meets the applicable provisions of the rules adopted for such facilities by the state fire marshal. The state fire marshal's rules shall be based upon such a facility's compliance with either the provisions applicable to health care occupancies or residential board and care occupancies of the life safety code of the national fire protection association, 2000 edition. The department shall adopt additional rules for intermediate care facilities for persons with mental retardation pursuant to section 135C.14, subsection 8.

d. Notwithstanding the limitations set out in this subsection regarding rules for intermediate care facilities for persons with mental retardation, the department shall consider the federal interpretive guidelines issued by the federal centers for Medicare and Medicaid services when interpreting the department's rules for intermediate care facilities for persons with mental retardation. This use of the guidelines is not subject to the rule-making provisions of sections 17A.4 and 17A.5, but the guidelines shall be published in the Iowa administrative bulletin and the Iowa administrative code.

4. The protection and advocacy agency designated in the state, under Pub. L. No. 98-527, the Developmental Disabilities Act of 1984, Pub. L. No. 99-319, the Protection and Advocacy for Mentally Ill Individuals Act of 1986, and Pub. L. No. 100-146, the federal Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1987, is recognized as an agency legally authorized and constituted to ensure the implementation of the purposes of this chapter for populations under its authority and in the manner designated by Pub. L. No. 98-527, Pub. L. No. 99-319, and Pub. L. No. 100-146 and in the assurances of the governor of the state.

5. The department shall establish a special

classification within the residential care facility category in order to foster the development of residential care facilities which serve persons with mental retardation, chronic mental illness, a developmental disability, or brain injury, as described under section 225C.26, and which contain five or fewer residents. A facility within the special classification established pursuant to this subsection is exempt from the requirements of section 135.63. The department shall adopt rules which are consistent with rules previously developed for the waiver demonstration project pursuant to 1986 Iowa Acts, chapter 1246, section 206, and which include all of the following provisions:

a. A facility provider under the special classification must comply with rules adopted by the department for the special classification. However, a facility provider which has been accredited by the accreditation council for services to persons with mental retardation and other developmental disabilities shall be deemed to be in compliance with the rules adopted by the department.

b. A facility must be located in an area zoned for single or multiple-family housing or in an unincorporated area and must be constructed in compliance with applicable local requirements and the rules adopted for the special classification by the state fire marshal in accordance with the concept of the least restrictive environment for the facility residents. Local requirements shall not be more restrictive than the rules adopted for the special classification by the state fire marshal and the state building code requirements for single or multiple-family housing, under section 103A.7.

c. Facility provider plans for the facility's accessibility to residents must be in place.

d. A written plan must be in place which documents that a facility meets the needs of the facility's residents pursuant to individual program plans developed according to age appropriate and least restrictive program requirements.

e. A written plan must be in place which documents that a facility's residents have reasonable access to employment or employment-related training, education, generic community resources, and integrated opportunities to promote interaction with the community.

f. The facilities licensed under this subsection shall be eligible for funding utilized by other licensed residential care facilities for persons with mental retardation, or licensed residential care facilities for persons with mental illness, including but not limited to funding under or from the federal social services block grant, the state supplementary assistance program, state mental health and developmental disabilities services funds, and county funding provisions.

6. a. This chapter shall not apply to adult day services provided in a health care facility. However, adult day services shall not be provided by a health care facility to persons requiring a level of

care which is higher than the level of care the facility is licensed to provide.

b. The level of care certification provisions pursuant to sections 135C.3 and 135C.4, the license application and fee provisions pursuant to section 135C.7, and the involuntary discharge provisions pursuant to section 135C.14, subsection 8, shall not apply to respite care services provided in a health care facility. However, respite care services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

c. The department shall adopt rules to implement this subsection.

7. The rules adopted by the department regarding nursing facilities shall provide that a nursing facility may choose to be inspected either by the department or by the joint commission on accreditation of health care organizations. The rules regarding acceptance of inspection by the joint commission on accreditation of health care organizations shall include recognition, in lieu of inspection by the department, of comparable inspections and inspection findings of the joint commission on accreditation of health care organizations, if the department is provided with copies of all requested materials relating to the inspection process.

2003 Acts, ch 44, §114; 2003 Acts, ch 101, §1, 4  
 Rules requiring special license classification for facility or unit designated and dedicated to caring for persons with chronic confusion or a debilitating illness; applicability; existing facilities; 90 Acts, ch 1016, §1  
 Subsection 7 is effective contingent upon passage of federal legislation; see 96 Acts, ch 1053, §3  
 Code section reference added  
 Subsection 3, paragraph c amended

### 135C.6 License required — exemptions.

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate a health care facility in this state without a license for the facility. A supported community living service, as defined in section 225C.21, is not required to be licensed under this chapter, but is subject to approval under section 225C.21 in order to receive public funding.

2. A health care facility suitable for separation and operation with distinct parts may, where otherwise qualified in all respects, be issued multiple licenses authorizing various parts of such facilities to be operated as health care facilities of different license categories.

3. No change in a health care facility, its operation, program, or services, of a degree or character affecting continuing licensability shall be made without prior approval thereof by the department. The department may by rule specify the types of changes which shall not be made without its prior approval.

4. No department, agency, or officer of this state or of any of its political subdivisions shall pay or approve for payment from public funds any

amount or amounts to a health care facility under any program of state aid in connection with services provided or to be provided an actual or prospective resident in a health care facility, unless the facility has a current license issued by the department and meets such other requirements as may be in effect pursuant to law.

5. No health care facility established and operated in compliance with law prior to January 1, 1976, shall be required to change its corporate or business name by reason of the definitions prescribed in section 135C.1, provided that no health care facility shall at any time represent or hold out to the public or to any individual that it is licensed as, or provides the services of, a health care facility of a type offering a higher grade of care than such health care facility is licensed to provide. Any health care facility which, by virtue of this section, operates under a name not accurately descriptive of the type of license which it holds shall clearly indicate in any printed advertisement, letterhead, or similar material, the type of license or licenses which it has in fact been issued. No health care facility established or renamed after January 1, 1976, shall use any name indicating that it holds a different type of license than it has been issued.

6. A health care facility operated by and for the exclusive use of members of a religious order, which does not admit more than two individuals to the facility from the general public, may be operated without obtaining a license under this chapter and shall not be deemed to be licensed by the state.

7. A freestanding hospice facility which operates a hospice program in accordance with 42 C.F.R. § 418 may be operated without obtaining a license under this chapter and shall not be deemed to be licensed by the state.

8. The following residential programs to which the department of human services applies accreditation, certification, or standards of review shall not be required to be licensed as a health care facility under this chapter:

a. Residential programs providing care to not more than four individuals and receiving moneys appropriated to the department of human services under provisions of a federally approved home and community-based services waiver for persons with mental retardation or other medical assistance program under chapter 249A. In approving a residential program under this paragraph, the department of human services shall consider the geographic location of the program so as to avoid an overconcentration of such programs in an area. In order to be approved under this paragraph, a residential program shall not be required to involve the conversion of a licensed residential care facility for persons with mental retardation.

b. Not more than forty residential care facilities for persons with mental retardation that are licensed to serve not more than five individuals may be authorized by the department of human

services to convert to operation as a residential program under the provisions of a medical assistance home and community-based services waiver for persons with mental retardation. A converted residential program operating under this paragraph is subject to the conditions stated in paragraph "a" except that the program shall not serve more than five individuals.

c. A residential program approved by the department of human services pursuant to this paragraph "c" to receive moneys appropriated to the department of human services under provisions of a federally approved home and community-based services waiver for persons with mental retardation may provide care to not more than five individuals. The department shall approve a residential program under this paragraph that complies with all of the following conditions:

(1) Approval of the program will not result in an overconcentration of such programs in an area.

(2) The county in which the residential program is located submits to the department of human services a letter of support for approval of the program.

(3) The county in which the residential program is located provides to the department of human services verification in writing that the program is needed to address one or more of the following:

(a) The quantity of services currently available in the county is insufficient to meet the need.

(b) The quantity of affordable rental housing in the county is insufficient.

(c) Implementation of the program will cause a reduction in the size or quantity of larger congregate programs.

9. Contingent upon the department of human services receiving federal approval, a residential program which serves not more than eight individuals and is licensed as an intermediate care facility for persons with mental retardation may surrender the facility license and continue to operate under a federally approved medical assistance home and community-based services waiver for persons with mental retardation, if the department of human services has approved a plan submitted by the residential program.

10. Notwithstanding section 135C.9, nursing facilities which are accredited by the joint commission on accreditation of health care organizations shall be licensed without inspection by the department, if the nursing facility has chosen to be inspected by the joint commission on accreditation of health care organizations in lieu of inspection by the department.

2003 Acts, ch 101, §2, 4  
Subsection 10 is effective contingent upon passage of federal legislation; see 96 Acts, ch 1053, §3  
Subsection 8 amended

### **135C.16 Inspections.**

1. In addition to the inspections required by

sections 135C.9 and 135C.38, the department shall make or cause to be made such further unannounced inspections as it deems necessary to adequately enforce this chapter. At least one general unannounced inspection shall be conducted for each health care facility within a thirty-month period. The inspector shall show identification to the person in charge of the facility and state that an inspection is to be made before beginning the inspection. An employee of the department who gives unauthorized advance notice of an inspection made or planned to be made under this subsection or section 135C.38 shall be disciplined as determined by the director, except that if the employee is employed pursuant to the merit system provisions of chapter 8A, subchapter IV, the discipline shall not exceed the discipline authorized pursuant to that subchapter.

2. The department shall prescribe by rule that any licensee or applicant for license desiring to make specific types of physical or functional alterations or additions to its facility or to construct new facilities shall, before commencing the alteration or additions or new construction, submit plans and specifications to the department for preliminary inspection and approval or recommendations with respect to compliance with the department's rules and standards. When the plans and specifications have been properly approved by the department or other appropriate state agency, the facility or the portion of the facility constructed or altered in accord with the plans and specifications shall not for a period of at least five years from completion of the construction or alteration be considered deficient or ineligible for licensing by reason of failure to meet any rule or standard established subsequent to approval of the plans and specifications. When construction or alteration of a facility or portion of a facility has been completed in accord with plans and specifications submitted as required by this subsection and properly approved by the department or other appropriate state agency, and it is discovered that the facility or portion of a facility is not in compliance with a requirement of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, and the deficiency was apparent from the plans and specifications submitted but was not noted or objected to by the department or other appropriate state agency, the department or agency responsible for the oversight shall either waive the requirement or reimburse the licensee or applicant for any costs which are necessary to bring the new or reconstructed facility or portion of a facility into compliance with the requirement and which the licensee or applicant would not have incurred if the facility or portion of the facility had been constructed in compliance with the requirements of this chapter or of the rules or standards adopted pursuant to it and in effect at the time the plans

and specifications were submitted. If within two years from the completion of the construction or alteration of the facility or portion thereof, a department or agency of the state orders that the new or reconstructed facility or portion thereof be brought into compliance with the requirements of this chapter or the rules or standards adopted pursuant to it and in effect at the time the plans and specifications were submitted, the state shall have a claim for damages to the extent of any reimbursement paid to the licensee or applicant against any person who designed the facility or portion thereof for negligence in the preparation of the plans and specifications therefor, subject to all defenses based upon the negligence of the state in reviewing and approving those plans and specifications, but not thereafter.

The provisions of this subsection shall not apply where the deficiency presents a clear and present danger to the safety of the residents of the facility.

3. An inspector of the department may enter any licensed health care facility without a warrant, and may examine all records pertaining to the care provided residents of the facility. An inspector of the department may contact or interview any resident, employee, or any other person who might have knowledge about the operation of a health care facility. An inspector of the department of human services shall have the same right with respect to any facility where one or more residents are cared for entirely or partially at public expense, and an investigator of the designated protection and advocacy agency shall have the same right with respect to any facility where one or more residents have developmental disabilities or mental illnesses, and the state fire marshal or a deputy appointed pursuant to section 135C.9, subsection 1, paragraph "b" shall have the same right of entry into any facility and the right to inspect any records pertinent to fire safety practices and conditions within that facility. If any such inspector has probable cause to believe that any institution, building, or agency not licensed as a health care facility is in fact a health care facility as defined by this chapter, and upon producing identification that the individual is an inspector is denied entry thereto for the purpose of making an inspection, the inspector may, with the assistance of the county attorney of the county in which the purported health care facility is located, apply to the district court for an order requiring the owner or occupant to permit entry and inspection of the premises to determine whether there have been any violations of this chapter.

2003 Acts, ch 145, §187  
Subsection 1 amended

### 135C.18 Employees.

The department may employ, pursuant to chapter 8A, subchapter IV, such assistants and inspectors as may be necessary to administer and en-

force the provisions of this chapter.

2003 Acts, ch 145, §188  
Section amended

### 135C.31A Assessment of residents — program eligibility.

Beginning July 1, 2003, a health care facility receiving reimbursement through the medical assistance program under chapter 249A shall assist the Iowa commission of veterans affairs in identifying, upon admission of a resident, the resident's eligibility for benefits through the federal department of veterans affairs. The health care facility shall also assist the Iowa commission of veterans affairs in determining such eligibility for residents residing in the facility on July 1, 2003. The department of inspections and appeals, in cooperation with the department of human services, shall adopt rules to administer this section, including a provision that ensures that if a resident is eligible for benefits through the federal department of veterans affairs or other third-party payor, the payor of last resort for reimbursement to the health care facility is the medical assistance program. This section shall not apply to the admission of an individual to a state mental health institute for acute psychiatric care.

2003 Acts, ch 112, §2; 2003 Acts, ch 179, §160  
NEW section

### 135C.33 Child or dependent adult abuse information and criminal records — evaluations — application to other providers.

1. Beginning July 1, 1997, prior to employment of a person in a facility, the facility shall request that the department of public safety perform a criminal history check and the department of human services perform a dependent adult abuse record check of the person in this state. In addition, the facility may request that the department of human services perform a child abuse record check in this state. Beginning July 1, 1997, a facility shall inform all persons prior to employment regarding the performance of the records checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. Additionally, a facility shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" If the person has been convicted of a crime under a law of any state or has a record of founded child or dependent adult abuse, the department of human services shall, upon the facility's request, perform an evaluation to determine whether the crime or founded child or dependent adult abuse warrants prohibition of employment in the facility. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department of human services. If a person owns or operates more than one facility, and an employee of one of such facilities is transferred to another such fa-

cility without a lapse in employment, the facility is not required to request additional criminal and dependent adult abuse record checks of that employee.

2. If the department of public safety determines that a person has committed a crime and is to be employed in a facility licensed under this chapter, the department of public safety shall notify the licensee that an evaluation, if requested by the facility, will be conducted by the department of human services to determine whether prohibition of the person's employment is warranted. If a department of human services child or dependent adult abuse record check shows that the person has a record of founded child or dependent adult abuse, the department of human services shall inform the licensee that an evaluation, if requested by the facility, will be conducted to determine whether prohibition of the person's employment is warranted.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. The department of human services has final authority in determining whether prohibition of the person's employment is warranted.

4. A person shall not be employed in a facility licensed under this chapter unless an evaluation has been performed by the department of human services. If the department of human services determines from the evaluation that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of employment, the person shall not be employed in a facility licensed under this chapter.

5. Beginning July 1, 1998, this section shall apply to prospective employees of all of the following, if the provider is regulated by the state or re-

ceives any state or federal funding:

*a.* An employee of a homemaker, home-health aide, home-care aide, adult day services, or other provider of in-home services if the employee provides direct services to consumers.

*b.* An employee of a hospice, if the employee provides direct services to consumers.

*c.* An employee who provides direct services to consumers under a federal home and community-based services waiver.

*d.* An employee of an elder group home certified under chapter 231B, if the employee provides direct services to consumers.

*e.* An employee of an assisted living program certified under chapter 231C, if the employee provides direct services to consumers.

In substantial conformance with the provisions of this section, prior to the employment of such an employee, the provider shall request the performance of the criminal and dependent adult abuse record checks and may request the performance of the child abuse record checks. The provider shall inform the prospective employee and obtain the prospective employee's signed acknowledgment. The department of human services shall perform the evaluation of any criminal record or founded child or dependent adult abuse record and shall make the determination of whether a prospective employee of a provider shall not be employed by the provider.

6. *a.* The department of inspections and appeals, in conjunction with other departments and agencies of state government involved with criminal history and abuse registry information, shall establish a single contact repository for facilities and other providers to have electronic access to data to perform background checks for purposes of employment, as required of the facilities and other providers under this section.

*b.* The department may access the single contact repository for any of the following purposes:

(1) To verify data transferred from the department's nurse aide registry to the repository.

(2) To conduct record checks of applicants for employment with the department.

2003 Acts, ch 166, §2

Legislative intent; 98 Acts, ch 1217, §36

Subsection 5, paragraph e amended

## CHAPTER 137

### LOCAL BOARDS OF HEALTH

#### 137.6 Powers of local boards.

Local boards shall have the following powers:

1. Enforce state health laws and the rules and lawful orders of the state department.

2. Make and enforce such reasonable rules and regulations not inconsistent with law or with

the rules of the state board as may be necessary for the protection and improvement of the public health.

*a.* Rules of a county board shall become effective upon approval by the county board of supervisors and publication in a newspaper having gener-

al circulation in the county.

b. Rules of a city board shall become effective upon approval by the city council and publication in a newspaper having general circulation in the city.

c. Rules of a district board shall become effective upon approval by the district board and publication in a newspaper having general circulation in the district.

d. However, before approving any rule or regulation the local board of health shall hold a public hearing on the proposed rule. Any citizen may appear and be heard at the public hearing. A notice of the public hearing, stating the time and place and the general nature of the proposed rule or regulation, shall be published as provided in section 331.305 in the area served by the board.

The board shall also make a reasonable effort to give notice of the hearing to the communications media located within said area.

3. May by agreement with the council of any city within its jurisdiction enforce appropriate ordinances of said city.

4. Employ persons as necessary for the efficient discharge of its duties. Employment practices shall meet the requirements of chapter 8A, subchapter IV, or any civil service provision adopted under chapter 400.

5. Provide reports of its operations and activities to the state department as may be required by the director.

2003 Acts, ch 145, §189  
Subsection 4 amended

## CHAPTER 137F

### FOOD ESTABLISHMENTS AND FOOD PROCESSING PLANTS

#### 137F.1 Definitions.

For the purpose of this chapter:

1. *“Bed and breakfast home”* means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel, or motel, does not require reservations, and serves food only to overnight guests.

2. *“Commissary”* means a food establishment used for preparing, fabricating, packaging, and storage of food or food products for distribution and sale through the food establishment’s own food establishment outlets.

3. *“Department”* means the department of inspections and appeals.

4. *“Director”* means the director of the department of inspections and appeals.

5. *“Farmers market”* means a marketplace which seasonally operates principally as a common market for fresh fruits and vegetables on a retail basis for off-the-premises consumption.

6. *“Food”* means a raw, cooked, or processed edible substance, ice, a beverage, an ingredient used or intended for use or sale in whole or in part for human consumption, or chewing gum.

7. *“Food code”* means the 1997 edition of the United States food and drug administration food code.

8. *“Food establishment”* means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance

abuse treatment facility, correctional facility operated by the department of corrections, the state training school, or the Iowa juvenile home. *“Food establishment”* does not include the following:

a. A food processing plant.

b. An establishment that offers only prepackaged foods that are nonpotentially hazardous.

c. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.

d. Premises which are a home food establishment pursuant to chapter 137D.

e. Premises where a person operates a farmers market, if potentially hazardous food is not sold or distributed from the premises.

f. Premises of a residence in which food that is nonpotentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food.

g. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.

h. A private home that receives catered or home-delivered food.

i. Child care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.

j. Supply vehicles, vending machine locations, or boardinghouses for permanent guests.

k. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to section 189A.3.

l. Premises covered by a current class “A” beer permit as provided in chapter 123.

m. The premises of a residence in which honey

is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.

9. “*Food processing plant*” means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. “*Food processing plant*” does not include any of the following:

a. A premises covered by a class “A” beer permit as provided in chapter 123.

b. A premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.

10. “*Mobile food unit*” means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

11. “*Municipal corporation*” means a political subdivision of this state.

12. “*Perishable food*” means potentially hazardous food.

13. “*Potentially hazardous food*” means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of clostridium botulinum. “*Potentially hazardous food*” includes an animal food that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures. “*Potentially hazardous food*” does not include the following:

a. An air-cooled hard-boiled egg with shell intact.

b. A food with a water activity value of 0.85 or less.

c. A food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at twenty-four degrees Centigrade or seventy-five degrees Fahrenheit.

d. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

14. “*Pushcart*” means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

15. “*Regulatory authority*” means the department or a municipal corporation that has entered into an agreement with the director pursuant to section 137F.3 for authority to enforce this chapter in its jurisdiction.

16. “*Temporary food establishment*” means a food establishment that operates for a period of no more than fourteen consecutive days in conjunc-

tion with a single event or celebration.

17. “*Vending machine*” means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

18. “*Vending machine location*” means the physical site where a vending machine is installed and operated, including the storage and servicing areas on the premises that are used in conjunction with the vending machine.

2003 Acts, ch 44, §37  
Subsection 8, paragraph e amended

### 137F.6 License fees.

The regulatory authority shall collect the following annual license fees:

1. For a mobile food unit or pushcart, twenty dollars.

2. For a temporary food establishment per fixed location, twenty-five dollars.

3. For a vending machine, twenty dollars for the first machine and five dollars for each additional machine.

4. For a food establishment which prepares or serves food for individual portion service intended for consumption on-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:

a. Annual gross sales of under fifty thousand dollars, fifty dollars.

b. Annual gross sales of at least fifty thousand dollars but less than one hundred thousand dollars, eighty-five dollars.

c. Annual gross sales of at least one hundred thousand dollars but less than two hundred fifty thousand dollars, one hundred seventy-five dollars.

d. Annual gross sales of two hundred fifty thousand dollars but less than five hundred thousand dollars, two hundred dollars.

e. Annual gross sales of five hundred thousand dollars or more, two hundred twenty-five dollars.

5. For a food establishment which sells food or food products to consumer customers intended for preparation or consumption off-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:

a. Annual gross sales of under ten thousand dollars, thirty dollars.

b. Annual gross sales of at least ten thousand dollars but less than two hundred fifty thousand dollars, seventy-five dollars.

c. Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred thousand dollars, one hundred fifteen dollars.

d. Annual gross sales of at least five hundred thousand dollars but less than seven hundred fifty thousand dollars, one hundred fifty dollars.

e. Annual gross sales of seven hundred fifty thousand dollars or more, two hundred twenty-five dollars.

6. For a food processing plant, the annual license fee shall correspond to the annual gross food and beverage sales of the food processing plant, as follows:

a. Annual gross sales of under fifty thousand dollars, fifty dollars.

b. Annual gross sales of at least fifty thousand dollars but less than two hundred fifty thousand dollars, one hundred dollars.

c. Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred thousand dollars, one hundred fifty dollars.

d. Annual gross sales of five hundred thousand dollars or more, two hundred fifty dollars.

7. For a farmers market where potentially hazardous food is sold or distributed, one seasonal license fee of one hundred dollars for each vendor

on a countywide basis.

A food establishment covered by subsections 4 and 5 shall be assessed license fees not to exceed seventy-five percent of the total fees applicable under both subsections.

Fees collected by the department shall be deposited in the general fund of the state. Fees collected by a municipal corporation shall be retained by the municipal corporation for regulation of food establishments and food processing plants licensed under this chapter.

Each vending machine licensed under this chapter shall bear a readily visible identification tag or decal provided by the licensee, containing the licensee's business address and phone number, and a company license number assigned by the regulatory authority.

2003 Acts, ch 108, §128, 132  
Section not amended; section history revised

## CHAPTER 139A

### COMMUNICABLE AND INFECTIOUS DISEASES AND POISONINGS

#### 139A.2 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "*Business*" means and includes every trade, occupation, or profession.

2. "*Care provider*" means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual's official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. "*Care provider*" also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

3. "*Communicable disease*" means any disease spread from person to person or animal to person.

4. "*Contagious or infectious disease*" means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease, with the exception of AIDS or HIV infection as defined in section 141A.1, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

5. "*Department*" means the Iowa department of public health.

6. "*Designated officer*" means a person who is

designated by a department, agency, division, or service organization to act as an infection control liaison officer.

7. "*Exposure*" means the risk of contracting disease as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

8. "*Exposure-prone procedure*" means a procedure performed by a health care provider which presents a recognized risk of percutaneous injury to the health care provider and if such an injury occurs, the health care provider's blood is likely to contact a patient's body cavity, subcutaneous tissues, or mucous membranes, or an exposure-prone procedure as defined by the centers for disease control and prevention of the United States department of health and human services.

9. "*HBV*" means hepatitis B virus.

10. "*Health care facility*" means a health care facility as defined in section 135C.1, an ambulatory surgical center, or a clinic.

11. "*Health care provider*" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, podiatry, nursing, dentistry, optometry, or as a physician assistant, dental hygienist, or acupuncturist.

12. "*HIV*" means HIV as defined in section 141A.1.

13. "*Hospital*" means hospital as defined in section 135B.1.

14. “*Isolation*” means the separation of persons or animals presumably or actually infected with a communicable disease or who are disease carriers for the usual period of communicability of that disease in such places, marked by placards if necessary, and under such conditions as will prevent the direct or indirect conveyance of the infectious agent or contagion to susceptible persons.

15. “*Local board*” means the local board of health.

16. “*Local department*” means the local health department.

17. “*Placard*” means a warning sign to be erected and displayed on the periphery of a quarantine area, forbidding entry to or exit from the area.

18. “*Public health disaster*” means public health disaster as defined in section 135.140.

19. “*Quarantinable disease*” means any communicable disease designated by rule adopted by the department as requiring quarantine or isolation to prevent its spread.

20. “*Quarantine*” means the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease within specified limits marked by placards for a period of time equal to the longest usual incubation period of the disease in such manner as to prevent the spread of a communicable disease which affects people.

21. “*Reportable disease*” means any disease designated by rule adopted by the department requiring its occurrence to be reported to an appropriate authority.

22. “*Sexually transmitted disease or infection*” means a disease or infection as identified by rules adopted by the department, based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

23. “*Terminal cleaning*” means cleaning procedures defined in the isolation guidelines issued by the centers for disease control and prevention of the United States department of health and human services.

2003 Acts, ch 33, §9,11

NEW subsection 18 and former subsections 18 – 22 renumbered as 19 – 23

### 139A.3A Investigation and control.

When the department receives a report under this chapter or acts on other reliable information that a person is infected with a disease, illness, or health condition that may be a potential cause of a public health disaster, the department shall identify all individuals reasonably believed to have been exposed to the disease, illness, or health condition and shall investigate all such cases for sources of infection and ensure that such cases are subject to proper control measures. Any hospital, health care provider, or other person may provide

information, interviews, reports, statements, memoranda, records, or other data related to the condition and treatment of any individual, if not otherwise prohibited by the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, to the department to be used for the limited purpose of determining whether a public health disaster exists.

2003 Acts, ch 33, §10, 11  
NEW section

### 139A.8 Immunization of children.

1. A parent or legal guardian shall assure that the person’s minor children residing in the state are adequately immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, rubella, and varicella, according to recommendations provided by the department subject to the provisions of subsections 3 and 4.

2. *a.* A person shall not be enrolled in any licensed child care center or elementary or secondary school in Iowa without evidence of adequate immunizations against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, rubella, and varicella.

*b.* Evidence of adequate immunization against haemophilus influenza B shall be required prior to enrollment in any licensed child care center.

*c.* Evidence of hepatitis type B immunization shall be required of a child born on or after July 1, 1994, prior to enrollment in school in kindergarten or in a grade.

*d.* Immunizations shall be provided according to recommendations provided by the department subject to the provisions of subsections 3 and 4.

3. Subject to the provision of subsection 4, the state board of health may modify or delete any of the immunizations in subsection 2.

4. Immunization is not required for a person’s enrollment in any elementary or secondary school or licensed child care center if either of the following applies:

*a.* The applicant, or if the applicant is a minor, the applicant’s parent or legal guardian, submits to the admitting official a statement signed by a physician, advanced registered nurse practitioner, or physician assistant who is licensed by the board of medical examiners, board of nursing, or board of physician assistant examiners that the immunizations required would be injurious to the health and well-being of the applicant or any member of the applicant’s family.

*b.* The applicant, or if the applicant is a minor, the applicant’s parent or legal guardian, submits an affidavit signed by the applicant, or if the applicant is a minor, the applicant’s parent or legal guardian, stating that the immunization conflicts with the tenets and practices of a recognized religious denomination of which the applicant is an adherent or member.

The exemptions under this subsection do not apply in times of emergency or epidemic as deter-

mined by the state board of health and as declared by the director of public health.

5. A person may be provisionally enrolled in an elementary or secondary school or licensed child care center if the person has begun the required immunizations and if the person continues to receive the necessary immunizations as rapidly as is medically feasible. The department shall adopt rules relating to the provisional admission of persons to an elementary or secondary school or licensed child care center.

6. The local board shall furnish the department, within sixty days after the first official day of school, evidence that each person enrolled in any elementary or secondary school has been immunized as required in this section subject to subsection 4. The department shall adopt rules pursuant to chapter 17A relating to the reporting of evidence of immunization.

7. Local boards shall provide the required immunizations to children in areas where no local provision of these services exists.

8. The department, in consultation with the director of the department of education, shall adopt rules for the implementation of this section and shall provide those rules to local school boards and local boards.

2003 Acts, ch 78, §1 – 3

Subsection 1 amended

Subsection 2, paragraph a amended

Subsection 4, paragraph a amended

### 139A.19 Care provider notification.

1. *a.* Notwithstanding any provision of this chapter to the contrary, if a care provider sustains an exposure from an individual while rendering health care services or other services, the individual to whom the care provider was exposed is deemed to consent to a test to determine if the individual has a contagious or infectious disease and is deemed to consent to notification of the care provider of the results of the test, upon submission of an exposure report by the care provider to the hospital or other person specified in this section to whom the individual is delivered by the care provider. The exposure report form may be incorporated into the Iowa prehospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first response service or law enforcement agency.

*b.* The hospital or other person specified in this section to whom the individual is delivered shall conduct the test. If the individual is delivered by the care provider to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered by the care provider to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. The sample and test results shall only be identified by a number and shall not otherwise identify the individual tested.

*c.* A hospital, institutions administered by the department of corrections, and jails shall have written policies and procedures for notification of a care provider under this section. The policies and procedures shall include designation of a representative of the care provider to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall inform the hospital, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

*d.* Notwithstanding any other provision of law to the contrary, a care provider may transmit cautions regarding contagious or infectious disease information in the course of the care provider's duties over the police radio broadcasting system under chapter 693 or any other radio-based communications system if the information transmitted does not personally identify an individual.

2. If the individual tested is diagnosed or confirmed as having a contagious or infectious disease, the hospital or other person conducting the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider.

3. The notification to the care provider shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the care provider seek medical attention. The notification shall be provided as soon as is reasonably possible following determination that the individual has a contagious or infectious disease. The notification shall not include the name of the individual tested for the contagious or infectious disease unless the individual consents. If the care provider who sustained an exposure determines the identity of the individual diagnosed or confirmed as having a contagious or infectious disease, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual diagnosed with or confirmed as having a contagious or infectious disease.

4. This section does not require or permit, unless otherwise provided, a hospital, health care provider, or other person to administer a test for the express purpose of determining the presence of a contagious or infectious disease, except that testing may be performed if the individual consents and if the requirements of this section are satisfied.

5. This section does not preclude a hospital or a health care provider from providing notification to a care provider under circumstances in which the hospital's or health care provider's policy provides for notification of the hospital's or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a patient's name, unless the patient consents.

6. A hospital, health care provider, or other person participating in good faith in complying with provisions authorized or required under this section is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

7. A hospital's or health care provider's duty of notification under this section is not continuing but is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to which notification under this section applies.

8. A hospital, health care provider, or other person who is authorized to perform a test under this section who performs the test in compliance with this section or who fails to perform the test

authorized under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

9. A hospital, health care provider, or other person who is authorized to perform a test under this section has no duty to perform the test authorized.

10. The department shall adopt rules pursuant to chapter 17A to administer this section. The department may determine by rule the contagious or infectious diseases for which testing is reasonable and appropriate and which may be administered under this section.

11. The employer of a care provider who sustained an exposure under this section shall pay the costs of testing for the individual who is the source of the exposure and of the testing of the care provider, if the exposure was sustained during the course of employment. However, the department shall pay the costs of testing for the individual who is the source of the significant exposure and of the testing of the care provider who renders direct aid without compensation.

Care provider notification of HIV infections, see §141A.8  
Hepatitis testing and immunization of emergency responders; reimbursement; 2003 Acts, ch 175, §2  
Section not amended; footnote revised

## CHAPTER 141A

### ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

#### **141A.7 Test results — counseling — application for services.**

1. Prior to undergoing an HIV-related test, information shall be available to the subject of the test concerning testing and any means of obtaining additional information regarding HIV infection and risk reduction. At any time that the subject of an HIV-related test is informed of confirmed positive test results, counseling concerning the emotional and physical health effects shall be initiated. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning additional counseling.

2. Notwithstanding subsection 1, the provisions of this section do not apply to any of the following:

*a.* The performance by a health care provider or health facility of an HIV-related test when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the uniform anatomical gift Act as provided in chapter 142C, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of

blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.

*b.* A person engaged in the business of insurance who is subject to section 505.16.

*c.* The performance by a health care provider or health facility of an HIV-related test when the subject of the test is deceased and a documented significant exposure has occurred.

3. A person may apply for voluntary treatment, contraceptive services, or screening or treatment for HIV infection and other sexually transmitted diseases directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic. Notwithstanding any other provision of law, however, a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the need for family support and assists in making available the resources necessary to accomplish that goal. However, a

testing facility which is precluded by federal statute, regulation, or centers for disease control and prevention guidelines from informing the legal guardian is exempt from the notification requirement. The minor shall give written consent to these procedures and to receive the services,

screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority.

2003 Acts, ch 108, §35  
Uniform anatomical gift Act, see chapter 142C  
Subsection 2, paragraph a amended

## CHAPTER 142

### DEAD BODIES FOR SCIENTIFIC PURPOSES

#### 142.4 Surrender to relatives.

When any dead body which has been delivered under this chapter for scientific purposes is subsequently claimed by any relative, it shall be at once surrendered to such relative for burial without public expense; and all bodies received under this chapter shall be held for a period of thirty days before being used. Unless such person claiming the body for burial pays the costs that have been incurred in the care and transportation of the body within thirty days after claiming it, all rights thereto shall cease and the body may then be used as if no claim had been made.

This section shall not apply to bodies given under authority of the uniform anatomical gift Act as provided in chapter 142C.

2003 Acts, ch 108, §36  
Unnumbered paragraph 2 amended

#### 142.8 Purpose for which body used.

The dead bodies delivered under this chapter shall be used only within the limits of this state for the purpose of scientific, medical, and surgical study, and no person shall remove the same beyond the limits of this state or in any manner traffic therein. Any person who shall violate this section shall be guilty of a serious misdemeanor.

This section shall not apply to bodies given under authority of the uniform anatomical gift Act as provided in chapter 142C.

2003 Acts, ch 108, §37  
Unnumbered paragraph 2 amended

## CHAPTER 142A

### TOBACCO USE PREVENTION AND CONTROL

#### 142A.5 Director and administrator duties.

1. The director shall do all of the following:
  - a. Establish and maintain the division of tobacco use prevention and control.
  - b. Employ a division administrator who shall be responsible for the administration and oversight of the division. The division administrator shall report to and shall serve at the pleasure of the director. The administrator shall be exempt from the merit system provisions of chapter 8A, subchapter IV.
  - c. Coordinate all tobacco use prevention and control programs and activities under the purview of the department.
  - d. Receive and review budget recommendations from the commission. The director shall consider these recommendations in developing the budget request for the department.
  - e. Enter into contracts with the alcoholic beverages division of the department of commerce, to provide enforcement of tobacco laws and regulations. Such contracts shall require that enforce-

ment efforts include training of local authorities who issue retailer permits and education of retailers.

2. The administrator shall do all of the following:
  - a. Implement the initiative, coordinate the activities of the commission and the initiative, and coordinate other tobacco use prevention and control activities as assigned by the director.
  - b. Monitor and evaluate the effectiveness of performance measures.
  - c. Provide staff and administrative support to the commission.
  - d. Administer contracts entered into under this chapter.
  - e. Coordinate and cooperate with other tobacco use prevention and control programs within and outside of the state.
  - f. Coordinate the efforts of the division with tobacco law enforcement programs funded through the commission.

2003 Acts, ch 145, §190  
Subsection 1, paragraph b amended

**142A.6 Comprehensive tobacco use prevention and control initiative established — purpose — results.**

1. A comprehensive tobacco use prevention and control initiative is established. The division shall implement the initiative as provided in this chapter.

2. The purpose of the initiative is to attain the following results:

- a. Reduction of tobacco use by youth.
- b. Strong, active youth involvement in activities to prevent youth tobacco use and to promote cessation of youth tobacco use.
- c. Enhanced capacity of youth to make healthy choices.
- d. Reduction of tobacco use by pregnant women.
- e. Increased compliance by minors and retailers with tobacco sales laws and ordinances.

3. Success in achieving the initiative's desired results may be demonstrated by a minimum of the following:

- a. Data demonstrating consistent progress in reducing the prevalence of tobacco use among youth and adults.
- b. Survey results indicating widespread support among youth for the initiative's tobacco use prevention and control activities; for programs that enhance the ability of youth to make healthy choices including those related to use of tobacco, alcohol, and other substances; and for the media, marketing, and communications efforts supporting the initiative's desired results. Any survey conducted may also include an assessment of the effectiveness of tobacco use prevention and control activities in affecting other unhealthy youth behaviors including sexual activity and violent behavior.
- c. Data demonstrating increased compliance by minors and retailers with tobacco sales laws

and ordinances.

4. The division shall implement the initiative in a manner that ensures that youth are extensively involved in the decision making for the programs implemented under the initiative. The initiative shall also involve parents, schools, and community members in activities to achieve the results desired for the initiative. The division shall encourage collaboration at the state and local levels to maximize available resources and to provide flexibility to support community efforts.

5. Procurement of goods and services necessary to implement the initiative is subject to approval of the commission. Notwithstanding chapter 8A, subchapter III, or any other provision of law to the contrary, such procurement may be accomplished by the commission under its own competitive bidding process which shall provide for consideration of such factors as price, bidder competence, and expediency in procurement.

6. In order to promote the tobacco use prevention and control partnership established in section 142A.1, the following persons shall comply with the following, as applicable:

- a. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away cigarettes or tobacco products.
- b. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not provide free articles, products, commodities, gifts, or concessions in any exchange for the purchase of cigarettes or tobacco products.
- c. The prohibitions in this section do not apply to transactions between manufacturers, distributors, wholesalers, or retailers.
- d. For the purpose of this subsection, manufacturer, distributor, wholesaler, retailer, and distributing agent mean as defined in section 453A.1.

2003 Acts, ch 145, §191  
Subsection 5 amended

## CHAPTER 142C

### UNIFORM ANATOMICAL GIFT ACT

**142C.6 Delivery of document of gift.**

1. Validity of an anatomical gift does not require delivery of the document of gift during the donor's lifetime.

2. If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after the death of the donor. The document of gift, or a copy, may be deposited in any hospital, organ procurement organization, bank or storage organization, or donor registry office that accepts the document of gift for safekeeping or for the facilitation of procedures after the death of the donor. If a document is deposited by a donor in a

hospital, donor registry office, or bank or storage organization, the hospital, donor registry office, or bank or storage organization may forward the document to an organ procurement organization which will retain the document for facilitating procedures following the death of the donor. Upon request of a hospital, physician, or surgeon, upon or after the donor's death, the person in possession of the document of gift may allow the hospital, physician, or surgeon to examine or copy the document of gift.

2003 Acts, ch 108, §38  
Subsection 2 amended

**142C.15 Anatomical gift public awareness and transplantation fund — established — uses of fund.**

1. An anatomical gift public awareness and transplantation fund is created as a separate fund in the state treasury under the control of the Iowa department of public health. The fund shall consist of moneys remitted by the county treasurer of a county or by the department of transportation which were collected through the payment of a contribution made by an applicant for registration of a motor vehicle pursuant to section 321.44A and any other contributions to the fund.

2. The moneys collected under this section and deposited in the fund are appropriated to the Iowa department of public health for the purposes specified in this section. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose.

3. The treasurer of state shall act as custodian of the fund and shall disburse amounts contained in the fund as directed by the department. The treasurer of state may invest the moneys deposited in the fund. The income from any investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes of this section.

4. The Iowa department of public health may use not more than five percent of the moneys in the fund for administrative costs. The remaining moneys in the fund may be expended through grants to any of the following persons, subject to the following conditions:

*a.* Not more than twenty percent of the moneys in the fund annually may be expended in the form of grants to state agencies or to nonprofit legal entities with an interest in anatomical gift public awareness and transplantation to conduct public awareness projects or to research and develop a statewide organ and tissue donor registry. Grants shall be made based upon the submission of a grant application by an agency or entity to con-

duct a public awareness project or to research and develop a statewide organ and tissue donor registry.

*b.* Not more than thirty percent of the moneys in the fund annually may be expended in the form of grants to hospitals for reimbursement for costs directly related to the development of in-hospital anatomical gift public awareness projects, anatomical gift referral protocols, and associated administrative expenses. As a condition of receiving a grant, a hospital shall demonstrate, through documentation, that the hospital, during the previous calendar year, properly complied with in-hospital anatomical gift request protocols for all deaths occurring in the hospital at a percentage rate which places the hospital in the upper fifty percent of all protocol compliance rates for hospitals submitting documentation for cost reimbursement under this section.

*c.* Not more than fifty percent of the moneys in the fund annually may be expended in the form of grants to transplant recipients, transplant candidates, living organ donors, or to legal representatives on behalf of transplant recipients, transplant candidates, or living organ donors. Transplant recipients, transplant candidates, living organ donors, or the legal representatives of transplant recipients, transplant candidates, or living organ donors shall submit grant applications with supporting documentation provided by a hospital that performs transplants, verifying that the person by or for whom the application is submitted requires a transplant or is a living organ donor and specifying the amount of the costs associated with the following, if funds are not available from any other third-party payor:

(1) The costs of the organ transplantation procedure.

(2) The costs of post-transplantation drug or other therapy.

(3) Other transplantation costs including but not limited to food, lodging, and transportation.

2003 Acts, ch 32, §2  
Subsection 4, paragraph c amended

## CHAPTER 144

### VITAL STATISTICS

Vital records modernization project; extension; temporary fee increase ending June 30, 2004; 2003 Acts, ch 175, §4

**144.13A Fees — use of funds.**

1. The state registrar shall charge the parent a fee for the registration of a certificate of birth as follows:

*a.* Beginning July 1, 2003, and ending June 30, 2005, a fee of fifteen dollars.

*b.* Beginning July 1, 2005, a fee of twenty dollars.

2. The state registrar shall charge the parent a separate fee established under section 144.46 for a certified copy of the certificate. The certified copy shall be mailed to the parent by the state registrar.

3. If the person responsible for the filing of the certificate of birth under section 144.13 is not the parent, the person is entitled to collect the fee from

the parent. The fee shall be remitted to the state registrar. If the expenses of the birth are reimbursed under the medical assistance program established by chapter 249A, or paid for under the statewide indigent patient care program established by chapter 255, or paid for under the obstetrical and newborn indigent patient care program established by chapter 255A, or if the parent is indigent and unable to pay the expenses of the birth and no other means of payment is available to the parent, the registration fee and certified copy fee are waived. If the person responsible for the filing of the certificate is not the parent, the person is discharged from the duty to collect and remit the fee under this section if the person has made a good faith effort to collect the fee from the parent.

4. The fees collected by the state registrar shall be remitted to the treasurer of state for deposit in the general fund of the state.

*a.* It is the intent of the general assembly that the funds generated from the registration fees be appropriated and used as follows:

(1) Beginning July 1, 2003, and ending June 30, 2005, ten dollars of each fee for primary and secondary child abuse prevention programs, and five dollars of each fee for the birth defects institute central registry established pursuant to section 136A.6.

(2) Beginning July 1, 2005, ten dollars of each fee for primary and secondary child abuse prevention programs, and ten dollars of each fee for the birth defects institute central registry established pursuant to section 136A.6.

*b.* It is the intent of the general assembly that the funds generated from the fees as established under section 144.46 for the mailing of the certified copy of the birth certificate be appropriated and used to support the distribution of the automatic birth certificate and the implementation of the electronic birth certificate system.

2003 Acts, ch 103, §1  
Section amended

#### **144.29A Termination of pregnancy reporting.**

1. A health care provider who initially identifies and diagnoses a spontaneous termination of pregnancy or who induces a termination of pregnancy shall file with the department a report for each termination within thirty days of the occurrence. The health care provider shall make a good faith effort to obtain all of the following information that is available with respect to each termination:

- a.* The confidential health care provider code as assigned by the department.
- b.* The report tracking number.
- c.* The maternal health services region of the Iowa department of public health, as designated as of July 1, 1997, in which the patient resides.
- d.* The race of the patient.
- e.* The age of the patient.

*f.* The marital status of the patient.

*g.* The educational level of the patient.

*h.* The number of previous pregnancies, live births, and spontaneous or induced terminations of pregnancies.

*i.* The month and year in which the termination occurred.

*j.* The number of weeks since the patient's last menstrual period and a clinical estimate of gestation.

*k.* The method used for an induced termination, including whether mifepristone was used.

2. It is the intent of the general assembly that the information shall be collected, reproduced, released, and disclosed in a manner specified by rule of the department, adopted pursuant to chapter 17A, which ensures the anonymity of the patient who experiences a termination of pregnancy, the health care provider who identifies and diagnoses or induces a termination of pregnancy, and the hospital, clinic, or other health facility in which a termination of pregnancy is identified and diagnosed or induced. The department may share information with federal public health officials for the purposes of securing federal funding or conducting public health research. However, in sharing the information, the department shall not relinquish control of the information, and any agreement entered into by the department with federal public health officials to share information shall prohibit the use, reproduction, release, or disclosure of the information by federal public health officials in a manner which violates this section. The department shall publish, annually, a demographic summary of the information obtained pursuant to this section, except that the department shall not reproduce, release, or disclose any information obtained pursuant to this section which reveals the identity of any patient, health care provider, hospital, clinic, or other health facility, and shall ensure anonymity in the following ways:

*a.* The department may use information concerning the report tracking number or concerning the identity of a reporting health care provider, hospital, clinic, or other health facility only for purposes of information collection. The department shall not reproduce, release, or disclose this information for any purpose other than for use in annually publishing the demographic summary under this section.

*b.* The department shall enter the information, from any report of termination submitted, within thirty days of receipt of the report, and shall immediately destroy the report following entry of the information. However, entry of the information from a report shall not include any health care provider, hospital, clinic, or other health facility identification information including, but not limited to, the confidential health care provider code, as assigned by the department.

*c.* To protect confidentiality, the department shall limit release of information to release in an

aggregate form which prevents identification of any individual patient, health care provider, hospital, clinic, or other health facility. For the purposes of this paragraph, “*aggregate form*” means a compilation of the information received by the department on termination of pregnancies for each information item listed, with the exceptions of the report tracking number, the health care provider code, and any set of information for which the amount is so small that the confidentiality of any person to whom the information relates may be compromised. The department shall establish a methodology to provide a statistically verifiable basis for any determination of the correct amount at which information may be released so that the confidentiality of any person is not compromised.

3. Except as specified in subsection 2, reports, information, and records submitted and maintained pursuant to this section are strictly confidential and shall not be released or made public upon subpoena, search warrant, discovery proceedings, or by any other means.

4. The department shall assign a code to any health care provider who may be required to report a termination under this section. An application procedure shall not be required for assignment of a code to a health care provider.

5. A health care provider shall assign a report tracking number which enables the health care provider to access the patient’s medical information without identifying the patient.

6. To ensure proper performance of the reporting requirements under this section, it is preferred that a health care provider who practices within a hospital, clinic, or other health facility authorize one staff person to fulfill the reporting requirements.

7. For the purposes of this section, “*health care provider*” means an individual licensed under

chapter 148, 148C, 148D, 150, 150A, or 152, or any individual who provides medical services under the authorization of the licensee.

8. For the purposes of this section, “*inducing a termination of pregnancy*” means the use of any means to terminate the pregnancy of a woman known to be pregnant with the intent other than to produce a live birth or to remove a dead fetus.

9. For the purposes of this section, “*spontaneous termination of pregnancy*” means the occurrence of an unintended termination of pregnancy at any time during the period from conception to twenty weeks gestation and which is not a spontaneous termination of pregnancy at any time during the period from twenty weeks or greater which is reported to the department as a fetal death under this chapter.

2003 Acts, ch 42, §1  
Subsection 1, NEW paragraph k

#### **144.46 Fee for copy of record.**

The department by rule shall establish fees based on the average administrative cost which shall be collected by the state registrar or the county registrar for each certified copy or short form certification of certificates or records, or for a search of the files or records when no copy is made, or when no record is found on file. Fees collected by the state registrar and by the county registrar on behalf of the state under this section shall be deposited in the general fund of the state. Fees collected by the county registrar pursuant to section 331.605, subsection 5, shall be deposited in the county general fund. A fee shall not be collected from a political subdivision or agency of this state.

Temporary fee increase through June 30, 2004, for vital records modernization project extension; 2003 Acts, ch 175, §4  
Section not amended; footnote revised

## CHAPTER 147

### GENERAL PROVISIONS, HEALTH-RELATED PROFESSIONS

#### **147.26 Supplies and examination quarters.**

The department shall furnish each examining board with all articles and supplies required for the public use and necessary to enable said board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained and the cost shall be assessed to the examining board. The director of the department of administrative services shall furnish each examining board with suitable quarters in which to conduct the examination and the cost of the quarters shall be as-

sessed to the examining board.

2003 Acts, ch 145, §286  
Terminology change applied

#### **147.74 Professional titles or abbreviations — false use prohibited.**

1. Any person who falsely claims by the use of any professional title or abbreviation, either in writing, cards, signs, circulars, or advertisements, to be a practitioner of a system of the healing arts other than the one under which the person holds a license or who fails to use the following designations shall be guilty of a simple misdemeanor.

2. A physician or surgeon may use the prefix

“Dr.” or “Doctor”, and shall add after the person’s name the letters, “M. D.”

3. An osteopath or osteopathic physician and surgeon may use the prefix “Dr.” or “Doctor”, and shall add after the person’s name the letters, “D. O.”, or the words “osteopath” or “osteopathic physician and surgeon”.

4. A chiropractor may use the prefix “Doctor”, but shall add after the person’s name the letters, “D. C.” or the word, “chiropractor”.

5. A dentist may use the prefix “Doctor”, but shall add after the person’s name the letters “D. D. S.” or the word “dentist” or “dental surgeon”.

6. A podiatric physician may use the prefix “Dr.” but shall add after the person’s name the words “podiatric physician”.

7. A graduate of a school accredited on the board of optometric examiners may use the prefix “Doctor”, but shall add after the person’s name the letters “O. D.”

8. A physical therapist registered or licensed under chapter 148A may use the words “physical therapist” after the person’s name or signify the same by the use of the letters “P. T.” after the person’s name.

9. A physical therapist assistant licensed under chapter 148A may use the words “physical therapist assistant” after the person’s name or signify the same by use of the letters “P. T. A.” after the person’s name.

10. A psychologist who possesses a doctoral degree and who claims to be a certified practicing psychologist may use the prefix “Doctor” but shall add after the person’s name the word “psychologist”.

11. A speech pathologist with an earned doctoral degree in speech pathology obtained beyond a bachelor’s degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix “Doctor” or “Dr.” and add after the person’s name the words “speech pathologist”. An audiologist with an earned doctoral degree in audiology obtained beyond a bachelor’s degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix “Doctor” or “Dr.” and add after the person’s name the word “audiologist”.

12. A bachelor social worker licensed under chapter 154C may use the words “licensed bachelor social worker” or the letters “L. B. S. W.” after the person’s name. A master social worker licensed under chapter 154C may use the words “licensed master social worker” or the letters “L. M. S. W.” after the person’s name. An independent social worker licensed under chapter 154C may use the words “licensed independent social worker”, or the letters “L. I. S. W.” after the person’s name.

13. A marital and family therapist licensed under chapter 154D and this chapter may use the words “licensed marital and family therapist” after the person’s name or signify the same by the

use of the letters “L. M. F. T.” after the person’s name. A marital and family therapist licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix “Doctor” or “Dr.” in conjunction with the person’s name, but shall add after the person’s name the words “licensed marital and family therapist”.

14. A mental health counselor licensed under chapter 154D and this chapter may use the words “licensed mental health counselor” after the person’s name. A mental health counselor licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix “Doctor” or “Dr.” in conjunction with the person’s name, but shall add after the person’s name the words “licensed mental health counselor”.

15. A pharmacist who possesses a doctoral degree recognized by the American council of pharmaceutical education from a college of pharmacy approved by the board of pharmacy examiners or a doctor of philosophy degree in an area related to pharmacy may use the prefix “Doctor” or “Dr.” but shall add after the person’s name the word “pharmacist” or “Pharm. D.”

16. A physician assistant licensed under chapter 148C may use the words “physician assistant” after the person’s name or signify the same by the use of the letters “P. A.” after the person’s name.

17. A massage therapist licensed under chapter 152C may use the words “licensed massage therapist” or the initials “L. M. T.” after the person’s name.

18. An acupuncturist licensed under chapter 148E may use the words “licensed acupuncturist” after the person’s name.

19. A respiratory care practitioner licensed under chapter 152B and this chapter may use the title “respiratory care practitioner” or the letters “R. C. P.” after the person’s name.

20. An athletic trainer licensed under chapter 152D and this chapter may use the title “licensed athletic trainer” after the person’s name.

21. A registered nurse licensed under chapter 152 may use the words “registered nurse” or the letters “R. N.” after the person’s name. A licensed practical nurse licensed under chapter 152 may use the words “licensed practical nurse” or the letters “L. P. N.” after the person’s name.

22. No other practitioner licensed to practice a profession under any of the provisions of this subtitle shall be entitled to use the prefix “Dr.” or “Doctor”.

2003 Acts, ch 93, §1, 14  
Subsection 16 amended

#### **147.80 License — examination — fees.**

An examining board shall set the fees for the examination of applicants, which fees shall be based upon the cost of administering the examinations. An examining board shall set the license fees and renewal fees required for any of the following based upon the cost of sustaining the board and

the actual costs of licensing:

1. License to practice dentistry issued upon the basis of an examination given by the board of dental examiners, license to practice dentistry issued under a reciprocal agreement, resident dentist's license, renewal of a license to practice dentistry.

2. License to practice pharmacy issued upon the basis of an examination given by the board of pharmacy examiners, license to practice pharmacy issued under a reciprocal agreement, renewal of a license to practice pharmacy.

3. License to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy and renewal of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

4. Certificate to practice psychology or associate psychology issued on the basis of an examination given by the board of psychology examiners, or certificate to practice psychology or associate psychology issued under a reciprocity agreement or by endorsement, renewal of a certificate to practice psychology or associate psychology.

5. Application for a license to practice as a physician assistant, issuance of a license to practice as a physician assistant issued upon the basis of an examination given or approved by the board of physician assistant examiners, issuance of a license to practice as a physician assistant issued under a reciprocal agreement, renewal of a license to practice as a physician assistant, temporary license to practice as a physician assistant.

6. License to practice chiropractic issued on the basis of an examination given by the board of chiropractic examiners. License to practice chiropractic issued by endorsement or under a reciprocal agreement, renewal of a license to practice chiropractic.

7. License to practice podiatry issued upon the basis of an examination given by the board of podiatry examiners, license to practice podiatry issued under a reciprocal agreement, renewal of a license to practice podiatry.

8. License to practice physical therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to practice physical therapy issued under a reciprocal agreement, renewal of a license to practice physical therapy.

9. License to practice as a physical therapist assistant issued on the basis of an examination given by the board of physical and occupational therapy examiners, license to practice as a physical therapist assistant issued under a reciprocal agreement, renewal of a license to practice as a physical therapist assistant.

10. For a license to practice optometry issued upon the basis of an examination given by the board of optometry examiners, license to practice optometry issued under a reciprocal agreement,

renewal of a license to practice optometry.

11. License to practice dental hygiene issued upon the basis of an examination given by the board of dental examiners, license to practice dental hygiene issued under a reciprocal agreement, renewal of a license to practice dental hygiene.

12. License to practice mortuary science issued upon the basis of an examination given by the board of mortuary science examiners, license to practice mortuary science issued under a reciprocal agreement, renewal of a license to practice mortuary science.

13. License to practice nursing issued upon the basis of an examination given by the board of nursing; license to practice nursing based on an endorsement from another state, territory or foreign country; renewal of a license to practice nursing.

14. A nurse who does not engage in nursing during the year succeeding the expiration of the license shall notify the board to place the nurse upon the inactive list and the nurse shall not be required to pay the renewal fee so long as the nurse remains inactive and so notifies the board. To resume nursing, the nurse shall notify the board and remit the renewal fee for the current period.

15. License to practice cosmetology arts and sciences issued upon the basis of an examination given by the board of cosmetology arts and sciences examiners, license to practice cosmetology arts and sciences under a reciprocal agreement, renewal of a license to practice cosmetology arts and sciences, temporary permit to practice as a cosmetology arts and sciences trainee, original license to conduct a school of cosmetology arts and sciences, renewal of license to conduct a school of cosmetology arts and sciences, original license to operate a salon, renewal of a license to operate a salon, original license to practice manicuring, renewal of a license to practice manicuring, annual inspection of a school of cosmetology arts and sciences, annual inspection of a salon, original cosmetology arts and sciences school instructor's license, and renewal of cosmetology arts and sciences school instructor's license.

16. License to practice barbering on the basis of an examination given by the board of barber examiners, license to practice barbering under a reciprocal agreement, renewal of a license to practice barbering, annual inspection by the department of inspections and appeals of barber school and annual inspection of barber shop, an original barber school license, renewal of a barber school license, transfer of license upon change of ownership of a barber shop or barber school, inspection by the department of inspections and appeals and an original barber shop license, renewal of a barber shop license, original barber school instructor's license, renewal of a barber school instructor's license.

17. License to practice speech pathology or audiology issued on the basis of an examination giv-

en by the board of speech pathology and audiology, or license to practice speech pathology or audiology issued under a reciprocity agreement, renewal of a license to practice speech pathology or audiology.

18. License to practice occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to practice occupational therapy issued under a reciprocal agreement, renewal of a license to practice occupational therapy.

19. License to assist in the practice of occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy examiners, license to assist in the practice of occupational therapy issued under a reciprocal agreement, renewal of a license to assist in the practice of occupational therapy.

20. License to practice social work issued on the basis of an examination by the board of social work examiners, or license to practice social work issued under a reciprocity agreement, or renewal of a license to practice social work.

21. License to practice marital and family therapy issued upon the basis of an examination given by the board of behavioral science examiners, license to practice marital and family therapy issued under a reciprocal agreement, or renewal of a license to practice marital and family therapy.

22. License to practice mental health counseling issued upon the basis of an examination given by the board of behavioral science examiners, license to practice mental health counseling issued under a reciprocal agreement, or renewal of a license to practice mental health counseling.

23. License to practice dietetics issued upon the basis of an examination given by the board of dietetic examiners, license to practice dietetics issued under a reciprocal agreement, or renewal of a license to practice dietetics.

24. License to practice acupuncture, license to practice acupuncture under a reciprocal agreement, or renewal of a license to practice acupuncture.

25. License to practice respiratory care, license to practice respiratory care under a reciprocal license, or renewal of a license to practice respiratory care.

26. License to practice massage therapy, license to practice massage therapy under a reciprocal license, or renewal of a license to practice massage therapy.

27. License to practice athletic training, license to practice athletic training under a reciprocal license, or renewal of a license to practice athletic training.

28. Registration to practice as a dental assistant, registration to practice as a dental assistant under a reciprocal agreement, or renewal of registration to practice as a dental assistant.

29. For a certified statement that a licensee is licensed in this state.

30. Duplicate license, which shall be so designated on its face, upon satisfactory proof the original license issued by the department has been destroyed or lost.

The licensing and certification division shall prepare estimates of projected revenues to be generated by the licensing, certification, and examination fees of each board as well as a projection of the fairly apportioned administrative costs and rental expenses attributable to each board. Each board shall annually review and adjust its schedule of fees so that, as nearly as possible, projected revenues equal projected costs and any imbalance in revenues and costs in a fiscal year is offset in a subsequent fiscal year.

2003 Acts, ch 93, §2, 14  
Subsection 5 amended

#### **147.98 Secretary of pharmacy examiners.**

The pharmacy examiners shall have the right to employ a full-time secretary, who shall not be a member of the examining board, at such compensation as may be fixed pursuant to chapter 8A, subchapter IV, but the provisions of section 147.22 providing for a secretary for each examining board shall not apply to the pharmacy examiners.

2003 Acts, ch 145, §192  
Section amended

#### **147.102 Psychologists, chiropractors, and dentists.**

Notwithstanding the provisions of this subtitle, every application for a license to practice psychology, chiropractic, or dentistry shall be made directly to the chairperson, executive director, or secretary of the examining board of such profession, and every reciprocal agreement for the recognition of any such license issued in another state shall be negotiated by the examining board for such profession. All examination, license, and renewal fees received from persons licensed to practice any of such professions shall be paid to and collected by the chairperson, executive director, or secretary of the examining board of such profession, who shall transmit the fees to the treasurer of state for deposit into the general fund of the state. The salary of the secretary shall be established by the governor with the approval of the executive council pursuant to section 8A.413, subsection 2, under the pay plan for exempt positions in the executive branch of government.

2003 Acts, ch 145, §193  
Section amended

#### **147.103 Investigators for physician assistants.**

The board of physician assistant examiners may appoint investigators, who shall not be members of the examining board, to administer and aid in the enforcement of the provisions of law relating to physician assistants. The amount of compensation for the investigators shall be determined pur-

suant to chapter 8A, subchapter IV.

Investigators authorized by the board of physician assistant examiners have the powers and status of peace officers when enforcing this chapter and chapters 148C, and 272C.

2003 Acts, ch 145, §194  
Unnumbered paragraph 1 amended

**147.103A Physicians and surgeons, osteopaths, and osteopathic physicians and surgeons.**

This chapter shall apply to the licensing of persons to practice as physicians and surgeons, osteopaths, and osteopathic physicians and surgeons by the board of medical examiners subject to the following provisions:

1. A person violating the provisions of section 147.2, 147.84, or 147.85, shall upon conviction be guilty of a class “D” felony.

2. The issuance of reciprocal agreements pursuant to section 147.44 is not required and is subject to the discretion of the board.

3. The board may appoint investigators, who shall not be members of the examining board, and whose compensation shall be determined pursuant to chapter 8A, subchapter IV. Investigators appointed by the board have the powers and status of peace officers when enforcing this chapter and chapters 148, 150, 150A, and 272C.

4. Applications for a license shall be made to the chairperson, executive director, or secretary of the board. All examination, license, and renewal fees shall be paid to and collected by the chairperson, executive director, or secretary of the board, who shall transmit the fees to the treasurer of state for deposit in the general fund of the state. The salary of the executive director of the board shall be established by the governor with approval of the executive council pursuant to section 8A.413, subsection 2, under the pay plan for exempt positions in the executive branch of government.

5. The board shall give priority to the processing of applications for licensure submitted by physicians and surgeons, osteopaths, and osteopathic physicians and surgeons whose practice will primarily involve provision of service to underserved populations, including but not limited to persons who are minorities or low-income, or who live in rural areas.

6. Disciplinary hearings held pursuant to section 272C.6, subsection 1, shall be heard by the board, or by a panel of not less than three board members, at least two of which are licensed in the profession, or by a panel of not less than three members appointed pursuant to section 272C.6, subsection 2. Notwithstanding chapters 17A and 21, a disciplinary hearing shall be open to the public at the discretion of the licensee.

2003 Acts, ch 145, §195  
Subsections 3 and 4 amended

**147.107 Drug dispensing, supplying, and prescribing — limitations.**

1. A person, other than a pharmacist, physician, dentist, podiatric physician, or veterinarian who dispenses as an incident to the practice of the practitioner’s profession, shall not dispense prescription drugs or controlled substances.

2. A pharmacist, physician, dentist, or podiatric physician who dispenses prescription drugs, including but not limited to controlled substances, for human use, may delegate nonjudgmental dispensing functions to staff assistants only when verification of the accuracy and completeness of the prescription is determined by the pharmacist or practitioner in the pharmacist’s or practitioner’s physical presence. However, the physical presence requirement does not apply when a pharmacist or practitioner is utilizing an automated dispensing system. When using an automated dispensing system the pharmacist or practitioner shall utilize an internal quality control assurance plan that ensures accuracy for dispensing. Verification of automated dispensing accuracy and completeness remains the responsibility of the pharmacist or practitioner and shall be determined in accordance with rules adopted by the state board of pharmacy examiners, the state board of medical examiners, the state board of dental examiners, and the state board of podiatry examiners for their respective licensees.

A dentist, physician, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall register the fact that they dispense prescription drugs with the practitioner’s respective examining board at least biennially.

A physician, dentist, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall offer to provide the patient with a written prescription that may be dispensed from a pharmacy of the patient’s choice or offer to transmit the prescription to a pharmacy of the patient’s choice.

3. A physician’s assistant or registered nurse may supply when pharmacist services are not reasonably available or when it is in the best interests of the patient, on the direct order of the supervising physician, a quantity of properly packaged and labeled prescription drugs, controlled substances, or contraceptive devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician’s assistant or registered nurse, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices.

4. Notwithstanding subsection 3, a physician assistant shall not dispense prescription drugs as an incident to the practice of the supervising physician or the physician assistant, but may supply,

when pharmacist services are not reasonably available, or when it is in the best interests of the patient, a quantity of properly packaged and labeled prescription drugs, controlled substances, or medical devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician assistant, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices. Prescription drugs supplied under the provisions of this subsection shall be supplied for the purpose of accommodating the patient and shall not be sold for more than the cost of the drug and reasonable overhead costs, as they relate to supplying prescription drugs to the patient, and not at a profit to the physician or the physician assistant. If prescription drug supplying authority is delegated by a supervising physician to a physician assistant, a nurse or staff assistant may assist the physician assistant in providing that service. Rules shall be adopted by the board of physician assistant examiners, after consultation with the board of pharmacy examiners, to implement this subsection.

5. Notwithstanding subsection 1 and any other provision of this section to the contrary, a physician may delegate the function of prescribing drugs, controlled substances, and medical devices to a physician assistant licensed pursuant to chapter 148C. When delegated prescribing occurs, the supervising physician's name shall be used, recorded, or otherwise indicated in connection with each individual prescription so that the individual who dispenses or administers the prescription knows under whose delegated authority the physician assistant is prescribing. Rules relating to the authority of physician assistants to prescribe drugs, controlled substances, and medical devices pursuant to this subsection shall be adopted by the board of physician assistant examiners, after consultation with the board of medical examiners and the board of pharmacy examiners. However, the rules shall prohibit the prescribing of schedule II controlled substances which are listed as stimulants or depressants pursuant to chapter 124.

6. Health care providers shall consider the instructions of the physician assistant to be instructions of the supervising physician if the instructions concern duties delegated to the physician assistant by a supervising physician.

7. A physician assistant rules review group is established consisting of two physician assistants selected by the board of physician assistants, two physicians selected by the board of medical examiners, and one physician currently practicing as a supervising physician of physician assistants selected by the four other members of the rules review group no later than August 1, 1991. The rules

review group shall select its own chairperson.

The rules review group shall review and approve or disapprove rules proposed for adoption relating to the authority of physician assistants to supply or prescribe drugs, controlled substances, and medical devices pursuant to subsection 5. Approval shall be by a simple majority of the members of the rules review group. A rule shall not become effective without the approval of the rules review group unless otherwise specified under this section.

8. Notwithstanding subsection 1, a family planning clinic may dispense birth control drugs and devices upon the order of a physician. Subsections 2 and 3 do not apply to a family planning clinic under this subsection.

9. Notwithstanding subsection 1, but subject to the limitations contained in subsections 2 and 3, a registered nurse who is licensed and registered as an advanced registered nurse practitioner and who qualifies for and is registered in a recognized nursing specialty may prescribe substances or devices, including controlled substances or devices, if the nurse is engaged in the practice of a nursing specialty regulated under rules adopted by the board of nursing in consultation with the board of medical examiners and the board of pharmacy examiners.

10. Notwithstanding section 147.86, a person, including a pharmacist, who violates this section is guilty of a simple misdemeanor.

2003 Acts, ch 93, §3, 14; 2003 Acts, ch 108, §39  
See also §154.1, 155A.4  
Subsections 4 - 7 not to limit certain powers existing on June 5, 1991;  
91 Acts, ch 238, §2, 3  
Subsection 2, unnumbered paragraph 1 amended  
Subsection 5 amended

## BURN INJURIES

### 147.113A Report of burn injuries.

Any person licensed under the provisions of this subtitle who administers any treatment to a person suffering a burn which appears to be of a suspicious nature on the body, a burn to the upper respiratory tract, a laryngeal edema due to the inhalation of super-heated air, or a burn injury that is likely to result in death, which appears to have been received in connection with the commission of a criminal offense, or to whom an application is made for treatment of any nature because of any such burn or burn injury shall at once but not later than twelve hours after treatment was administered or application was made report the fact to law enforcement. The report shall be made to the law enforcement agency within whose jurisdiction the treatment was administered or application was made, or if ascertainable, to the law enforcement agency in whose jurisdiction the burn or burn injury occurred, stating the name of such person, the person's residence if ascertainable,

and giving a brief description of the burn or burn injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this section are concerned.

2003 Acts, ch 134, §1  
NEW section

**147.114 Inspector.**

An inspector may be appointed by the board of dental examiners pursuant to the provisions of chapter 8A, subchapter IV.

2003 Acts, ch 145, §196  
Section amended

**CHAPTER 148**

**MEDICINE AND SURGERY**

**148.13 Authority of board as to supervising physicians and review of contested cases under chapter 148C — rules.**

1. The board of medical examiners shall adopt rules setting forth in detail its criteria and procedures for determining the ineligibility of a physician to serve as a supervising physician under chapter 148C. The rules shall provide that a physician may serve as a supervising physician under chapter 148C until such time as the board determines, following normal disciplinary procedures, that the physician is ineligible to serve in that capacity.

2. The board of medical examiners shall establish by rule specific procedures for consulting with and considering the advice of the board of physician assistant examiners in determining whether to initiate a disciplinary proceeding under chapter

17A against a licensed physician in a matter involving the supervision of a physician assistant.

3. In exercising their respective authorities, the board of medical examiners and the board of physician assistant examiners shall cooperate with the goal of encouraging the utilization of physician assistants in a manner that is consistent with the provision of quality health care and medical services for the citizens of Iowa.

4. The board of medical examiners shall adopt rules requiring a physician serving as a supervising physician to notify the board of the identity of a physician assistant the physician is supervising, and of any change in the status of the supervisory relationship.

2003 Acts, ch 93, §4, 5, 14  
Subsection 1 amended  
Subsection 4 stricken and rewritten

**CHAPTER 148C**

**PHYSICIAN ASSISTANTS**

**148C.1 Definitions.**

1. “*Approved program*” means a program for the education of physician assistants which has been accredited by the American medical association’s committee on allied health education and accreditation or its successor, by the commission on accreditation of allied health educational programs or its successor, or by the accreditation review commission on education for the physician assistant or its successor.

2. “*Board*” means the board of physician assistant examiners.

3. “*Department*” means the Iowa department of public health.

4. “*Licensed physician assistant*” means a person who is licensed by the board to practice as a physician assistant under the supervision of one or more physicians specified in the license. “*Supervision*” does not require the personal presence of the supervising physician at the place where medical services are rendered except insofar as the personal presence is expressly required by this

chapter or required by rules of the board adopted pursuant to this chapter.

5. “*Physician*” means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. Notwithstanding this subsection, a physician supervising a physician assistant practicing in a federal facility or under federal authority shall not be required to obtain licensure beyond licensure requirements mandated by the federal government for supervising physicians.

6. “*Physician assistant*” means a person who has successfully completed an approved program and passed an examination approved by the board or is otherwise found by the board to be qualified to perform medical services under the supervision of a physician.

7. “*Trainee*” means a person who is currently enrolled in an approved program.

2003 Acts, ch 93, §6 – 8, 14  
Subsection 1 stricken and rewritten  
Subsection 5 amended  
Subsection 7 stricken and former subsection 8 renumbered as 7

**148C.2 Approved programs.** Repealed by 2003 Acts, ch 93, § 13, 14.

**148C.3 Licensure.**

1. The board shall adopt rules to govern the licensure of physician assistants. An applicant for licensure shall submit the fee prescribed by the board and shall meet the requirements established by the board with respect to each of the following:

*a.* Academic qualifications, including evidence of graduation from an approved program. A physician assistant who is not a graduate of an approved program, but who passed the national commission on certification of physician assistants' physician assistant national certifying examination prior to 1986, is exempt from this graduation requirement.

*b.* Evidence of passing the national commission on the certification of physician assistants' physician assistant national certifying examination or an equivalent examination approved by the board.

*c.* Hours of continuing medical education necessary to become or remain licensed.

2. Rules shall be adopted by the board pursuant to this chapter requiring a licensed physician assistant to be supervised by physicians. The rules shall provide that not more than two physician assistants shall be supervised by a physician at one time. The rules shall also provide that a physician assistant shall notify the board of the identity of their supervising physician, and of any change in the status of the supervisory relationship.

3. A licensed physician assistant shall perform only those services for which the licensed physician assistant is qualified by training or not prohibited by the board.

4. The board may issue a temporary license under special circumstances and upon conditions prescribed by the board. A temporary license shall not be valid for more than one year and shall not be renewed more than once.

5. The board may issue an inactive license under conditions prescribed by rules adopted by the board.

6. The board shall adopt rules pursuant to this section after consultation with the board of medical examiners.

2003 Acts, ch 93, §9, 14  
Section stricken and rewritten

**148C.4 Services performed by physician assistants.**

1. A physician assistant may perform medical services when the services are rendered under the supervision of a physician. A physician assistant student may perform medical services when the services are rendered within the scope of an ap-

proved program. For the purposes of this section, "medical services when the services are rendered under the supervision of a physician" includes making a pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, or a Medicare-certified hospice program or facility, with notice of the death to a physician and in accordance with the directions of a physician.

2. Notwithstanding subsection 1, a physician assistant licensed pursuant to this chapter or authorized to practice in any other state or federal jurisdiction who voluntarily and gratuitously, and other than in the ordinary course of the physician assistant's employment or practice, responds to a need for medical care created by an emergency or a state or local disaster may render such care that the physician assistant is able to provide without supervision as described in this section or with such supervision as is available.

A physician who supervises a physician assistant providing medical care pursuant to this subsection shall not be required to meet the requirements of rules adopted pursuant to section 148C.3, subsection 2, relating to supervision by physicians. A physician providing physician assistant supervision pursuant to this subsection or a physician assistant, who voluntarily and gratuitously, and other than in the ordinary course of the physician assistant's employment or practice, responds to a need for medical care created by an emergency or a state or local disaster shall not be subject to criminal liability by reason of having issued or executed the orders for such care, and shall not be liable for civil damages for acts or omissions relating to the issuance or execution of the orders unless the acts or omissions constitute recklessness.

2003 Acts, ch 93, §10, 14  
Section amended

**148C.5 Advisory committee created.** Repealed by 88 Acts, ch 1225, § 27.

Section not amended; repeal entry revised

**148C.5A Initiating disciplinary proceedings — advice from board of medical examiners.** Repealed by 2003 Acts, ch 93, § 13, 14.

**148C.6 Fees and renewals.** Repealed by 88 Acts, ch 1225, § 27. See § 148C.3.

Section not amended; repeal entry revised

**148C.6A Appeal to board of medical examiners in contested cases involving discipline.** Repealed by 2003 Acts, ch 93, § 13, 14.

**148C.7 Rules — review group.** Repealed by 2003 Acts, ch 93, § 13, 14.

**148C.11 Prohibition — crime.**

A person not licensed as required by this chapter who practices as a physician assistant is guilty

of a serious misdemeanor.

2003 Acts, ch 93, §11, 14  
Section amended

## CHAPTER 149

## PODIATRY

**149.5 Amputations — anesthesia — prescription drugs.**

A license to practice podiatry shall not authorize the licensee to amputate the human foot.

A licensed podiatric physician may administer local anesthesia. Conscious sedation may be administered by a licensed podiatric physician in a

hospital or an ambulatory surgical center.

A licensed podiatric physician may prescribe and administer drugs for the treatment of human foot ailments as provided in section 149.1.

2003 Acts, ch 22, §1  
Section amended

## CHAPTER 152

## NURSING

**152.1 Definitions.**

As used in this chapter:

1. “*Board*” means the board of nursing, created under chapter 147.

2. As used in this section, “*nursing diagnosis*” means to identify and use discriminatory judgment concerning physical and psychosocial signs and symptoms essential to determining effective nursing intervention.

3. “*Physician*” means a person licensed in this state to practice medicine and surgery, osteopathy and surgery, or osteopathy, or a person licensed in this state to practice dentistry or podiatry when acting within the scope of the license. A physician licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy in a state bordering this state shall be considered a physician for purposes of this chapter unless previously determined to be ineligible for such consideration by the Iowa board of medical examiners.

4. The “*practice of a licensed practical nurse*” means the practice of a natural person who is licensed by the board to do all of the following:

a. Perform services in the provision of supportive or restorative care under the supervision of a registered nurse or a physician.

b. Perform additional acts under emergency or other conditions which require education and training and which are recognized by the medical and nursing professions and are approved by the board, as being proper to be performed by a licensed practical nurse.

c. Make the pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, or a Medicare-certified hospice program or facility,

with notice of the death to a physician and in accordance with any directions of a physician.

5. The “*practice of nursing*” means the practice of a registered nurse or a licensed practical nurse. It does not mean any of the following:

a. The practice of medicine and surgery, as defined in chapter 148, the osteopathic practice, as defined in chapter 150, the practice of osteopathic medicine and surgery, as defined in chapter 150A, or the practice of pharmacy as defined in chapter 155A, except practices which are recognized by the medical and nursing professions and approved by the board as proper to be performed by a registered nurse.

b. The performance of nursing services by an unlicensed student enrolled in a nursing education program if performance is part of the course of study. Individuals who have been licensed as registered nurses or licensed practical or vocational nurses in any state or jurisdiction of the United States are not subject to this exemption.

c. The performance of services by unlicensed workers employed in offices, hospitals, or health care facilities, as defined in section 135C.1, under the supervision of a physician or a nurse licensed under this chapter, or employed in the office of a psychologist, podiatric physician, optometrist, chiropractor, speech pathologist, audiologist, or physical therapist licensed to practice in this state, and when acting while within the scope of the employer’s license.

d. The practice of a nurse licensed in another state and employed in this state by the federal government if the practice is in discharge of official employment duties.

e. The care of the sick rendered in connection with the practice of the religious tenets of any

church or order by the adherents thereof which is not performed for hire, or if performed for hire by those who depend upon prayer or spiritual means for healing in the practice of the religion of their church or denomination, so long as they do not otherwise engage in the practice of nursing as practical nurses.

6. The “*practice of the profession of a registered nurse*” means the practice of a natural person who is licensed by the board to do all of the following:

a. Formulate nursing diagnosis and conduct nursing treatment of human responses to actual or potential health problems through services, such as case finding, referral, health teaching, health counseling, and care provision which is supportive to or restorative of life and well-being.

b. Execute regimen prescribed by a physician.

c. Supervise and teach other personnel in the performance of activities relating to nursing care.

d. Perform additional acts or nursing specialties which require education and training under emergency or other conditions which are recognized by the medical and nursing professions and are approved by the board as being proper to be performed by a registered nurse.

e. Make the pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, or a Medicare-certified hospice program or facility, with notice of the death to a physician and in accordance with any directions of a physician.

f. Apply to the abilities enumerated in paragraphs “a” through “e” of this subsection scientific principles, including the principles of nursing skills and of biological, physical, and psychosocial sciences.

2003 Acts, ch 78, §4, 5

Subsection 5, paragraph b stricken and rewritten  
Subsection 5, paragraph c amended

### 152.2 Executive director — assistants.

The board shall appoint a full-time executive director. The executive director shall be a registered nurse and shall not be a member of the board. The

governor, with the approval of the executive council pursuant to section 8A.413, subsection 2, under the pay plan for exempt positions in the executive branch of government, shall set the salary of the executive director.

2003 Acts, ch 145, §197  
Section amended

### 152.3 Director’s duties.

The duties of the executive director shall be as follows:

1. To receive all applications to be licensed for the practice of nursing.

2. Notwithstanding section 147.82, to collect and receive all fees.

3. To deposit all fees collected in the general fund of the state and, at the same time, to render to the director of the department of administrative services an itemized and verified report which indicates the source of the collected fees.

4. To keep all records pertaining to the licensing of nurses, including a record of all board proceedings.

5. To perform such other duties as may be prescribed by the board.

6. To appoint assistants to the director and persons necessary to administer this chapter. Any appointments shall be merit appointments made pursuant to chapter 8A, subchapter IV.

2003 Acts, ch 145, §198, 286  
Terminology change applied  
Subsection 6 amended

### 152.11 Investigators for nurses.

The board of nursing may appoint investigators, who shall not be members of the board, to administer and aid in the enforcement of the provisions of law related to those licensed to practice nursing. The amount of compensation for the investigators shall be determined pursuant to chapter 8A, subchapter IV. Investigators authorized by the board of nursing have the powers and status of peace officers when enforcing this chapter and chapters 147 and 272C.

2003 Acts, ch 145, §199  
Section amended

## CHAPTER 152C

### MESSAGE THERAPY

#### 152C.5A Massage therapy modalities study.

The Iowa department of public health, with input from the board, shall conduct a study regarding the modalities associated with the practice of massage therapy. The study shall be conducted with the input of licensed massage therapists, reflexologists, and unlicensed persons practicing

modalities related to massage therapy. The objective of the study shall be to determine which modalities shall be included under the definition of massage therapy and require licensure, and shall include, but not be limited to, a recommendation regarding the licensure of reflexologists. The study shall focus on the health, safety, and welfare of the public regarding each of the modalities re-

viewed. The department shall submit a report summarizing the results of the study and making recommendations regarding modality inclusion to the general assembly by January 15, 2004.

2003 Acts, ch 70, §1  
NEW section

#### **152C.7A Temporary exemptions.**

An individual who is engaged exclusively in the practice of reflexology or an unlicensed individual who is practicing a modality related to massage therapy, and whose professional practice does not incorporate aspects that constitute massage therapy as defined in section 152C.1, shall not be subject to the licensure provisions of this chapter for

a one-year period beginning July 1, 2003, and ending June 30, 2004. Beginning July 1, 2004, an individual who is engaged exclusively in the practice of reflexology or an unlicensed individual who is practicing a modality related to massage therapy shall be subject to licensure pursuant to this chapter unless, based upon the recommendations contained in the massage therapy modalities study as provided in section 152C.5A, the practice of reflexology or an unlicensed individual who is practicing a modality related to massage therapy is permanently exempted from massage therapy licensure.

2003 Acts, ch 70, §2  
NEW section

## CHAPTER 153

### DENTISTRY

#### **153.33 Powers of board.**

Subject to the provisions of this chapter, any provision of this subtitle to the contrary notwithstanding, the board shall exercise the following powers:

1. To initiate investigations of and conduct hearings on all matters or complaints relating to the practice of dentistry, dental hygiene, or dental assisting or pertaining to the enforcement of any provision of this chapter, to provide for mediation of disputes between licensees or registrants and their patients when specifically recommended by the board, to revoke or suspend licenses or registrations, or the renewal thereof, issued under this or any prior chapter, to provide for restitution to patients, and to otherwise discipline licensees and registrants.

Subsequent to an investigation by the board, the board may appoint a disinterested third party to mediate disputes between licensees or registrants and patients. Referral of a matter to mediation shall not preclude the board from taking disciplinary action against the affected licensee or registrant.

2. To appoint investigators, who shall not be members of the examining board, to administer and aid in the enforcement of the provisions of law relating to those persons licensed to practice dentistry and dental hygiene, and persons registered as dental assistants. The amount of compensation for the investigators shall be determined pursuant to chapter 8A, subchapter IV. Investigators authorized by the board of dental examiners have the powers and status of peace officers when enforcing this chapter and chapters 147 and 272C.

3. All employees needed to administer this chapter shall be appointed pursuant to the merit system.

4. To initiate in its own name or cause to be initiated in a proper court appropriate civil proceedings against any person to enforce the provisions of this chapter or this subtitle relating to the practice of dentistry, and the board may have the benefit of counsel in connection therewith. Any such judicial proceeding as may be initiated by the board shall be commenced and prosecuted in the same manner as any other civil action and injunctive relief may be granted therein without proof of actual damage sustained by any person but such injunctive relief shall not relieve the person so enjoined from criminal prosecution by the attorney general or county attorney for violation of any provision of this chapter or this subtitle relating to the practice of dentistry.

5. In any investigation made or hearing conducted by the board on its own motion, or upon written complaint filed with the board by any person, pertaining to any alleged violation of this chapter or the accusation against any licensee or registrant, the following procedure and rules so far as material to such investigation or hearing shall obtain:

*a.* The accusation of such person against any licensee or registrant shall be reduced to writing, verified by some person familiar with the facts therein stated, and three copies thereof filed with the board.

*b.* If the board shall deem the charges sufficient, if true, to warrant suspension or revocation of license or registration, it shall make an order fixing the time and place for hearing thereon and requiring the licensee or registrant to appear and answer thereto, such order, together with a copy of the charges so made to be served upon the accused at least twenty days before the date fixed for hearing, either personally or by certified or registered

mail, sent to the licensee's or registrant's last known post office address as shown by the records of the board.

c. At the time and place fixed in said notice for said hearing, or at any time and place to which the said hearing shall be adjourned, the board shall hear the matter and may take evidence, administer oaths, take the deposition of witnesses, including the person accused, in the manner provided by law in civil cases, compel the appearance of witnesses before it in person the same as in civil cases by subpoena issued over the signature of the chairperson of the board and in the name of the state of Iowa, require answers to interrogatories and compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation or relating to the hearing.

d. In all such investigations and hearings pertaining to the suspension or revocation of licenses or registrations, the board and any person affected thereby may have the benefit of counsel, and upon the request of the licensee or registrant or the licensee's or registrant's counsel the board shall issue subpoenas for the attendance of such witnesses in behalf of the licensee or registrant, which subpoenas when issued shall be delivered to the licensee or registrant or the licensee's or registrant's counsel. Such subpoenas for the attendance of witnesses shall be effective if served upon the person named therein anywhere within this state, provided, that at the time of such service the fees now or hereafter provided by law for witnesses in civil cases in district court shall be paid or tendered to such person.

e. In case of disobedience of a subpoena lawfully served hereunder, the board or any party to such hearing aggrieved thereby may invoke the aid of the district court in the county where such hearing is being conducted to require the attendance and testimony of such witnesses. Such district court of the county within which the hearing is being conducted may, in case of contumacy or refusal to obey such subpoena, issue an order requiring such person to appear before said board, and if so ordered

give evidence touching the matter involved in the hearing. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

f. If the licensee or registrant pleads guilty, or after hearing shall be found guilty by the board of any of the charges made, it may suspend for a limited period or revoke the license or registration, and the last renewal thereof, and shall enter the order on its records and notify the accused of the revocation or suspension of the person's license or registration, as the case may be, who shall thereupon forthwith surrender that license or registration to the board. Any such person whose license or registration has been so revoked or suspended shall not thereafter and while such revocation or suspension is in force and effect practice dentistry, dental hygiene, or dental assisting within this state.

g. The findings of fact made by the board acting within its power shall, in the absence of fraud, be conclusive, but the district court shall have power to review questions of law involved in any final decision or determination of the board; provided, that application is made by the aggrieved party within thirty days after such determination by certiorari, mandamus or such other method of review or appeal permitted under the laws of this state, and to make such further orders in respect thereto as justice may require.

h. Pending the review and final disposition thereof by the district court, the action of the board suspending or revoking such license or registration shall not be stayed.

6. To adopt rules regarding infection control in dental practice which are consistent with standards of the federal Occupational Safety and Health Act of 1970, 29 U.S.C. § 651-678, and recommendations of the centers for disease control.

7. To promulgate rules as may be necessary to implement the provisions of this chapter.

2003 Acts, ch 44, §38, 39; 2003 Acts, ch 145, §200  
 Subsection 2 amended  
 Subsection 5, unnumbered paragraph 1 amended  
 Subsection 5, paragraphs a, b, d, and h amended

## CHAPTER 157

### COSMETOLOGY

#### 157.7 Inspectors and clerical assistants.

The department of inspections and appeals shall employ personnel pursuant to chapter 8A, subchapter IV, to perform duties related to inspection functions under this chapter. The department of inspections and appeals shall, when possible, integrate inspection efforts under this chapter with inspections conducted under chapter 158.

The Iowa department of public health may employ clerical assistants pursuant to chapter 8A, subchapter IV, to administer and enforce this chapter. The costs and expenses of the clerical assistants shall be paid from funds appropriated to the department of public health.

2003 Acts, ch 145, §201  
 Section amended

## CHAPTER 158

### BARBERING

#### 158.6 Inspectors and clerical assistants.

The department of inspections and appeals shall employ personnel pursuant to chapter 8A, subchapter IV, to perform duties related to inspection functions under this chapter. The department of inspections and appeals shall, when possible, integrate inspection efforts under this chapter with inspections conducted under chapter 157.

The Iowa department of public health may employ clerical assistants pursuant to chapter 8A, subchapter IV, to administer and enforce this chapter. The costs and expenses of the clerical assistants shall be paid from funds appropriated to the department of public health.

2003 Acts, ch 145, §202  
Section amended

## CHAPTER 159

### DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

#### SUBCHAPTER I

#### GENERAL PROVISIONS

#### 159.5 Powers and duties.

The secretary of agriculture is the head of the department of agriculture and land stewardship which shall:

1. Carry out the objects for which the department is created and maintained.
2. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it.
3. Consolidate the inspection service of the state in respect to the laws administered by the department so as to eliminate duplication of inspection insofar as practicable.
4. Maintain a weather division which shall, in cooperation with the national weather service, collect and disseminate weather and phenological statistics and meteorological data, and promote knowledge of meteorology, phenology and climatology of the state. The division shall be headed by the state climatologist who shall be appointed by the secretary of agriculture, and shall be an officer of the national weather service, if one is detailed for that purpose by the federal government.
5. Establish volunteer weather stations in one or more places in each county, appoint observers thereat, supervise such stations, receive reports of meteorological events and tabulate the same for permanent record.
6. Issue weekly weather and crop bulletins from April 1 to October 1 of each year, and edit and cause to be published monthly weather reports, containing meteorological matter in its relationship to agriculture, transportation, commerce and the general public.
7. Maintain a division of agricultural statistics, which shall, in cooperation with the United States department of agriculture statistical reporting service, gather, compile, and publish sta-

tistical information concerning the condition and progress of crops, the production of crops, livestock, livestock products, poultry, and other such related agricultural statistics, as will generally promote knowledge of the agricultural industry in the state of Iowa. The statistics, when published, constitute official agricultural statistics for the state of Iowa. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture and who shall be an officer of the United States department of agriculture statistical reporting service, if one is detailed for that purpose by the federal government.

8. Establish and maintain a marketing news service division in the department which shall, in cooperation with the federal market news and grading division of the United States department of agriculture, collect and disseminate data and information relative to the market prices and conditions of agricultural products raised, produced, and handled in the state. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture and shall be an officer of the federal market news and grading division of the United States department of agriculture, if one is detailed for that purpose by the federal government.

9. Inspect and supervise all food producing or distributing establishments including the furniture, fixtures, utensils, machinery, and other equipment so as to prevent the production, preparation, packing, storage, or transportation of food in a manner detrimental to its character or quality.

10. Approve all methods of probing for foreign material content of any type of grain.

11. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of subtitles 1 through 3 of this title, excluding chapters 161A through 161C, and for the enforcement of the various laws, the administra-

tion and supervision of which are imposed upon the department.

12. Establish a swine tuberculosis eradication program including, but not limited to:

*a.* The inspection of swine herds in this state when the department finds that an animal from a swine herd has, or is believed to have, tuberculosis;

*b.* Ear tagging or otherwise physically marking all swine reacting positively to tests for tuberculosis;

*c.* Condemning any swine which has tuberculosis;

*d.* Depopulating any swine herd where tuberculosis is found to be generally present; and

*e.* Compensate the owners of condemned swine as provided under section 165.18, following the general procedures for filing claims and paying indemnities as provided in chapter 165.

If the department finds that the source of the tuberculosis in a swine herd is from another species of animal, except bovine, located on or near the premises on which the affected swine herd is located, the department may destroy those animals and indemnify the owners of the condemned animals as provided in chapter 163.

13. Establish and maintain a division of soil conservation. The division administrator shall be appointed by the secretary from a list of names of persons recommended by the soil conservation committee, pursuant to section 161A.4, subsection 2, and shall serve at the pleasure of the secretary.

14. Establish and administer programs for the inspection and control of disease among livestock as defined in section 717.1.

2003 Acts, ch 74, §1  
Subsection 12 stricken and former subsections 13 and 14 renumbered as 12 and 13

Subsection 15 stricken and former subsection 16 renumbered as 14

### 159.6 Additional duties.

In addition to the duties imposed by section 159.5 the department shall enforce the law relative to:

1. Forest and fruit-tree reservations, chapter 427C.

2. Infectious and contagious diseases among animals, chapter 163.

3. Eradication of bovine tuberculosis, chapter 165.

4. Hog-cholera virus and serum, chapter 166.

5. Use and disposal of dead animals, chapter 167.

6. Practice of veterinary medicine and surgery, chapter 169.

7. Regulation and inspection of foods, drugs, and other articles, as provided in Title V, subtitle 4, but chapter 205 of that subtitle shall be enforced as provided in that chapter.

8. State aid received by certain associations as provided in chapters 176 through 182, 186, and 352.

9. Coal mining and mines as set forth in chapters 207 and 208.

10. Soil and water conservation as set forth in chapters 161A, 161B, 161C, 161E, and 161F.

11. Grain dealers as set forth in chapter 203.

12. Bonded warehouses for agricultural products as set forth in chapter 203C.

13. The grain depositors and sellers indemnity fund as set forth in chapter 203D.

2003 Acts, ch 69, §23  
For 2002 and 2003 amendments to subsection 8 effective July 1, 2005, see 2002 Acts, ch 1017, §2, 8, and 2003 Acts, ch 44, §40, 116  
Subsection 12 stricken and former subsections 13 and 14 renumbered as 12 and 13

### 159.11 Agricultural statistics.

Agricultural statistics shall be collected each year by the department, which shall design surveys, collect data and publish county estimates of agricultural items. The department may make public announcements of the information collected and may provide copies without fee to vocational agricultural schools, state agricultural extension service and libraries. The department shall establish subscription fees for access by other parties to the information collected under this section. The fees shall be deposited in the general fund of the state. Production and acreage data collected under this section and provided by the department to the department of revenue shall not be adjusted for accuracy by the department of revenue.

2003 Acts, ch 145, §286  
Terminology change applied

## SUBCHAPTER II

### AGRICULTURAL MARKETING

### 159.21 International relations fund.

1. An international relations fund is created in the state treasury under the control of the department. The fund is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund.

2. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants written by the director of the department of administrative services, drawn upon the written requisition of the department.

3. Moneys in the fund are appropriated exclusively to support costs incurred by the department related to promoting the sale of Iowa agricultural commodities and agricultural products to government officials and business leaders of other nations. The department may use moneys in the fund to support travel, including international travel, for the secretary of agriculture or the secretary's designee, and hosting or attending trade missions, functions, or events.

4. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys

earned as income or interest from the fund shall remain in the fund until expended as provided in this section.

2003 Acts, ch 145, §286  
Terminology change applied

### 159.23 Special fund.

All fees collected as a result of the inspection and grading provisions set out herein shall be paid into the state treasury, there to be set aside in a separate fund which is hereby appropriated for the use of the department except as indicated. Withdrawals therefrom shall be by warrant of the director of the department of administrative services upon requisition by the secretary of agriculture. Such fund shall be continued from year to year, provided, however, that if there be any balance remaining at the end of the biennium which, in the opinion of the governor, director of management and secretary of agriculture, is greater than necessary for the proper administration of the inspection and grading program referred to herein, the treasurer of state is hereby authorized on the recommendation and with the approval of the governor, director of management and secretary of agriculture, to transfer to the general fund of the state that portion of such account as they shall deem advisable.

2003 Acts, ch 145, §286  
Terminology change applied

### 159.27 Iowa seal.

A seal for agricultural products shall be created under the direction of the department of agriculture and land stewardship to identify agricultural products that have been produced or processed in the state. The department shall certify that agricultural products marked with the Iowa seal are of the quality and specifications warranted by the sellers of those products.

The department of agriculture and land stewardship shall adopt rules under chapter 17A to provide methods of identifying, marking, and grading agricultural products, to prevent any misleading use of the Iowa seal, and as necessary or advisable to fully implement this section.

A violation of a rule adopted by the department of agriculture and land stewardship to implement this section is a simple misdemeanor. A fraudulent use of the term “Iowa Seal” or of the identifying mark for the Iowa seal, or a deliberately misleading or unwarranted use of the term or identifying mark is a serious misdemeanor.

2003 Acts, ch 48, §7

Section transferred from §159.31 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 48, §7

**159.31 Iowa seal.** Transferred to § 159.27; 2003 Acts, ch 48, § 7.

## SUBCHAPTER III DEPOSITARIES — ASSISTANCE SERVICES

### 159.32 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. “*Depository*” means a qualified person who executes a contract with the department pursuant to section 159.33 to provide assistance services as provided in this subchapter.

2. “*Electronic funds transfer*” means a remote electronic transmission used for ordering, instructing, or authorizing a financial institution to apply money to or credit the account of the payee and debit the account of the payer. The remote electronic transmission may be initiated by telephone, computer, or similar device.

3. “*Filing document*” means any of the following:

a. An application for a license, permit, or certification, required to be submitted to the department as provided in this title.

b. A registration required to be submitted to the department as provided in this title.

4. “*Filing document fee*” means a fee or other charge established by statute or rule which is required to accompany a filing document submitted to the department as provided in this title.

2003 Acts, ch 48, §2  
NEW section

### 159.33 Assistance services — authority to contract with depository.

Whenever practical, the department may execute a contract with a person qualified to provide assistance services under this subchapter, if the contract for the assistance services is cost-effective and the quality of the services ensures compliance with state and any applicable federal law. A person executing a contract with the department for the purpose of providing the assistance services shall be deemed to be a depository of the state and an agent of the department only for purposes expressly provided in this subchapter. The department shall periodically review assistance services performed by a person under the contract to ensure that quality, cost-effective service is being provided.

2003 Acts, ch 48, §3  
NEW section

### 159.34 Assistance services — filing documents.

1. A contract executed under this subchapter may require that a depository provide for the receipt, acceptance, and storage of filing documents that are sent in an electronic format to the depository by persons who would otherwise be required to submit filing documents to the department under other provisions of this title. The contract shall be governed under the same provisions as

provided in section 14B.202.\*

2. *a.* A depositary must send filing documents that it receives to the department for processing, including for the approval or disapproval of an application or the acknowledgment of a registration. The receipt of the filing document by the depositary shall be deemed receipt of the filing document but not an approval of an application or acknowledgment of a registration by the department.

*b.* A depositary may send a person notice of the department's approval or disapproval of an application or acknowledgment of a registration. The department and not a depositary shall be considered the lawful custodian of the department's filing documents which shall be public records as provided in chapter 22.

3. A filing document that is transmitted electronically to a depositary or from a depositary to another person is an electronic record for purposes of chapter 554D. An application or registration required to be signed must be authenticated by an electronic signature as provided by the department in conformance with chapter 554D.

2003 Acts, ch 48, §4  
\*§14B.202 was repealed by 2003 Acts, ch 145, §291; corrective legislation is pending  
NEW section

### **159.35 Assistance services — collection of moneys.**

1. A contract executed under this subchapter may require that a depositary provide for the receipt, acceptance, and transmission of moneys owed to the department by a person in order to satisfy a liability arising from the operation of law which is limited to filing document fees and civil penalties. These moneys are public funds or public deposits as provided in chapter 12. The depositary shall transfer the moneys to the department for deposit into the general fund of the state unless the disposition of the moneys is specifically provided for under other law.

2. A depositary may commit its assets to lines of credit pursuant to credit arrangements, including but not limited to agreements with credit and debit cardholders and with other credit or debit card issuers. The depositary may accept forms of payment including credit cards, debit cards, or electronic funds transfer.

3. The moneys owed to the department shall not exceed the amount required to satisfy the liability arising from the operation of law. However, the contract executed under this subchapter may provide for assistance service charges, including service delivery fees, credit card fees, debit card fees, and electronic funds transfer charges payable to the depositary or another party and not to the state. An assistance service charge shall not exceed that permitted by statute. The contract may also provide for the retention of interest earned on moneys under the control of the depositary. These moneys are not considered public funds or public deposits as provided in chapter 12.

4. The depositary, as required by the department for purposes of determining compliance, shall send information to the department including payment information for an identified filing document fee or the payment of a specific civil penalty.

5. Each calendar year, the auditor of state shall conduct an annual audit of the activities of the depositary.

2003 Acts, ch 48, §5  
NEW section

### **159.36 Filing documents and payment of moneys to department.**

Nothing in this subchapter shall prevent a person from submitting a filing document or making a payment to the department as otherwise provided in this title.

2003 Acts, ch 48, §6  
NEW section

## **CHAPTER 159A**

### **RENEWABLE FUELS AND COPRODUCTS**

#### **159A.3 Office of renewable fuels and coproducts.**

1. An office of renewable fuels and coproducts is created within the department and shall be staffed by a coordinator who shall be appointed by the secretary. It shall be the policy of the office to further renewable fuels and coproducts activities. The office shall first further renewable fuels and coproducts activities based on the following considerations:

*a.* The price competitiveness of the renewable fuel or coproduct.

*b.* The production capacity and supply of the

renewable fuel or coproduct.

*c.* The ease and safety of transporting and storing the renewable fuel or coproduct.

*d.* The degree to which the renewable fuel or coproduct is currently developed for ready transfer to current engine technology.

*e.* The degree to which the renewable fuel or coproduct is environmentally protective.

*f.* The degree to which the renewable fuel or coproduct provides economic development opportunities.

2. The duties of the office include, but are not limited to, the following:

*a.* Serving as advisor to the department regarding regulations, including federal and state standards, relating to oxygenate octane enhancers, as defined in section 214A.1.

*b.* Serving as advisor to the department regarding renewable fuels and coproducts programs.

*c.* Serving as monitor of regulations administered in the state, in other states, or by the federal government. The office shall collect information and data prepared by state agencies related to these regulations, and provide referral and assistance to interested persons and agencies.

*d.* Cooperating with persons and agencies involved in renewable fuels and coproducts activities, including other states and the federal government, to standardize regulations and coordinate programs, in order to increase administrative effectiveness and reduce administrative duplication.

*e.* Implementing policies and procedures designed to facilitate communication between persons involved in renewable fuels and coproducts activities.

*f.* Assisting state or federal agencies, or assisting commercial enterprises or commodity organizations which are located in or desiring to locate in the state. The assistance may include support of public research relating to renewable fuels and coproducts activities.

*g.* Conducting studies relating to the viability of producing or using renewable fuels and coproducts, and methods and schedules required to ensure a practicable transition to the use of renewable fuels and coproducts.

*h.* Preparing an annual report to the secretary regarding renewable fuels and coproducts activities. The report shall include a review of research and research results, areas of study with promising potential, a summary of initiatives in other states, and an analysis of state and federal regulations and programs.

*i.* Cooperating with the committee in carrying out the purposes of the committee as provided in section 159A.5. The office shall regularly inform the committee regarding its operations and programs administered under this chapter, including financial reports concerning the fund.

*j.* Approve a renewable fuel which may be used as a flexible fuel powering a motor vehicle required to be purchased by state agencies.

3. *a.* A chief purpose of the office is to further the production and consumption of ethanol fuel in this state. The office shall be the primary state agency charged with the responsibility to promote public consumption of ethanol fuel.

*b.* The office shall promote the production and consumption of soydiesel fuel in this state.

4. The office and state entities, including the department, the committee, the Iowa department of economic development, the Iowa department of transportation, the department of natural resources, and the state board of regents institutions, shall cooperate to implement this section.

2003 Acts, ch 44, §41, 42  
Subsection 4 stricken and former subsection 5 amended and renumbered as 4

#### **159A.7 Renewable fuels and coproducts fund.**

1. A renewable fuels and coproducts fund is created in the state treasury under the control of the office of renewable fuels and coproducts. The fund may also include other moneys available to and obtained or accepted by the office, including moneys from the United States, other states in the union, foreign nations, state agencies, political subdivisions, and private sources.

Moneys in the fund shall be used only to carry out the provisions of this section and sections 159A.3, 159A.4, 159A.5, 159A.6, 159A.6A, and 159A.6B within the state of Iowa.

2. Moneys in the fund shall be allocated during each fiscal year as follows:

*a.* At least forty percent shall be dedicated to support education, promotion, and advertising of renewable fuels and coproducts as provided in section 159A.6.

*b.* Up to thirty percent may be dedicated to support research at the university of Iowa, Iowa state university of science and technology, and the university of northern Iowa, as provided in section 159A.6A.

*c.* Any remaining balance shall be used by the office to support technical assistance as provided in section 159A.6B and any other projects or programs developed by the office.

3. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants by the director of the department of administrative services, drawn upon the written requisition of the coordinator.

4. In administering the fund, the office may do all of the following:

*a.* Contract, sue and be sued, and adopt procedures necessary to administer this section. However, the office shall not in any manner, directly or indirectly, pledge the credit of the state.

*b.* Authorize payment from the fund for commissions, attorney and accountant fees, and other reasonable expenses related to and necessary for administering the fund.

5. Section 8.33 does not apply to moneys in the fund. Income received by investment of moneys in the fund shall remain in the fund.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 161

### AGRICHEMICAL REMEDIATION

#### 161.7 Agrichemical remediation fund.

1. An agrichemical remediation fund is created within the state treasury under the control of the department.

2. The fund shall consist of any moneys appropriated by the general assembly for placement in the fund, and moneys available to and obtained or accepted by the department from the federal government or private sources for placement in the fund.

3. Moneys in the fund are appropriated exclusively to support agrichemical remediation as provided in this chapter, including the payment of claims under section 161.9 and the administration of this chapter by the board and the department.

4. The treasurer of state shall act as custodian of the fund and disburse amounts contained in the fund as directed by the department, in consultation with the board. The treasurer of state is au-

thorized to invest the moneys deposited in the fund. The income from such investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes set out in this chapter. The moneys in the fund shall be disbursed upon warrants drawn by the director of the department of administrative services pursuant to the order of the department. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The auditor of state shall regularly perform audits of the fund.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 161A

### SOIL AND WATER CONSERVATION

**161A.11 Report to governor.** Repealed by 2003 Acts, ch 74, § 2; 2003 Acts, ch 128, § 2.

See Code editor's note to §2.9

## CHAPTER 161B

### AGRICULTURAL ENERGY MANAGEMENT

#### 161B.1 Agricultural energy management fund.

1. The agricultural energy management fund is created within the department of agriculture and land stewardship. The fund shall be used to finance education and demonstration projects regarding tillage practices and the management of fertilizer and pesticide use which result in management practices that reduce energy inputs in agriculture and reduce potential for groundwater

contamination.

2. The department of agriculture and land stewardship shall report annually to the senate standing committee on natural resources and environment and the house of representatives standing committee on environmental protection on the projects conducted with the agricultural energy management fund.

2003 Acts, ch 108, §40  
Subsection 2 amended

## CHAPTER 161C

### WATER PROTECTION PROJECTS AND PRACTICES

#### 161C.5 Organic nutrient management fund.

1. An organic nutrient management fund is

created in the state treasury under the control of the division. The fund is composed of moneys appropriated by the general assembly, and moneys

available to and obtained or accepted by the division or the state soil conservation committee, from the United States or private sources for placement in the fund.

2. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants by the director of the department of administrative services, drawn upon the written requisition of the division.

3. The fund shall be used to support the organic nutrient management program provided in section 161C.6. Moneys shall be used to provide financial incentives under the program and to pay for expenses incurred by the division in administering the program. Not more than two percent of the moneys shall be used to pay for administering the program. Moneys expended for financial incentives shall be allocated on a cost-share basis. The division may adopt rules to administer this section.

4. The division shall not in any manner directly or indirectly pledge the credit of the state.

5. Section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

2003 Acts, ch 145, §286  
Terminology change applied

#### **161C.7 Watershed protection.**

1. The department of agriculture and land stewardship shall initiate and coordinate the establishment of a watershed protection task force and provide staffing assistance to the task force. It is the intent of the general assembly that the task force include representatives of the department of agriculture and land stewardship, the department of natural resources, the homeland security and emergency management division of the department of public defense, county conservation boards, soil and water conservation districts, and

any other appropriate stakeholders. The task force shall study the condition of watershed protection in the state and provide recommendations to the department of agriculture and land stewardship regarding soil conservation, water quality protection, flood control, and other natural resource conservation issues. The task force shall submit recommendations to the department by January 1 of each year through January 1, 2001.

2. The department of agriculture and land stewardship shall implement and administer a watershed protection program. The department of agriculture and land stewardship, in consultation with the department of natural resources, shall annually establish a prioritized list of watersheds that are of the highest importance to the state's water quality. The watershed protection program shall, to the extent practical, target for assistance those watersheds on the prioritized list. A soil and water conservation district, in cooperation with state agencies, local units of government, and private organizations, may submit an application for assistance to the department which provides a strategy for protecting soil, water quality, and other natural resources, and improving flood control in the watershed. Upon approval of an application, the department may provide a grant to the soil and water conservation district for purposes of carrying out the strategy provided in the application.

3. A watershed protection account is created within the water protection fund created in section 161C.4. Moneys credited to the account shall be distributed under the watershed protection program.

4. Administrative rules used for water quality protection projects under the water protection fund shall be used to administer the watershed protection program.

2003 Acts, ch 179, §157  
Terminology change applied

## CHAPTER 161D

### LOESS HILLS AND SOUTHERN IOWA DEVELOPMENT AND CONSERVATION

#### **161D.8 Annual report — audit.**

1. The authority shall submit to the department of management, the legislative services agency, and the division of soil conservation of the department of agriculture and land stewardship, on or before December 31 annually, a report including information regarding all of the following:

*a.* Its operations and accomplishments.

*b.* Its budget, receipts, and actual expenditures during the previous fiscal year, in accordance with classifications it establishes for its operating and capital accounts.

*c.* Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.

*d.* A statement of its proposed and projected activities.

*e.* Recommendations to the governor and the general assembly, as deemed necessary.

*f.* Any other information deemed necessary.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period in attaining these goals.

3. The fund shall be subject to an annual audit by the auditor of state.

2003 Acts, ch 35, §45, 49  
Terminology change applied

**161D.13 Annual report — audit.**

1. The southern Iowa development and conservation authority shall submit to the department of management, the legislative services agency, and the division of soil conservation of the department of agriculture and land stewardship, on or before December 31 annually, a report including information regarding all of the following:

- a. Its operations and accomplishments.
- b. Its budget, receipts, and actual expenditures during the previous fiscal year, in accordance with classifications it establishes for its op-

erating and capital accounts.

c. Its assets and liabilities at the end of the previous fiscal year and the status of reserve, special, and other funds.

d. A statement of its proposed and projected activities.

e. Recommendations to the governor and the general assembly, as deemed necessary.

f. Any other information deemed necessary.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period in attaining these goals.

3. The southern Iowa development and conservation fund shall be subject to an annual audit by the auditor of state.

2003 Acts, ch 35, §45, 49  
Terminology change applied

## CHAPTER 163

### INFECTIOUS AND CONTAGIOUS DISEASES AMONG ANIMALS

**163.30 Swine dealer licensing and fees — swine movement.**

1. This section shall apply to all swine moved interstate and intrastate, except swine moved directly to slaughter or to a livestock market for sale directly to a slaughtering establishment for immediate slaughter.

2. When used in this subchapter:

a. “*Dealer*” means any person who is engaged in the business of buying for resale, or selling, or exchanging swine as a principal or agent or who claims to be so engaged, but does not include the owner or operator of a farm who does not claim to be so engaged, and who sells or exchanges only those swine which have been kept by the person solely for feeding or breeding purposes.

b. “*Move*” or “*movement*” means to ship, transport, or deliver swine by land, water, or air, except that “*move*” or “*movement*” does not mean a relocation.

c. “*Relocate*” or “*relocation*” means to ship, transport, or deliver swine by land, water, or air, to different premises, if the ownership of the swine does not change, the prior and new premises are located within the state, and the shipment, transportation, or delivery between the prior and new premises occurs within the state.

d. “*Separate and apart*” means a manner of holding swine so as not to have physical contact with other swine on the premises.

3. A person shall not act as a dealer unless the department issues the person a dealer’s license. The person must be licensed as a dealer regardless of whether the swine originate in this state or another jurisdiction or the person resides in this state or another jurisdiction. The jurisdiction may be in another state or a foreign nation.

a. The fee for a dealer’s license is five dollars each year. A license expires on the first day of July following the date of issue. A license shall be numbered and the dealer shall retain the number from year to year.

b. To be issued a license, an applicant must file a surety bond with the department. The applicant shall file a standard surety bond of ten thousand dollars with the secretary named as trustee, for the use and benefit of anyone damaged by a violation of this section, except that the bond shall not be required for dealers who are bonded in the same or a greater amount than required pursuant to the federal Packers and Stockyards Act. In addition, the department may require that a licensee file evidence of financial responsibility with the department prior to a license being issued or renewed as provided in section 202C.2.

c. Each employee or agent doing business by buying for resale, selling, or exchanging feeder swine in the name of a licensed dealer shall be required to secure a permit and identification card issued by the department showing the person is employed by or represents a licensed dealer. All such permits and identification cards shall be issued upon application forms furnished by the department at a cost of three dollars per annum, and shall expire on the first day of July following the date of issue.

d. A permittee shall not represent more than one dealer. Failure of a licensee or permittee to comply with this chapter or a rule made pursuant to this chapter is cause for revocation by the secretary of the permit or license after notice to the alleged offender and the holding of a hearing by the secretary. Rules shall be made in accordance with chapter 17A. A rule, the violation of which is made

the basis for revocation, except temporary emergency rules, shall first have been approved after public hearing as provided in section 17A.4 after giving twenty days' notice of the hearing as follows:

By mailing notice, by ordinary mail, to every person filing a request for notice accompanied by an addressed envelope with prepaid postage. Any person may file such a request to be listed with any agency for notice for the time and place for all hearings on proposed rules, which request shall be accompanied by a remittance of five dollars. Such fee shall be added to the operating fund of the department. The listing shall expire semiannually on January 1 and July 1.

4. All swine moved shall be individually identified with a distinctive and easily discernible ear tag affixed in either ear of the animal or other identification acceptable to the department, which has been specified by rule promulgated under the department's rulemaking authority. The department shall make ear tags available at convenient locations within each county and shall sell such tags at a price not exceeding the cost to producers and others to comply with this section.

Every seller, dealer and market operator shall keep a record of the ear tag numbers, or other approved identification, and the farm of origin of swine moved by or through that person, which records shall be made available by that person to any appropriate representative of the department or the United States department of agriculture.

5. All swine moved shall be accompanied by an official health certificate or veterinarian inspection certificate issued by the state of origin and prepared and signed by a veterinarian. The health certificate or veterinarian inspection certificate shall show the point of origin, the point of destination, individual identification, immunization status, and, when required, any movement permit number assigned to the shipment by the department. All such movement of swine shall be completed within seventy-two hours unless an extension of time for movement is granted by the department.

However, swine may be moved intrastate directly to an approved state, federal or auction market without such identification or certification, there to be identified and certificated.

However, registered swine for exhibition or breeding purposes which can be individually identified by an ear notch or tattoo or other method approved by the department are excepted from this identification requirement. In addition, native Iowa swine moved from farm to farm shall be excepted from the identification requirement if the owner transferring possession of the feeder pigs executes a written agreement with the person taking possession of the feeder pigs. The agreement shall provide that the feeder pigs shall not be commingled with other swine for a period of thirty

days. The owner transferring possession shall be responsible for making certain that the agreement is executed and for providing a copy of the agreement to the person taking possession.

The department may combine an official health certificate or a veterinarian inspection certificate with a certificate of inspection required under chapter 166D.

6. The department may require issuance of movement permits on certain categories of swine moved, prior to their movement, pursuant to departmental rule. The rule shall be promulgated when in the judgment of the secretary, such movements would otherwise threaten or imperil the eradication of hog cholera in Iowa.

7. All swine moved shall be quarantined separate and apart from other swine located at the Iowa farm of destination for thirty days beginning with their arrival at such premises, or if such incoming swine are not held separate and apart, all swine on such premises shall be thus quarantined, except animals moving from such premises directly to slaughter.

There can only be one transfer by a dealer, involving not more than two markets, prior to quarantine.

8. The use of anti-hog-cholera serum or antibody concentrate shall be in accordance with rules issued by the department.

9. All swine found by a registered veterinarian to have any infectious, contagious, or communicable swine disease after delivery to any livestock sale barn or auction market for resale other than for slaughter, shall be immediately returned to the consignor's premises to be quarantined separate and apart for fifteen days. Such swine may not be moved from such premises for any purpose unless an official health certificate or veterinarian inspection certificate accompanies the movement or unless they are sent to slaughter. This subsection shall in no way supersede the requirements of sections 163A.2 and 163A.3.

2003 Acts, ch 90, §1; 2003 Acts, ch 108, §41  
Subsection 2, unnumbered paragraph 1 amended  
Subsection 3, unnumbered paragraph 1 amended and redesignated as subsection 3, unnumbered paragraph 1 and paragraphs a and b  
Subsection 3, unnumbered paragraphs 2 and 3 redesignated as paragraphs c and d

### **163.37 Form of identification required.**

1. The slap tattoo or other means of identification required by section 163.36 shall be in accordance with regulations of the department.

2. Each person required by section 163.36 to identify animals shall record such identification on forms specified and furnished by the department. The identification shall include the tattoo specifications, the date of application, and the name, address and county of residence of the person who owned or controlled the herd from which the animals originated.

3. Such records shall be maintained for a

length of time as required by and pursuant to chapter 305 and at the point of concentration and shall be made available for inspection by the department at reasonable times.

2003 Acts, ch 92, §2  
Subsection 3 amended

**163.51 Security measures.**

1. The department may establish security measures in order to control outbreaks of foot and mouth disease in this state, including by providing for the prevention, suppression, and eradication of foot and mouth disease. In administering and enforcing this section, the department may adopt rules and shall issue orders in a manner consistent with sound veterinary principles and federal law for the control of outbreaks of the disease. The department may implement the security measures by doing any of the following:

*a.* If the department determines that an animal is infected with or exposed to foot and mouth disease, or the department suspects that an animal is so infected or exposed, the department may provide for all of the following:

(1) The quarantine, condemnation, or destruction of the animal. The department may establish quarantined areas and regulate activities in the quarantined areas, including movement or relocation of animals or other property within, into, or from the quarantined areas. This section does not authorize the department to provide for the destruction of personal property other than an animal.

(2) The inspection or examination of the animal's premises in order to perform an examination or test to determine whether the animal is or was infected or exposed or whether the premises is contaminated. The department may take a blood or tissue sample of any animal on the premises.

(3) The compelling of a person who is the owner or custodian of the animal to provide information regarding the movement or relocation of the animal or the vaccination status of the animal or the herd where the animal originates. The department may issue a subpoena for relevant testimony or records as defined in section 516E.1. In the case of a failure or refusal of the person to provide testimony or records, the district court upon application of the department or the attorney general acting upon behalf of the department, may order the person to show cause why the person should not be held in contempt. The court may order the person to provide testimony or produce the record or be punished for contempt as if the person refused to testify before the court or disobeyed a subpoena issued by the court.

*b.* The department may provide for the cleaning and disinfection of real or personal property if the department determines that the property is

contaminated with foot and mouth disease or suspects that the property is contaminated with foot and mouth disease.

2. *a.* If the department determines that there is a suspected outbreak of foot and mouth disease in this state, the department shall immediately notify all of the following:

(1) The governor or a designee of the governor. The notification shall contain information regarding actions being implemented or recommended in order to determine if the outbreak is genuine and measures to control a genuine outbreak.

(2) The administrative unit of the United States department of agriculture responsible for controlling outbreaks in this state.

*b.* If the department confirms an outbreak of foot and mouth disease in this state, the department shall cooperate with the governor; federal agencies, including the United States department of agriculture; and state agencies, including the homeland security and emergency management division of the department of public defense, in order to provide the public with timely and accurate information regarding the outbreak. The department shall cooperate with organizations representing agricultural producers in order to provide all necessary information to agricultural producers required to control the outbreak.

3. The department shall cooperate with federal agencies, including the United States department of agriculture, other state agencies and law enforcement entities, and agencies of other states. Other state agencies and law enforcement entities shall assist the department.

4. *a.* To the extent that an animal's owner would not otherwise be compensated, section 163.15 shall apply to the owner's loss of any animal destroyed under this section.

*b.* Upon the request of the executive council, the department shall develop and submit a plan to the executive council that compensates an owner for property, other than an animal, that is inadvertently destroyed by the department as a result of the department's regulation of activities in a quarantined area. The plan shall not be implemented without the approval of at least three members of the executive council. The payment of the compensation under the plan shall be made in the same manner as provided in section 163.15. The owner may submit a claim for compensation prior to the plan's implementation. The executive council may apply the plan retroactively, but not earlier than June 1, 2001.

5. Nothing in this section limits the department's authority to regulate animals or premises under other provisions of state law, including this chapter.

2003 Acts, ch 179, §157  
Terminology change applied

## CHAPTER 165

### ERADICATION OF BOVINE TUBERCULOSIS

#### **165.18 Brucellosis and tuberculosis eradication fund.**

1. A brucellosis and tuberculosis eradication fund is created in the office of the secretary of agriculture, to be used together with state and federal funds available to pay:

*a.* The indemnity and other expenses provided in this chapter.

*b.* The indemnity as set out in section 164.21 and other expenses provided in chapter 164.

*c.* The expenses of the inspection and testing program provided in chapter 163A, but only to the extent that the moneys in the fund are not required for expenses incurred under chapter 164 or 165.

*d.* Indemnities as provided in section 159.5, subsection 12, but only to the extent that the moneys in the fund are not required to pay expenses under chapter 163A, 164, or 165.

2. If it appears to the secretary of agriculture that the balance in the fund on January 20 is insufficient to carry on the work in the state for the following fiscal year, the secretary shall notify the board of supervisors of each county to levy an amount sufficient to pay the expenses estimated to be incurred under subsection 1 for the following fiscal year, subject to a maximum levy of thirty-three and three-fourths cents per thousand dollars of assessed value of all taxable property in the county.

3. Not later than December 15 or June 15 of a year in which the tax is collected, the county treasurer shall transmit the amount of the tax levied and collected to the treasurer of state, who shall credit it to the brucellosis and tuberculosis eradication fund.

Section not amended; internal reference change applied

## CHAPTER 166D

### PSEUDORABIES CONTROL

#### **166D.10 Movement of swine.**

1. A person shall not sell, lease, exhibit, loan, move, or relocate swine within the state unless the swine are accompanied by a certificate of inspection in the same manner as provided for an official health certificate or veterinarian certificate as provided in section 163.30. The department may combine the certificate of inspection with an official health certificate or a veterinarian inspection certificate. A certificate of inspection is not required if any of the following apply:

*a.* The swine are moved to slaughter.

*b.* The swine are relocated, if all of the following apply:

(1) A transportation certificate accompanies the relocated swine.

(2) The swine's owner maintains information regarding the relocation in relocation records. The department may adopt rules excusing a person from maintaining relocation records, if the department determines that the purposes of the chapter as provided in section 166D.1 are not furthered by the requirement.

(3) A certificate of inspection, or an official health certificate or a veterinarian inspection certificate as provided in section 163.30, has been issued for the swine within thirty days prior to the date of relocation. The department may adopt rules excusing a person from complying with this subparagraph if the department determines that

the purposes of the chapter as provided in section 166D.1 are not furthered by the requirement.

(4) The swine have a current negative pseudorabies status.

The department shall adopt rules required to administer this paragraph. A transportation certificate accompanying relocated swine shall cite the relevant relocation record and certificate of inspection, or official health certificate or veterinarian inspection certificate. The department may provide for the examination of the relocation records on the owner's premises during normal business hours, or may require that reports containing relevant information contained in relocation records and certificates of inspection, or official health certificates or veterinarian inspection certificates, be periodically submitted to the department. For purposes of this section, swine production information contained in relocation records is a trade secret as provided in section 22.7, unless otherwise provided by rules adopted by the department. The department shall provide for the disclosure of confidential information only to the extent required for enforcement of this chapter, the detection and prosecution of public offenses, or to comply with a subpoena or court order.

*c.* A person transfers ownership of all or part of a herd, if the herd remains on the same premises. However, the herd must be tested by statistical sampling. If any part of the herd is subse-

quently moved or relocated, the swine must be moved or relocated in accordance with this section and sections 166D.7, 166D.8, and 166D.10A.

2. Swine that are moved shall be individually identified as provided in section 163.30, which may include requirements for affixing ear tags to swine. However, native Iowa feeder pigs moved from farm to farm within the state shall be exempted from the identification requirements of this subsection if the owner transferring possession of the feeder pigs executes a written agreement with the person taking possession of the feeder pigs. The agreement shall provide that the feeder pigs shall not be commingled with other swine for a period of thirty days. The owner transferring possession shall be responsible for making certain that the agreement is executed and for providing a copy of the agreement to the person taking possession.

As used in this subsection, “*farm to farm within the state*” does not include the movement or relocation of native Iowa feeder pigs to the possession of a dealer licensed pursuant to section 163.30. Native Iowa feeder pigs that are moved shall be accompanied by a certificate of inspection, or an official health certificate or veterinarian certificate as provided in section 163.30, unless swine are otherwise exempted from this requirement by this section.

3. Swine from a herd located within this state must be moved or relocated in compliance with this section. If the swine is moved or relocated from a herd located within a county which is designated by the department as in stage II of the national pseudorabies eradication program, the swine shall not be moved or relocated unless in compliance with section 166D.11. Regardless of whether the swine is from a herd located in a stage II county, the following shall govern the movement or relocation of swine within this state:

*a.* For swine from a noninfected herd, a person shall not move swine for breeding purposes, unless one of the following applies:

(1) The swine is moved from a qualified negative herd or qualified differentiable negative herd.

(2) The swine reacts negatively to a differentiable test within thirty days prior to moving the swine.

*b.* For swine which is exposed, a person shall not move or relocate the swine, unless one of the following applies:

(1) The swine reacts negatively to a differentiable test within thirty days prior to moving or relocating the swine.

(2) The swine moves by restricted movement to either a fixed concentration point or slaughtering establishment.

*c.* For swine from a herd of unknown status, a person shall not move or relocate the swine, unless one of the following applies:

(1) The swine reacts negatively to a differentiable test within thirty days prior to moving or relo-

cating the swine.

(2) The swine moves by restricted movement to either a fixed concentration point or slaughtering establishment. However, the swine is not required to move by restricted movement if the swine is moved from a fixed concentration point directly to another fixed concentration point or to a slaughtering establishment.

*d.* For swine which is from an infected herd, a person shall not move or relocate the swine, unless one of the following applies:

(1) If the swine is part of a cleanup plan, the following shall apply:

(a) For swine, other than feeder pigs or cull swine, which are part of a herd subject to a cleanup plan, a person shall only move swine by restricted movement to either a fixed concentration point or slaughtering establishment. A person shall not relocate the swine.

(b) For a feeder pig or cull swine which is part of a herd subject to a herd cleanup plan, a person shall only move the feeder pig or cull swine by restricted movement to either a fixed concentration point or slaughtering establishment or relocate the feeder pig or cull swine by restricted movement to an approved premises. For a feeder pig or cull swine which is part of a feeder pig cooperator herd cleanup plan, a person shall only move the feeder pig or cull swine by restricted movement to either a fixed concentration point or slaughtering establishment or move or relocate the feeder pig or cull swine by restricted movement to an approved premises. However, a person shall not move or relocate a feeder pig or cull swine to an approved premises, unless the approved premises is identified in a cleanup plan as provided in section 166D.8, or the department approves the move or relocation to another approved premises. A person shall not move or relocate a cull swine to an approved premises, unless the cull swine reacts negatively to a test and is vaccinated with a differentiable vaccine. The test and vaccine must be administered within thirty days prior to the movement or relocation to the approved premises. A noninfected feeder pig is not required to be tested or vaccinated prior to movement or relocation to an approved premises, if the feeder pig is vaccinated upon arrival at the approved premises.

(c) For swine from a herd kept on an approved premises, a person shall only move or relocate the swine by restricted movement as provided in the cleanup plan governing the herd and terms and conditions of the certification required for the approved premises as provided in section 166D.10B.

(2) If the swine is not part of a herd that is subject to a cleanup plan because the herd is quarantined, a person shall only move the swine by restricted movement to either a fixed concentration point or slaughtering establishment.

4. Swine from a herd located outside this state must be moved into and maintained in this state in compliance with this section. A person shall not

move swine into this state, except as follows:

a. For swine from a herd, other than a noninfected herd, the swine must be moved either to a fixed concentration point or slaughtering establishment.

b. For swine from a noninfected herd, the swine may be moved to a concentration point or slaughtering establishment. If the swine is not moved to a concentration point or slaughtering establishment, the following shall apply:

(1) Unless the person moves the swine into a county designated by the department as in stage II of the national pseudorabies eradication program, the following shall apply:

(a) A person shall not move swine into this state for breeding purposes, unless one of the following applies:

(i) The swine is moved from a qualified negative herd or qualified differentiable negative herd.

(ii) The swine reacts negatively to a differentiable test, within thirty days prior to moving the swine.

(b) A person shall not move a feeder swine which is moved into this state, unless the feeder swine reacts negatively to a differentiable test within thirty days prior to movement from a herd in this state.

(2) If a person moves the swine into a county which is designated by the department as in stage II of the national pseudorabies eradication program, the following shall apply:

(a) Except as provided in this subparagraph, the owner of swine shall vaccinate the swine with a modified-live differentiable vaccine, prior to moving swine into the stage II county. A person is not required to vaccinate swine prior to moving swine into the stage II county if one of the following applies:

(i) The swine is part of a herd that cannot be vaccinated under the law of the state or country in which the herd is kept immediately prior to being moved into the stage II county.

(ii) The swine is an isowean feeder pig.

(iii) The swine is moved either to a fixed con-

centration point or slaughtering establishment.

(b) For swine which are not vaccinated before being moved into a stage II county as provided in this paragraph, the following shall apply:

(i) For swine other than swine moved into a herd within a stage II county as an isowean feeder pig, the swine must be immediately vaccinated with a differentiable vaccine, as provided in section 166D.11. The swine shall be considered as part of a herd of unknown status, until tested negative and vaccinated.

(ii) For swine moved into a herd within a stage II county as an isowean feeder pig, the swine moved into the herd must be immediately vaccinated with a differentiable vaccine, as provided in section 166D.11. The department may require that the swine be revaccinated with a differentiable vaccine at a later date. The swine shall be considered as part of a herd of unknown status, until tested negative and vaccinated.

5. A person shall not move a swine within this state, other than to a fixed concentration point or slaughtering establishment, if the swine is vaccinated with a vaccine other than a differentiable vaccine approved by the department pursuant to section 166D.14.

6. Known infected swine moved through a fixed concentration point shall only be moved by restricted movement to a slaughtering establishment.

7. Swine moved under this section to a slaughtering establishment shall be for the exclusive purpose of slaughtering the swine. Swine moved under this section to a fixed concentration point shall be for the exclusive purpose of immediately moving the swine to a slaughtering establishment. Swine moved or relocated under this section to an approved premises shall be for the exclusive purpose of feeding the swine prior to movement or relocation to another approved premises, or movement to either a fixed concentration point or a slaughtering establishment.

2003 Acts, ch 108, §124, 132  
Section not amended; section history revised

## CHAPTER 169A

### MARKING AND BRANDING OF LIVESTOCK

#### 169A.1 Definitions.

When used in this chapter:

1. *“Animal”* means a creature belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 170.1; or poultry.

2. *“Brand”* means an identification mark that is burned into the hide of a live animal by a hot iron or another method approved by the secretary. A brand shall include a cryo-brand.

3. *“Computer”* means the same as defined in section 22.3A.

4. *“Cryo-brand”* means a brand produced by application of extreme cold temperature.

5. *“Identification device”* means a device which when installed is designed to store information regarding an animal or the animal’s owner in an electronic format which may be accessed by a computer for purposes of reading or manipulating the information.

6. “*Install*” means to place an identification device onto or beneath the hide or skin of an animal, including but not limited to fixing the device into the ear of an animal or implanting the device beneath the skin of the animal.

7. “*Livestock*” means horses, cattle, sheep, mules, or asses.

2003 Acts, ch 149, §2, 23  
Further definitions; see §159.1  
Subsection 1 amended

#### 169A.13A Branding administration fund.

1. A branding administration fund is created in the state treasury under the control of the department. The fund is composed of moneys collected in fees as provided in this chapter, moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the department from the United States or private

sources for placement in the fund.

2. The fund is subject to warrants written by the director of the department of administrative services, drawn upon the written requisition of the department.

3. Moneys in the fund are appropriated to the department for the exclusive purpose of supporting the administration of this chapter by the department.

4. The department may adopt rules pursuant to chapter 17A to administer this section.

5. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 169C

### TRESPASSING OR STRAY LIVESTOCK

#### 169C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Aggrieved party*” means a landowner or a local authority.

2. “*Landowner*” means a person who holds an interest in land, including a titleholder or tenant.

3. “*Livestock*” means an animal belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 170.1; or poultry.

4. “*Livestock care provider*” means a person designated by a local authority to provide care to livestock which is distrained by a local authority.

5. “*Livestock owner*” means the person who holds title to livestock or who is primarily responsible for the care and feeding of the livestock as provided by the titleholder.

6. “*Local authority*” means a city as defined in section 362.2 or a county as provided in chapter 331.

7. “*Maintenance*” means the provision of shelter, food, water, or a nutritional formulation as required pursuant to chapter 717.

2003 Acts, ch 149, §3, 23  
Further definitions; see §159.1  
Subsection 3 amended

## CHAPTER 170

### FARM DEER

#### 170.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Chronic wasting disease*” means the animal disease afflicting deer and elk that is a transmissible disease of the nervous system resulting in distinctive lesions in the brain and that belongs to the group of diseases that is known as transmissible spongiform encephalopathies (TSE).

2. “*Council*” means the farm deer council established pursuant to section 170.2.

3. “*Department*” means the department of agriculture and land stewardship.

4. “*Farm deer*” means an animal belonging to the cervidae family and classified as part of the

dama species of the dama genus, commonly referred to as fallow deer; part of the elaphus species of the cervus genus, commonly referred to as red deer or elk; part of the virginianus species of the odocoileus genus, commonly referred to as white-tail; part of the hemionus species of the odocoileus genus, commonly referred to as mule deer; or part of the nippon species of the cervus genus, commonly referred to as sika. However, a farm deer does not include any unmarked free-ranging elk, white-tail, or mule deer.

5. “*Fence*” means a boundary fence which encloses farm deer within a landowner’s property as required to be constructed and maintained pursuant to section 170.4.

6. “*Landowner*” means a person who holds an interest in land, including a titleholder or tenant.

2003 Acts, ch 149, §4, 23  
NEW section

### 170.2 Farm deer council.

1. A farm deer council is established within the department.

a. The council shall consist of not more than seven members who shall be appointed by the secretary of agriculture. All members must be actively engaged in the production of farm deer and at least four members must be actively engaged in the production of whitetail as farm deer.

b. The members of the council shall serve staggered terms of two years, except that the initial council members shall serve terms of unequal length. A person appointed to fill a vacancy for a member shall serve only for the unexpired portion of the term. A member is eligible for reappointment for three successive terms.

c. The council shall elect a chairperson and meet according to rules adopted by the council. A majority of the council constitutes a quorum and an affirmative vote of a majority of members is necessary for substantive action taken by the council. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the council.

d. A member of the council is not entitled to receive expenses incurred in the discharge of the member’s duties on the council. A member is also not entitled to receive compensation as otherwise provided in section 7E.6.

2. The council shall do all of the following:

a. Monitor conditions relating to the production of farm deer, the processing of farm deer products, and the marketing of such products. The council shall advise the department about health issues affecting farm deer, including but not limited to chronic wasting disease, and related regulations or practices.

b. Advise the department about the administration and enforcement of this chapter, including but not limited to consulting with the department regarding the rules adopted under this chapter, the certification of fences, and disciplinary actions. However, the council shall not control policy decisions or direct the administration or enforcement of this chapter.

2003 Acts, ch 149, §5, 23  
NEW section

### 170.3 Departmental jurisdiction — administration and enforcement.

1. Farm deer are livestock as provided in this title and are principally subject to regulation by the department of agriculture and land stewardship, and also the department of natural resources

as specifically provided in this chapter. The regulations adopted by the department of agriculture and land stewardship may include but are not limited to providing for the importation, transportation, and disease control of farm deer. The department of natural resources shall not require that the landowner be issued a license or permit for keeping farm deer or for the construction of a fence for keeping farm deer.

2. The department of agriculture and land stewardship and the department of natural resources shall cooperate in administering and enforcing this chapter.

2003 Acts, ch 149, §6, 23  
NEW section

### 170.4 Requirements for keeping whitetail — fence certification.

A landowner shall not keep whitetail as farm deer, unless the whitetail is kept on land which is enclosed by a fence. The fence must be constructed and maintained as prescribed by rules adopted by the department. A landowner shall not keep the whitetail unless the fence is certified in a manner and according to procedures required by the department. The fence shall be constructed and maintained to ensure that whitetail are kept in the enclosure and that other deer are excluded from the enclosure. A fence that is constructed on or after May 23, 2003, shall be at least eight feet in height above ground level. The department of agriculture and land stewardship may require that the fence is inspected and approved prior to certification. The department of natural resources may periodically inspect the fence according to appointment with the enclosure’s landowner.

2003 Acts, ch 149, §7, 23  
Automatic certification of fences on land owned by certain licensed game breeders or hunting preserve licensees; 2003 Acts, ch 149, §22, 23; 2003 Acts, ch 179, §82  
NEW section

### 170.5 Requirements for releasing whitetail — property interests.

A person shall not release whitetail kept as farm deer onto land unless the landowner complies with all of the following:

1. The landowner must notify the department of natural resources and the department of agriculture and land stewardship at least thirty days prior to first releasing the whitetail on the land. The notice shall be provided in a manner required by the departments. The notice must at least provide all of the following:

a. A statement verifying that the fence which encloses the land is certified by the department of agriculture and land stewardship pursuant to section 170.4.

b. The landowner’s name.

c. The location of the land enclosed by the fence.

2. The landowner shall cooperate with the department of natural resources and the depart-

ment of agriculture and land stewardship to remove any whitetail from the enclosed land. However, after the thirtieth day following receipt of the notice, the state shall relinquish its property interest in any remaining whitetail that the landowner and the cooperating departments were unable to remove from the enclosed land. Any remaining whitetail existing at that time on the enclosed land, and any progeny of the whitetail, shall become property of the landowner.

2003 Acts, ch 149, §8, 23  
For exceptions to notification requirements, see 2003 Acts, ch 149, §22, 23; 2003 Acts, ch 179, §82  
NEW section

#### 170.6 Disciplinary proceedings.

1. The department of agriculture and land stewardship may suspend or revoke a certification issued pursuant to section 170.4 if the department determines that a landowner has done any of the following:

*a.* Provided false information to the department in an application for certification pursuant to section 170.4.

*b.* Failed to provide notice or access to the department of natural resources and the department of agriculture and land stewardship as required by section 170.5.

*c.* Failed to maintain a fence enclosing the land where a whitetail is kept as required in section 170.4.

*d.* Forces or lures a whitetail that is property of the state onto the enclosed land.

*e.* Restrains or inhibits a whitetail that is property of the state from leaving the enclosed land.

*f.* Takes a whitetail that is property of the state which is enclosed on the property in violation of a chapter in Title XI, subtitle 6.

2. If the department suspends a landowner's certification, the landowner shall not release additional whitetail onto the enclosed land, unless

otherwise provided in the department's order for suspension. If the department revokes a landowner's certification under this section, the landowner shall provide for the disposition of the enclosed whitetail by any lawful means.

2003 Acts, ch 149, §9, 23; 2003 Acts, ch 179, §66  
NEW section

#### 170.7 Department of natural resources — investigations.

This chapter does not prevent the department of natural resources from conducting an investigation of a violation of fish and game laws, including but not limited to a provision of Title XI, subtitle 6. The department of natural resources may obtain a warrant to search the enclosed land pursuant to chapter 808. This chapter does not prevent the department of natural resources from examining the landowner's business records according to appointment with the enclosure's landowner. The records include but are not limited to those relating to whitetail inventories, health, inspections, or shipments; and the enclosure's fencing.

2003 Acts, ch 149, §10, 23  
NEW section

#### 170.8 Penalties.

A person is guilty of taking a whitetail in violation of section 481A.48 if the whitetail is on the land enclosed by a fence required to be certified as provided in section 170.4 and the person does any of the following:

1. Forces or lures a whitetail that is property of the state onto the enclosed land.

2. Restrains or inhibits a whitetail that is property of the state from leaving the enclosed land.

3. Takes a whitetail that is property of the state that is within the enclosure in violation of a chapter in Title XI, subtitle 6.

2003 Acts, ch 149, §11, 23  
NEW section

## CHAPTER 172D

### LIVESTOCK FEEDLOTS

#### 172D.3 Compliance with rules of the department.

1. *Requirement.* A person who operates a feedlot shall comply with applicable rules of the department. The applicability of a rule of the department shall be as provided in subsection 2. A person complies with this section as a matter of law where no rule of the department exists.

2. *Applicability of rules.*

*a.* Exclusion for federally mandated requirements. This section shall apply to the department's rules except for rules required for delegation of the national pollutant discharge elimina-

tion system permit program pursuant to the federal Water Pollution Control Act, Title 33, United States Code, ch. 126, as amended, and 40 C.F.R. pt. 124.

*b.* Applicability of rules of the department other than those relating to air quality under chapter 455B, division II, and chapter 459, subchapter II.

(1) A rule of the department in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

(2) A rule of the department shall apply to a feedlot with an established date of operation sub-

sequent to the effective date of the rule.

(3) A rule of the department adopted after November 1, 1976, does not apply to a feedlot holding a wastewater permit from the department and having an established date of operation prior to the effective date of the rule until either the expiration of the term of the permit in effect on the effective date of the rule, or ten years from the established date of operation of the feedlot, whichever time period is greater.

(4) A rule of the department adopted after November 1, 1976, does not apply to a feedlot not previously required to hold a wastewater permit from the department and having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or five years from the effective date of the rule, whichever time period is greater.

(5) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule.

c. Applicability of rules of the department relating to air quality under chapter 455B, division II, and chapter 459, subchapter II.

(1) A rule of the department under chapter 455B, division II, in effect on November 1, 1976, shall apply to a feedlot with an established date of operation prior to November 1, 1976.

(2) A rule of the department under chapter

455B, division II, or chapter 459, subchapter II, shall apply to a feedlot with an established date of operation subsequent to the effective date of the rule.

(3) A rule of the department under chapter 455B, division II, or chapter 459, subchapter II, pertaining to feedlot management standards adopted after November 1, 1976, shall not apply to any feedlot having an established date of operation prior to the effective date of the rule until one year after the effective date of the rule.

(4) A rule of the department under chapter 455B, division II, or chapter 459, subchapter II, pertaining to feedlot design standards adopted after November 1, 1976, shall not apply to any feedlot having an established date of operation prior to the effective date of the rule for either a period of ten years from the established date of operation of the feedlot or two years from the effective date of the rule, whichever time period is greater. However, any design standard rule pertaining to the siting of any feedlot shall apply only to a feedlot with an established date of operation subsequent to the effective date of the rule.

(5) To achieve compliance with applicable rules the department shall issue an appropriate compliance schedule.

2003 Acts, ch 108, §42  
Subsection 2, paragraph a amended

## CHAPTER 173

### STATE FAIR

#### **173.3 Certification of state aid associations.**

On or before November 15 of each year, the secretary of agriculture shall certify to the secretary of the state fair board the names of the various associations and societies which have qualified for state aid under the provisions of chapters 176 through 178, 181, 182, 186, and 352, and which are entitled to representation in the convention as provided in section 173.2.

For 2002 and 2003 amendments effective July 1, 2005, see 2002 Acts, ch 1017, §3, 8, and 2003 Acts, ch 44, §43, 116  
Section not amended; footnote revised

#### **173.24 Exemption of state fair by the state's purchasing procedures.**

The state fair is exempt from the state system of uniform purchasing procedures. However, the board may contract with the department of administrative services to purchase any items through the state system. The board shall adopt its own system of uniform standards and specifications for purchasing.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 175

### AGRICULTURAL DEVELOPMENT

#### **175.3 Establishment of authority.**

1. *a.* The agricultural development authority is established within the office of treasurer of state. The authority is constituted as a public instrumentality and agency of the state exercising

public and essential governmental functions.

*b.* The authority is established to undertake programs which assist beginning farmers in purchasing agricultural land and agricultural improvements and depreciable agricultural property

for the purpose of farming, and programs which provide financing to farmers for permanent soil and water conservation practices on agricultural land within the state or for the acquisition of conservation farm equipment, and programs to assist farmers within the state in financing operating expenses and cash flow requirements of farming. The authority shall also develop programs to assist qualified agricultural producers within the state with financing other capital requirements or operating expenses.

c. The powers of the authority are vested in and exercised by a board of ten members with nine members appointed by the governor subject to confirmation by the senate. The treasurer of state or the treasurer's designee shall serve as an ex officio nonvoting member. No more than five appointed members shall belong to the same political party. As far as possible the governor shall include within the membership persons who represent financial institutions experienced in agricultural lending, the real estate sales industry, farmers, beginning farmers, average taxpayers, local government, soil and water conservation district officials, agricultural educators, and other persons specially interested in family farm development.

2. The appointed members of the authority shall be appointed by the governor for terms of six years except that, of the first appointments, three members shall be appointed for terms of two years and three members shall be appointed for a term of four years. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. An appointed member of the authority may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing. An appointed member of the authority may also serve as a member of the Iowa finance authority.

3. Five voting members of the authority constitute a quorum and the affirmative vote of a majority of the voting members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. The appointed members of the authority are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. The appointed members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or whenever two members so request.

7. The appointed members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director shall serve as secretary to the authority. The chairperson and vice chairperson shall serve on the selection and tenure committee as provided in section 175.7.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds or other obligations or to implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority including any net earnings shall vest in the state.

2003 Acts, ch 137, §2  
Subsection 1 amended

#### **175.7 Executive director — staff.**

1. The executive director of the authority shall be appointed by a selection and tenure committee, which shall consist of the chairperson of the board, the vice chairperson of the board, and one member elected by the board, or their designees. The executive director shall serve at the pleasure of the board. The votes of three members of the committee are necessary for any substantive action taken by the committee. If a member has a conflict of interest, the board shall appoint a substitute member of the committee from the appointed members of the board for the duration of the conflict of interest. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation.

2. The executive director shall not, directly or indirectly, exert influence to induce any other officers or employees of the state to adopt a political view, or to favor a political candidate for office.

3. The executive director shall advise the authority on matters relating to agricultural land and property and agricultural finance, and carry out all directives from the authority, and shall hire and supervise the authority's staff pursuant to its directions and under the merit system provisions of chapter 8A, subchapter IV, except that principal administrative assistants with responsibilities in beginning farm loan programs, accounting, mortgage loan processing, and investment portfolio management are exempt from the merit system.

4. The executive director, as secretary of the authority, shall be custodian of all books, documents and papers filed with the authority and of its minute book and seal. The executive director may cause to be made copies of all minutes and other records and documents of the authority and give certificates under the seal of the authority to the effect that the copies are true copies and all

persons dealing with the authority may rely upon the certificates.

2003 Acts, ch 137, §3; 2003 Acts, ch 145, §203  
Subsections 1 and 3 amended

#### **175.22 Moneys of the authority.**

1. Moneys of the authority, except as otherwise provided in this chapter, shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall be secured in the manner determined by the authority. The auditor of state or the auditor's legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and the authority shall not be required to pay a fee for the examination.

2. The authority may contract with holders of its bonds or notes as to the custody, collection, security, investment and payment of moneys of the authority, of moneys held in trust or otherwise for the payment of bonds or notes and to carry out the contract. Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of the moneys may be secured in the same manner as moneys of the authority and banks and trust companies may give security for the deposits.

3. Subject to the provisions of any contract with bondholders or noteholders and to the approval of the director of the department of administrative services, the authority shall prescribe a system of accounts.

4. The authority shall submit to the governor, the auditor of state, the department of management, and the department of administrative services, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority other than copies of the reports of examinations made by the auditor of state.

2003 Acts, ch 145, §286  
Terminology change applied

#### **175.35 Agricultural loan assistance program.**

1. The authority shall establish and develop an agricultural loan assistance program to facilitate the availability of affordable operating capital to farmers by providing grants to lending institutions as provided by this section.

2. The authority shall make available to farmers and lending institutions eligibility application forms for the agricultural loan assistance program. Applications to the authority for assistance under this section shall be executed jointly by the lending institution and the farmer upon approved forms.

3. The authority shall provide in the agricultural loan assistance program that a grant will be provided in conjunction with a farmer's operating loan only if the following criteria are satisfied:

a. The farmer is a resident of the state.

b. The farmer is an individual, a partnership, or a family farm corporation, as defined in section 9H.1, subsection 8.

c. The farming operation in which the farmer will use the operating loan is located within the state.

d. The operating loan will be used by the farmer for reasonable and necessary expenses and cash flow requirements of farming as defined by rules of the authority.

e. The farmer has made full disclosure of the farmer's finances to the lending institution and to the authority, to the extent required by the authority.

f. Additional requirements as are prescribed by the authority by rule, which may include but are not limited to:

(1) Participation in federal crop insurance programs, where available.

(2) A consideration of the borrower's agreement to maintain farm management techniques and standards established by the authority.

(3) Participation in federal farm programs, where applicable.

(4) The maximized use of available loan guarantees where applicable.

(5) A consideration of factors demonstrating the farmer's need for operating loan assistance and the probability of success with the assistance in the farming operation in which the operating loan will be used, including net worth, debt-to-asset ratio, debt service coverage ratio, projected income, and projected cash flow.

g. The farmer has a net worth of not more than two hundred thousand dollars.

h. The farmer develops a farm unit conservation plan, as defined in section 161A.42, with the commissioners of the soil and water conservation district where the land is located within one year from the date of entering into the program, unless the authority prescribes a shorter period by rule.

4. The authority may participate in and cooperate with programs of an agency or instrumentality of the federal government in the administration of the agricultural loan assistance program. The authority may provide in the agricultural loan assistance program that a grant may be provided in conjunction with a farmer's operating loan only if the farmer and lending institution participate in one or more operating loan assistance programs of an agency or instrumentality of the federal government, which are determined to be appropriate by the authority.

5. Upon approval of an eligibility application and a determination by the authority that assistance pursuant to the agricultural loan assistance

program is needed to qualify a farmer and lending institution for participation in an appropriate operating loan assistance program of an agency or instrumentality of the federal government, the authority may:

*a.* Enter into an agreement with the lending institution and the farmer to supplement the assistance to be received pursuant to the federal program in which agreement the lending institution shall agree to reduce for up to three years the interest rate on the farmer's operating loan to the rate determined by the authority to be necessary to qualify the farmer and lending institution for participation in the federal program and the farmer shall agree to comply with the rules and requirements established by the authority.

*b.* Agree to give the lending institution, for the benefit of the farmer, a grant in an amount to be determined by the authority to partially reimburse the lending institution for the reduction of the interest rate on the farmer's operating loan.

6. In determining the rate reduction to be required under subsection 5, paragraph "a", and the amount of the grant to be given under subsection 5, paragraph "b", the authority shall:

*a.* Consider the amount of any interest reimbursement to be received by the farmer or lending institution pursuant to the federal operating loan assistance program.

*b.* Not require a rate reduction pursuant to subsection 5, paragraph "a" which is in excess of three percentage points in addition to the interest rate reduction required pursuant to the federal program.

*c.* Not give a grant pursuant to subsection 5, paragraph "b" in an amount greater than three percent per annum of up to one hundred thousand dollars of the principal balance of the farmer's operating loan outstanding from time to time, for the term of the loan or for three years, whichever is less.

7. Notwithstanding the provisions of subsections 4, 5, and 6, upon approval of an eligibility application and a determination by the authority that operating loan assistance will not be available to an individual farmer and lending institution on a timely basis pursuant to an appropriate program of the federal government, the authority may:

*a.* Enter into an agreement with the lending institution and the farmer in which the lending institution shall agree to reduce for up to three years the interest rate on the farmer's operating loan to a rate determined by the authority below the lending institution's farm operating loan rate as certified to the authority and the farmer shall agree to comply with the rules and requirements established by the authority.

*b.* Agree to give to the lending institution, for the benefit of the farmer, a grant in the amount, as determined by the authority, up to three percent

per annum of up to one hundred thousand dollars of the principal balance of the farmer's operating loan outstanding from time to time, for the term of the loan or for three years, whichever is less, to partially reimburse the lending institution for the reduction of the interest rate on the borrower's operating loan. However, the grant shall not exceed fifty percent of the amount of interest foregone by the lending institution pursuant to the rate reduction under paragraph "a".

8. The authority may require a lending institution to submit evidence satisfactory to the authority that the lending institution has complied with the reduction in the interest rate as required by an agreement pursuant to subsection 5 or 7. The authority may inspect any books and records of a lending institution which are pertinent to the administration of the agricultural loan assistance program.

9. In order to assure compliance with this section and rules adopted pursuant to this section, the authority may establish by rule appropriate enforcement provisions, including but not limited to, the payment of civil penalties by a lending institution or farmer.

Section not amended; internal reference change applied

#### **175.36 Assistance and management programs for beef cattle producers.**

1. The authority shall create and develop programs to assist agricultural producers who have established or intend to establish in this state, beef cattle production operations, including but not limited to the following assistance:

*a. Insurance or loan guarantee program.* An insurance or loan guarantee program to provide for the insuring or guaranteeing of all or part of a loan made to an agricultural producer for the acquisition of beef cattle to establish or expand a feeder cattle operation.

*b. An interest buy-down program.* The authority may contract with a participating lending institution and a qualified agricultural producer to reduce the interest rate charged on a loan for the acquisition of beef cattle breeding stock. The authority shall determine the amount that the rate is reduced, by considering the lending institution's customary loan rate for the acquisition of beef cattle breeding stock as certified to the authority by the lending institution.

As part of the contract, in order to partially reimburse the lending institution for the reduction of the interest rate on the loan, the authority may agree to grant the lending institution any amount foregone by reducing the interest rate on that portion of the loan which is one hundred thousand dollars or less. However, the amount reimbursed shall not be more than the lesser of the following:

(1) Three percent per annum of the principal balance of the loan outstanding at any time for the term of the loan or within one year from the loan

initiation date as defined by rules adopted by the authority, whichever is less.

(2) Fifty percent of the amount of interest foregone by the lending institution on the loan.

*c. A cost-sharing program.* The authority may contract with an agricultural producer to reimburse the producer for the cost of converting land planted to row crops to pasture suitable for beef cattle production. However, the amount reimbursed shall not be more than twenty-five dollars per acre converted, or fifty percent of the conversion costs, whichever is less. The contract shall apply to not more than one hundred fifty acres of row crop land converted to pasture. The converted land shall be utilized in beef cattle production for a minimum of five years. The amount to be reimbursed shall be reduced by the amount that the agricultural producer receives under any other state or federal program that contributes toward the cost of converting the same land from row crops to pasture.

*d. A management assistance and training program.* The authority in cooperation with any agency or instrumentality of the federal government or with any state agency, including any state university or those associations organized for the purpose of assisting agricultural producers involved in beef cattle production, or with any farm management company if such company specializes in beef cattle production or in assisting beef cattle producers, as prescribed by rules adopted by the authority, shall establish programs to train and assist agricultural producers to effectively manage beef cattle production operations.

2. An agricultural producer shall be eligible to participate in a program established under this

section only if all the following criteria are satisfied:

*a.* The agricultural producer is a resident of the state.

*b.* The agricultural producer has land or other facilities available to establish a beef cattle production operation as prescribed by rules of the authority.

*c.* The agricultural producer is an individual, partnership, or a family farm corporation, as defined in section 9H.1, subsection 8.

*d.* The land or other facilities available to establish a beef cattle production operation are located within the state.

*e.* The agricultural producer has a net worth of four hundred thousand dollars or less.

*f.* The agricultural producer develops a farm unit conservation plan, as defined in section 161A.42, with the commissioners of the soil and water conservation district where the land is located within one year from the date of entering into the program, unless the authority prescribes a shorter period of time by rule.

3. The authority shall adopt rules to enforce the provisions of this section or the terms of a contract to which the authority is a party. The authority may also enforce the provisions of this section or terms of the contract by bringing an action in any court of competent jurisdiction to recover damages. As a condition of entering into the program, the authority may require that the agricultural producer consent to the jurisdiction of the courts of this state to hear any matter arising from the provisions of this section.

Section not amended; internal reference change applied

## CHAPTER 179

### DAIRY INDUSTRY COMMISSION

#### **179.5 Excise tax — administration of moneys — appropriation.**

1. There is levied and imposed an excise tax on all producers within the state of three-fourths of one percent of the gross value of milk produced in the state.

2. All taxes levied and imposed under this chapter shall be deducted from the price received by the producer and shall be collected by the first purchaser, except as follows:

*a.* If the producer produces milk from cows and sells the milk directly to the consumer, the taxes shall be remitted by that producer.

*b.* If the producer sells milk to a first purchaser outside the state, the taxes are due and payable by that producer before the shipment is made, ex-

cept that the commission may make agreements with extra state purchasers for the keeping of records and the collection of the taxes as necessary to secure the payment of the taxes within the time fixed by this chapter.

3. All taxes levied and imposed under this chapter and other contributions made to the dairy industry commission shall be paid to and collected by the commission within thirty days after the end of the month during which the milk was marketed. The commission shall remit the taxes and other contributions to the treasurer of the state each quarter, and at the same time render to the director of the department of administrative services an itemized and verified report showing the source from which the taxes and voluntary contributions

were obtained. All taxes and voluntary contributions received, collected, and remitted shall be placed in a special fund by the treasurer of state and the director of the department of administrative services, to be known as the “*dairy industry fund*” to be used by the Iowa dairy industry commission for the purposes set out in this chapter and to administer and enforce the laws relative to this chapter. The department of administrative services shall transfer moneys from the fund to the commission for deposit into an account established by the commission in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the commission. However, the department is only re-

quired to transfer moneys once during each day and only during hours when the offices of the state are open. Moneys deposited in the fund and transferred to the commission as provided in this section are appropriated and shall be used for the purpose of carrying out the provisions of this chapter.

4. A person from whom the excise tax provided in this chapter is collected may, by application filed with the commission within thirty days after the collection of the tax, have the tax refunded to that person by the commission.

2003 Acts, ch 145, §286  
Suspension during national order; see §179.2  
Terminology change applied

## CHAPTER 181

### BEEF CATTLE PRODUCERS ASSOCIATION

#### **181.13 Administration of moneys — appropriation.**

All excise taxes imposed and levied under this chapter shall be paid to and collected by the executive committee and deposited with the treasurer of state in a separate cattle and veal calf fund which shall be created by the treasurer of state. The department of administrative services shall transfer moneys from the fund to the executive committee for deposit into an account established by the executive committee in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the executive committee. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. From the moneys collected, deposited, and transferred to the executive committee, in accordance with the provisions of this chapter, the executive committee shall first pay the costs of referendums held pursuant to this chapter, the costs of collection of such excise tax, the expenses of its agents and expenses of officers provided for in sec-

tion 181.5. Except as otherwise provided in section 181.19, at least ten percent of the remaining funds shall be remitted to the Iowa beef cattle producers association in proportions determined by the executive committee, for use in a manner not inconsistent with section 181.7. The remaining moneys, with approval of a majority of the executive committee, shall be expended as the executive committee finds necessary to carry out the provisions and purposes of this chapter. However, in no event shall the total expenses exceed the total amount transferred from the fund for use by the executive committee.

All moneys deposited in the cattle and veal calf fund and transferred to the executive committee pursuant to this section are appropriated and shall be used for the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 183A

### IOWA PORK PRODUCERS COUNCIL

#### **183A.7 Administration of moneys — appropriation.**

Assessments imposed under this chapter paid to and collected by the Iowa pork producers council shall be deposited in the pork promotion fund which is established in the office of the treasurer of state. The department of administrative services shall transfer moneys from the fund to the council for deposit into an account established by

the council in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open.

All moneys deposited in the pork promotion fund and transferred to the council as provided in this section are appropriated and shall be used for

the administration of this chapter and for the payment of claims based upon obligations incurred in the performance of activities and functions set forth in this chapter.

From the moneys collected, deposited, and transferred to the council as provided in this chapter, the council shall first pay the costs of referendums held pursuant to this chapter. Of the moneys remaining, at least twenty-five percent shall be remitted to the national pork producers council and at least fifteen percent shall be remitted to the Iowa pork producers association, in the proportion

the committee determines, for use by recipients in a manner not inconsistent with market development as defined in section 183A.1. Moneys remaining shall be spent as found necessary by the council to further carry out the provisions and purposes of this chapter.

However, in no event shall the total expenses exceed the total amount of moneys transferred from the fund for use by the council.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 184

### IOWA EGG COUNCIL

#### 184.3 Assessment.

The council shall establish an assessment amount for each thirty dozen eggs produced in this state. The assessment shall be imposed on a producer at the time of delivery to a purchaser who shall deduct the assessment from the price paid to a producer at the time of sale. The assessment shall not be refundable. The assessment is due to be paid to the council within thirty days following each calendar quarter, as provided by the council.

If the producer sells eggs to a purchaser outside the state of Iowa, the producer shall deduct the tax from the amount received from the sale and shall forward the amount deducted to the council within thirty days following each calendar quarter. If the producer and processor are the same person, then that person shall pay the assessment to the council within thirty days following each calendar quarter.

The council may charge interest on any amount of the assessment that is delinquent. The rate of interest shall not be more than the current rate published in the Iowa administrative bulletin by the department of revenue pursuant to section 421.7. The interest amount shall be computed from the date the assessment is delinquent, unless the council designates a later date. The interest amount shall accrue for each month in which there is delinquency calculated as provided in section 421.7, and counting each fraction of a month as an entire month. The interest amount due shall become a part of the assessment due.

2003 Acts, ch 145, §286  
Terminology change applied

#### 184.6 Composition of council.

The Iowa egg council established under this chapter shall be composed of seven members. Each member must be a natural person who is a

resident of this state and a producer or an officer, equity owner, or employee of a producer. A producer shall not be represented by more than two members of the council. Two persons shall represent large producers, two persons shall represent medium producers, and three persons shall represent small producers. The council shall adopt rules pursuant to chapter 17A establishing classifications for large, medium, and small producers. The following persons or their designees shall serve as ex officio nonvoting members:

1. The secretary.
2. The director of the Iowa department of economic development.
3. The chairperson of the poultry science section of the department of animal science at Iowa state university of science and technology.

2003 Acts, ch 15, §1  
Unnumbered paragraph 1 amended

#### 184.13 Administration of moneys.

Subject to the provisions of section 184.3, the assessment imposed by this chapter shall be remitted by the purchaser to the council not later than thirty days following each calendar quarter during which the assessment was collected. Amounts collected from the assessment shall be deposited in the office of the treasurer of state in a separate fund to be known as the Iowa egg fund. The department of administrative services shall transfer moneys from the fund to the council for deposit into an account established by the council in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 184A

### EXCISE TAX ON TURKEYS

#### 184A.4 Administration of moneys.

1. The assessments collected by the council as provided in section 184A.2 shall be deposited in the office of the treasurer of state in a special fund known as the Iowa turkey fund. The department of administrative services shall transfer moneys from the fund to the council for deposit into the turkey council account established by the council pursuant to this section. The department shall transfer the moneys as provided in a resolution adopted by the council. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open.

2. The council shall establish a turkey council account in a qualified financial institution. The council shall provide for the deposit of all of the following into the account:

*a.* The assessment collected, deposited in the Iowa turkey fund, and transferred to the council as provided in this section.

*b.* Moneys, other than assessments, including moneys in the form of gifts, rents, royalties, or license fees received by the council pursuant to section 184A.1C.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 185

### SOYBEAN PROMOTION BOARD

#### 185.26 Administration of moneys.

Assessments collected by the board from a sale of soybeans shall be deposited in a special fund known as the soybean promotion fund, in the office of the treasurer of state. The fund may also contain any gifts, or federal or state grant received by the board. Moneys collected, deposited into the fund, and transferred to the board, as provided in this chapter, shall be subject to audit by the auditor of state. The department of administrative services shall transfer moneys from the fund to the board for deposit into an account established by the board in a qualified financial institution. The

department shall transfer the moneys as provided in a resolution adopted by the board. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. From moneys collected, deposited and transferred to the board as provided in this section, the board shall first pay the costs of referendums, elections and other expenses incurred in the administration of this chapter, before moneys may be expended for the purpose of market development.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 185C

### CORN PROMOTION BOARD

#### 185C.26 Deposit of moneys.

State assessments collected by the board from a sale of corn shall be deposited in the office of the treasurer of state in a special fund known as the corn promotion fund. The fund may include any gifts, rents, royalties, license fees, or a federal or state grant received by the board. Moneys collected, deposited in the fund, and transferred to the board as provided in this chapter, shall be subject to audit by the auditor of state. The department of administrative services shall transfer moneys from the fund to the board for deposit into an account established by the board in a qualified

financial institution. The department shall transfer the moneys as provided in a resolution adopted by the board. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. From moneys collected, the board shall first pay all the direct and indirect costs incurred by the secretary and the costs of referendums, elections, and other expenses incurred in the administration of this chapter, before moneys may be expended for the purpose of market development.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 186

## STATE HORTICULTURAL SOCIETY

**186.5 Appropriations.**

All money appropriated by the state for the use of the state horticultural society shall be paid on the warrant of the director of the department of administrative services, upon the order of the president and secretary of said society, in such

sums and at such times as may be for the interests of said society. All expenditures from state funds for the use of the state horticultural society are to be approved by the secretary of agriculture.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 189

## GENERAL PROVISIONS

**189.1 Definitions.**

For the purpose of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, unless the context otherwise requires:

1. “*Article*” includes food, commercial feed, agricultural seed, commercial fertilizer, drug, insecticide, fungicide, paint, linseed oil, turpentine, and illuminating oil, in the sense in which they are defined in the various provisions of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208.

2. “*Department*” means the department of agriculture and land stewardship, and if the department is required or authorized to do an act, the act may be performed by a regular assistant or a duly authorized agent of the department.

3. “*Official laboratory*” means a biological, chemical, or physical laboratory which performs testing or analysis pursuant to scientific procedures, to the extent the laboratory is recognized by the department as a reliable indicator of scientific results.

4. “*Package*” or “*container*”, unless otherwise defined, includes wrapper, box, carton, case, basket, hamper, can, bottle, jar, tube, cask, vessel, tub, firkin, keg, jug, barrel, tank, tank car, and other receptacles of a like nature; and the expression “*offered or exposed for sale or sold in package or wrapped form*” means the offering or exposing for sale, or selling of an article which is contained in a package or container as defined in this section.

5. “*Pasteurization*” or “*pasteurized*” means the procedure of processing milk or a milk product, in order to ensure its safety from contaminants, if the procedure of pasteurization is consistent with standards adopted by the department pursuant to section 192.102.

6. “*Person*” includes a corporation, company, firm, society, or association; and the act, omission, or conduct of any officer, agent, or other person acting in a representative capacity shall be imputed to the organization or person represented, and the person acting in that capacity shall also be liable for violations of this subtitle, excluding

chapters 203, 203C, 203D, 207, and 208.

7. “*Rules*” includes regulations and orders by the department.

8. “*Secretary*” means the secretary of agriculture.

9. “*United States Pharmacopoeia*” or “*National Formulary*” means the latest revision of these publications official at the time of a transaction which is in question.

2003 Acts, ch 69, §24, 25  
Unnumbered paragraph 1 and subsections 1 and 6 amended

**189.2 Duties.**

The department shall:

1. Execute and enforce this subtitle,\* except chapter 205.

2. Make and publish all necessary rules, not inconsistent with law, for enforcing the provisions of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208.

3. Provide educational measures and exhibits, and conduct educational campaigns as are deemed advisable in fostering and promoting the production and sale of the articles dealt with in this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, in accordance with the rules adopted pursuant to this subtitle.

4. Issue from time to time, bulletins showing the results of inspections, analyses, and prosecutions under this subtitle, excluding chapters 203, 203C, 203D, 207, and 208. These bulletins shall be printed in such numbers as may be approved by the director of the department of administrative services and shall be distributed to the newspapers of the state and to all interested persons.

2003 Acts, ch 69, §26; 2003 Acts, ch 145, §204

\*This provision does not include chapters 203, 203C, 203D, 207, and 208, which were moved into this subtitle by the Code editor. Chapters 203, 203C, 203D, 207, and 208 contain the applicable provisions pertaining to those chapters.

See Code editor’s note to §2.9  
Subsections 2 – 4 amended

**189.3 Procuring samples.**

The department shall, for the purpose of examination or analysis, procure from time to time,

or whenever the department has occasion to believe any of the provisions of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, are being violated, samples of the articles dealt with in these provisions which have been shipped into this state, offered or exposed for sale, or sold in the state.

2003 Acts, ch 69, §27  
Section amended

#### **189.4 Access to factories and buildings.**

The department shall have full access to all places, factories, buildings, stands, or premises, and to all wagons, auto trucks, vehicles, or cars used in the preparation, production, distribution, transportation, offering or exposing for sale, or sale of any article dealt with in this subtitle, excluding chapters 203, 203C, 203D, 207, and 208.

2003 Acts, ch 69, §28  
Section amended

#### **189.5 Dealer to furnish samples.**

Upon request and tender of the selling price by the department any person who prepares, manufactures, offers or exposes for sale, or delivers to a purchaser any article dealt with in this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, shall furnish, within business hours, a sample of the same, sufficient in quantity for a proper analysis or examination as shall be provided by the rules of the department.

2003 Acts, ch 69, §29  
Section amended

#### **189.6 Taking of samples.**

The department may, without the consent of the owner, examine or open any package containing, or believed to contain, any article or product which it suspects may be prepared, manufactured, offered, or exposed for sale, sold, or held in possession in violation of the provisions of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, in order to secure a sample for analysis or examination, and the sample and damage to container shall be paid for at the current market price out of the contingent fund of the department.

2003 Acts, ch 69, §30  
Section amended

#### **189.8 Witnesses.**

In the enforcement of the provisions of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, the department shall have power to issue subpoenas for witnesses, enforce their attendance, and examine them under oath. The witnesses shall be allowed the same fees as witnesses in district court. The fees shall be paid out of the contingent fund of the department.

2003 Acts, ch 69, §31  
Contempts, chapter 665  
Witness fees, §622.69 et seq.  
Section amended

#### **189.9 Labeling.**

All articles in package or wrapped form which are required by this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, to be labeled, unless otherwise provided, shall be conspicuously marked in the English language in legible letters of not less than eight point heavy gothic caps on the principal label with the following items:

1. The true name, brand, or trademark of the article.
2. The quantity of the contents in terms of weight, measure, or numerical count. Under this requirement reasonable variations shall be permitted, and small packages shall be excepted in accordance with the rules of the department.

3. The name and place of business of the manufacturer, packer, importer, dispenser, distributor, or dealer.

The above items shall be printed in such a way that there shall be a distinct contrast between the color of the letters and the background upon which printed.

2003 Acts, ch 69, §32  
Unnumbered paragraph 1 amended

#### **189.13 False labels — defacement.**

A person shall not use any label required by this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, which bears any representations of any kind which are deceptive as to the true character of the article or the place of its production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this subtitle, excluding chapters 203, 203C, 203D, 207, and 208.

2003 Acts, ch 69, §33  
Section amended

#### **189.14 Mislabeled articles.**

1. A person shall not knowingly introduce into this state, solicit orders for, deliver, transport, or have in possession with intent to sell, any article which is labeled in any other manner than that prescribed by this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, for the label of the article when offered or exposed for sale, or sold in package or wrapped form in this state.

2. No person shall package any liquid or semi-solid product or label any such product as honey, imitation honey or honey blend, or use the word "honey" in any prominent location on the label of such product or sell or offer for sale any such product which is labeled as honey, imitation honey or honey blend or which contains a label with the word "honey" prominently displayed thereon, unless the entire product is honey as defined in section 190.1, subsection 4.

3. A person shall not package a liquid or semi-solid product, or label the product, as sorghum, imitation sorghum, or sorghum blend, or use the word "sorghum" in a prominent location on the label of the product or sell or offer for sale a product labeled as sorghum, imitation sorghum, or sor-

ghum blend or which contains a label with the word “sorghum” prominently displayed, unless the product label states that the product is sorghum syrup as defined in section 190.1, imitation sorghum, or a sorghum blend. As used in this subsection, “*imitation sorghum*” means a product that has the flavor of sorghum but contains no sorghum syrup as defined in section 190.1. “*Sorghum blend*” means a product that is not entirely sorghum syrup as defined in section 190.1.

2003 Acts, ch 69, §34  
Subsection 1 amended

#### 189.15 Adulterated articles.

A person shall not knowingly manufacture, introduce into the state, solicit orders for, sell, deliver, transport, have in possession with the intent to sell, or offer or expose for sale, any article which is adulterated according to the provisions of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208.

2003 Acts, ch 69, §35  
Section amended

#### 189.16 Possession and control of adulterated and improperly labeled articles.

1. Except as provided in subsection 2, a person in possession or having control of an article which is adulterated or which is improperly labeled according to the provisions of this subtitle shall be presumed to know that the article is adulterated or improperly labeled. A person’s possession of an adulterated or improperly labeled article shall be prima facie evidence that the person intends to violate the provisions of this subtitle.

2. This section does not apply to the possession or control of any of the following:

- a. Grain by a person regulated under chapter 203, 203C, or 203D.
- b. Mining materials including coal by a person regulated under chapter 207 or 208.
- c. A controlled substance as provided in chapter 124.

2003 Acts, ch 69, §36  
Subsection 2, paragraph a amended

#### 189.19 Licenses.

The following provisions apply to all licenses issued or authorized under this subtitle, excluding chapters 203, 203C, 203D, 207, and 208:

1. *Applications.* Applications for licenses shall be made upon blanks furnished by the department and shall conform to the prescribed rules of the department.

2. *Refusal and revocation.* For good and sufficient grounds the department may refuse to grant a license to any applicant; and it may revoke a license for a violation of any provision of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, or for the refusal or failure of any licensee to obey the lawful directions of the department.

3. *Expiration.* Unless otherwise provided all licenses shall expire one year from the date of issue.

2003 Acts, ch 69, §37, 38  
Unnumbered paragraph 1 and subsection 2 amended

#### 189.20 Injunction.

Any person engaging in any business for which a license is required by this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, without obtaining such license, may be restrained by injunction, and shall pay all costs made necessary by such procedure.

2003 Acts, ch 69, §39  
Section amended

#### 189.21 Penalty.

Unless otherwise provided, any person violating any provision of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, or any rule adopted by the department pursuant to such a provision, is guilty of a simple misdemeanor.

2003 Acts, ch 69, §40  
Section amended

#### 189.23 Common carrier.

The penalties provided in this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, shall not be imposed upon any common carrier for introducing into the state, or having in its possession, any article which is adulterated or improperly labeled according to the provisions of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, when the same was received by the carrier for transportation in the ordinary course of its business and without actual knowledge of its true character.

2003 Acts, ch 69, §41  
Section amended

#### 189.24 Report of violations.

When it appears that any of the provisions of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, have been violated, the department shall at once certify the facts to the proper county attorney, with a copy of the results of any analysis, examination, or inspection the department may have made, duly authenticated by the proper person under oath, and with any additional evidence which may be in possession of the department.

2003 Acts, ch 69, §42  
Section amended

#### 189.28 Goods for sale in other states.

Any person may keep articles specifically set apart in the person’s stock for sale in other states which do not comply with the provisions of this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, as to standards, purity, or labeling.

2003 Acts, ch 69, §43  
Section amended

**189.29 Reports by dealers.**

Every person who deals in or manufactures any of the articles dealt with in this subtitle, excluding chapters 203, 203C, 203D, 207, and 208, shall make upon blanks furnished by the department

such reports and furnish such statistics as may be required by the department and certify to the correctness of the same.

2003 Acts, ch 69, §44  
Section amended

## CHAPTER 189A

### MEAT AND POULTRY INSPECTION

**189A.2 Definitions.**

As used in this chapter except as otherwise specified:

1. “*Adulterated*” shall apply to any livestock product or poultry product under any one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health.

b. (1) If it bears or contains, by reason of administration of any substance to the livestock or poultry or otherwise, any added poisonous or deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive, which may, in the judgment of the secretary, make such article unfit for human food.

(2) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the federal Food, Drug, and Cosmetic Act.

(3) If it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal Food, Drug, and Cosmetic Act.

(4) If it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal Food, Drug, and Cosmetic Act; however, an article which is not otherwise deemed adulterated under subparagraph (2), (3), or (4) of this paragraph shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the secretary in official establishments.

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

e. If it is, in whole or in part, the product of an animal, including poultry, which has died other-

wise than by slaughter.

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the federal Food, Drug, and Cosmetic Act.

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

i. If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

2. “*Animal food manufacturer*” means any person engaged in the business of preparing animal food, including poultry, derived wholly or in part from livestock or poultry carcasses or parts or products of such carcasses.

3. “*Broker*” means any person engaged in the business of buying or selling livestock products or poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for the person’s own account or as an employee of another person.

4. “*Capable of use as human food*” shall apply to any livestock or poultry carcass, or part or product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the secretary to deter its use as human food, or it is naturally inedible by humans.

5. “*Container*” or “*package*” means any box, can, tin, cloth, plastic or other receptacle, wrapper, or cover.

6. “*Establishment*” means all premises where animals or poultry are slaughtered or otherwise prepared, either for custom, resale, or retail, for food purposes, meat or poultry canneries, sausage factories, smoking or curing operations, restaurants, grocery stores, brokerages, cold storage

plants, and similar places.

6A. “*Farm deer*” means the same as defined in section 170.1.

7. “*Federal Food, Drug, and Cosmetic Act*” means the Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

8. “*Federal Meat Inspection Act*” means the Act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584); “*Federal Poultry Products Inspection Act*” means the Act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791); and “*federal Acts*” means these two federal laws.

9. “*Immediate container*” means any consumer package; or any other container in which livestock products or poultry products, not consumer packaged, are packed.

10. “*Inspector*” means an employee or official of the department authorized by the secretary or any employee or official of the government of any county or other governmental subdivision of this state, authorized by the secretary to perform any inspection functions under this chapter under an agreement between the secretary and such governmental subdivision.

11. “*Intrastate commerce*” means commerce within this state.

12. “*Label*” means a display of written, printed, or graphic matter upon any article or the immediate container, not including package liners, of any article.

13. “*Labeling*” means all labels and other written, printed, or graphic matter either upon any article or any of its containers or wrappers, or accompanying such article.

14. “*Livestock*” means a live or dead animal which is limited to cattle, sheep, swine, goats, farm deer, or which is classified as an equine including a horse or mule.

15. “*Livestock product*” means any carcass, part thereof, meat, or meat food product of any livestock.

16. “*Meat food product*” means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the secretary under such conditions as the secretary may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines or farm deer shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

17. “*Misbranded*” shall apply to any livestock product or poultry product under any one or more of the following circumstances:

a. If its labeling is false or misleading in any particular.

b. If it is offered for sale under the name of another food.

c. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word “imitation”, and immediately thereafter the name of the food imitated.

d. If its container is so made, formed, or filled as to be misleading.

e. Unless it bears a label showing both:

(1) The name and place of business of the manufacturer, packer, or distributor.

(2) An accurate statement of the quantity of the product in terms of weight, measure, or numerical count; however, under this paragraph, exemptions as to livestock products not in containers may be established by regulations prescribed by the secretary, and under this subparagraph reasonable variations may be permitted, and exemptions as to small packages may be established for livestock products or poultry products by regulations prescribed by the secretary.

f. If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the regulations of the secretary under section 189A.7, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the secretary under section 189A.7, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

i. If it is not subject to the provisions of paragraph “g” of this subsection, unless its label bears both:

(1) The common or usual name of the food, if any.

(2) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the secretary, be

designated as spices, flavorings, and colorings without naming each; however, to the extent that compliance with the requirements of this subparagraph is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the secretary.

*j.* If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the secretary, after consultation with the secretary of agriculture of the United States, determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses.

*k.* If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; however, to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the secretary.

*l.* If it fails to bear, directly thereon and on its containers, as the secretary may by regulations prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and, unrestricted by any of the foregoing, such other information as the secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

18. “*Official certificate*” means any certificate prescribed by regulations of the secretary for issuance by an inspector or other person performing official functions under this chapter.

19. “*Official device*” means any device prescribed or authorized by the secretary for use in applying any official mark.

20. “*Official establishment*” means any establishment as determined by the secretary at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this chapter.

21. “*Official inspection legend*” means any symbol prescribed by regulations of the secretary showing that an article was inspected and passed in accordance with this chapter.

22. “*Official mark*” means the official inspection legend or any other symbol prescribed by regulations of the secretary to identify the status of any article or livestock or poultry under this chapter.

23. “*Person*” includes any individual, partnership, corporation, association, or other business unit, and any officer, agent, or employee thereof.

24. “*Pesticide chemical*”, “*food additive*”, “*color additive*”, and “*raw agricultural commodity*” shall have the same meanings for purposes of this chapter as under the federal Food, Drug, and Cosmetic Act.

25. “*Poultry*” means any domesticated bird, whether live or dead.

26. “*Poultry product*” means any poultry carcass or part thereof, or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the secretary from definition as a poultry product under such conditions as the secretary may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

27. “*Prepared*” means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

28. “*Reinspection*” includes inspection of the preparation of livestock products and poultry products, as well as re-examination of articles previously inspected.

29. “*Renderer*” means any person engaged in the business of rendering livestock or poultry carcasses, or parts or products of such carcasses, except rendering conducted under inspection or exemption under this chapter.

30. “*Shipping container*” means any container used or intended for use in packaging the product packed in an immediate container.

31. “*Veterinary inspector*” means a graduate veterinarian with appropriate training to perform the inspection functions under the provisions of this chapter.

2003 Acts, ch 149, §12, 23  
Further definitions, see §189.1  
Subsection 6A stricken and rewritten

## CHAPTER 190

### ADULTERATION OF FOODS

#### 190.1 Definitions and standards.

For the purpose of this subtitle, except chapters 192, 203, 203C, 203D, 207, and 208, the following definitions and standards of food are established:

1. *Butter*. Butter is the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, with or without the addition of salt, or harmless color-

ing matter, and containing at least eighty percent, by weight, of milk fat.

2. *Flavoring extract.* A flavoring extract is a solution in ethyl alcohol or other suitable medium of the sapid and odorous principles derived from an aromatic plant, or parts of the plant, with or without its coloring matter, and conforms in name to the plant used in its preparation.

a. *Almond extract.* Almond extract is the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and contains not less than one percent by volume of oil of bitter almonds.

b. *Anise extract.* Anise extract is the flavoring extract prepared from oil of anise, and contains not less than three percent by volume of oil of anise.

c. *Cassia extract.* Cassia extract is the flavoring extract prepared from oil of cassia, and contains not less than two percent by volume of oil of cassia.

d. *Celery seed extract.* Celery seed extract is the flavoring extract prepared from celery seed or the oil of celery seed, or both, and contains not less than three-tenths percent by volume of oil of celery seed.

e. *Cinnamon extract.* Cinnamon extract is the flavoring extract prepared from oil of cinnamon, and contains not less than two percent by volume of oil of cinnamon.

f. *Clove extract.* Clove extract is the flavoring extract prepared from oil of cloves, and contains not less than two percent by volume of oil of cloves.

g. *Ginger extract.* Ginger extract is the flavoring extract prepared from ginger, and contains in each one hundred cubic centimeters the alcohol-soluble matters from not less than twenty grams of ginger.

h. *Lemon extract.* Lemon extract is the flavoring extract prepared from oil of lemon, or from lemon peel, or both, and contains not less than five percent by volume of oil of lemon.

i. *Terpeneless extract of lemon.* Terpeneless extract of lemon is the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or other suitable medium, or by dissolving terpeneless oil of lemon in such medium, and contains not less than two-tenths percent by weight of citral derived from oil of lemon.

j. *Nutmeg extract.* Nutmeg extract is the flavoring extract prepared from oil of nutmeg, and contains not less than two percent by volume of oil of nutmeg.

k. *Orange extract.* Orange extract is the flavoring extract prepared from oil of orange, or from orange peel, or both, and contains not less than five percent by volume of oil of orange.

l. *Terpeneless extract of orange.* Terpeneless extract of orange is the flavoring extract prepared by shaking oil of orange with dilute alcohol, or other suitable medium, or by dissolving terpeneless

oil of orange in such medium, and corresponds in flavoring strength to orange extract.

m. *Peppermint extract.* Peppermint extract is the flavoring extract prepared from oil of peppermint, or from peppermint, or both, and contains not less than three percent by volume of oil of peppermint.

n. *Rose extract.* Rose extract is the flavoring extract prepared from attar of roses, with or without red rose petals, and contains not less than four-tenths percent by volume of attar of roses.

o. *Savory extract.* Savory extract is the flavoring extract prepared from oil of savory, or from savory, or both, and contains not less than thirty-five hundredths percent by volume of oil of savory.

p. *Spearmint extract.* Spearmint extract is the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and contains not less than three percent by volume of oil of spearmint.

q. *Star anise extract.* Star anise extract is the flavoring extract prepared from oil of star anise, and contains not less than three percent by volume of oil of star anise.

r. *Sweet basil extract.* Sweet basil extract is the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and contains not less than one-tenth percent by volume of oil of sweet basil.

s. *Sweet marjoram extract.* Sweet marjoram extract is the flavoring extract prepared from the oil of marjoram, or from marjoram, or both, and contains not less than one percent by volume of oil of marjoram.

t. *Thyme extract.* Thyme extract is the flavoring extract prepared from oil of thyme, or from thyme, or both, and contains not less than two-tenths percent by volume of oil of thyme.

u. *Tonka extract.* Tonka extract is the flavoring extract prepared from tonka bean, with or without sugar or glycerin, and contains not less than one-tenth percent by weight of coumarin extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof.

v. *Vanilla extract.* Vanilla extract is the flavoring extract prepared from vanilla bean, with or without sugar or glycerin, and contains in one hundred cubic centimeters the soluble matters from not less than ten grams of the vanilla bean, and contains not less than thirty percent by volume of absolute ethyl alcohol, or other suitable medium.

w. *Wintergreen extract.* Wintergreen extract is the flavoring extract prepared from oil of wintergreen, and contains not less than three percent by volume of oil of wintergreen.

3. *Food.* Food shall include any article used by humans or domestic animals for food, drink, confectionery, or condiment, or which enters into the composition of the same, whether simple,

blended, mixed, or compound. The term “*blended*” shall be construed to mean a mixture of like substances.

4. *Honey*. Honey is the secretion of floral nectar collected by the honeybee and stored in wax combs constructed by the honeybee, or the liquid derived therefrom.

5. *Lard*. Lard is the fat rendered from fresh, clean, sound, fatty tissues from hogs in good health at the time of slaughter, with or without lard stearin or a hardened lard. The tissues do not include bones, detached skin, head fat, ears, tails, organs, windpipes, large blood vessels, scrap fat, skimmings, settlings, pressings and the like and are reasonably free from muscle tissue and blood.

6. *Oleomargarine*. Oleo, oleomargarine or margarine includes all substances, mixtures and compounds known as oleo, oleomargarine or margarine, or all substances, mixtures and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

7. *Oysters*. Oysters shall not contain ice, nor more than sixteen and two-thirds percent by weight of free liquid.

8. *Rendered pork fat*. Rendered pork fat is the fat other than lard, rendered from clean, sound carcasses, parts of carcasses, or edible organs from hogs in good health at the time of slaughter, except that stomachs, tails, bones from the head and bones from cured or cooked pork are not included. The tissues rendered are usually fresh, but may be cured, cooked, or otherwise prepared and may contain some meat food products. Rendered pork fat may be hardened by the use of lard stearin or hardened lard or rendered pork fat stearin or hardened rendered pork fat or any combination.

9. *Renovated butter*. Renovated butter is butter produced by taking original packing stock butter, or other butter, or both, and melting the same so that the milk fat can be extracted, then by mixing the said milk fat with skimmed milk, milk, cream, or some milk product, and rechurning or reworking the said mixture; or butter made by any

method which produces a product commonly known as boiled, processed, or renovated butter.

10. *Sorghum syrup*. Sorghum syrup is liquid food derived by the concentration and heat treatment of the juice of sorghum cane including sorgo and sorghum vulgare. Sorghum syrup must contain not less than seventy-four percent by weight of soluble solids derived solely from juices of sorghum cane.

11. *Substitute for sugar*. Where sugar is given as one of the ingredients in a food product when the definition is established by law or by regulation, the following products may be used as optional ingredients: Dextrose (corn sugar) or corn syrup.

12. *Vinegar*. Vinegar is the product made by the alcoholic and subsequent fermentation of fruits, grain, vegetables, sugar, or syrups without the addition of any other substance and containing an acidity of not less than four percent by weight of absolute acetic acid. The product may be distilled, but when not distilled it shall not carry in solution any other substance except the extractive matter derived from the substances from which it was made.

a. *Cider or apple vinegar*. Cider or apple vinegar is a similar product made by the same process solely from the juice of apples. Such vinegar which during the course of manufacture has developed in excess of four percent acetic acid may be reduced to said strength.

b. *Corn sugar vinegar*. Corn sugar vinegar is a similar product made by the same process solely from solutions of starch sugar.

c. *Malt vinegar*. Malt vinegar is a similar product made by the same process solely from barley malt or cereals whose starch has been converted by malt.

d. *Sugar vinegar*. Sugar vinegar is a similar product made by the same process solely from sucrose.

2003 Acts, ch 69, §45  
Further definitions, see §189.1  
“Person” also defined, §191.4  
Unnumbered paragraph 1 amended

## CHAPTER 190C

### ORGANIC AGRICULTURAL PRODUCTS

#### 190C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Agricultural product*” means any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock, that is marketed in this state for human or livestock consumption.

2. “*Council*” means the organic advisory council established pursuant to section 190C.2.

3. “*Crop*” means a plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

4. “*Department*” means the department of agriculture and land stewardship.

5. “*Handler*” means a person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products

that do not process agricultural products.

6. “*Label*” means a display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

7. “*Livestock*” means any cattle, sheep, goats, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.

8. “*National organic program*” means the program administered by the United States department of agriculture pursuant to 7 C.F.R. pt. 205, which implements the federal Organic Food Production Act of 1990, 7 U.S.C. § 6501 et seq.

9. “*Organic*” means a labeling term that refers to an agricultural product produced in accordance with this chapter.

10. “*Organic agricultural product*” means an agricultural product that is certified or otherwise qualifies as organic in accordance with the provisions of this chapter as they existed on and after May 20, 1998.

11. “*Processing*” means cooling, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing in a food container.

12. “*Processor*” means a person engaged in the business of processing.

13. “*Producer*” means a person who engages in the business of growing or producing food, fiber, feed, or other agricultural-based consumer products.

14. “*Regional organic association*” means a corporation authorized pursuant to section 190C.6.

15. “*Retailer*” means a person who sells agricultural products on a retail basis. “*Retailer*” includes a food establishment as defined in section 137F.1. “*Retailer*” also includes a restaurant, delicatessen, bakery, grocery store, or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat food.

16. “*Secretary*” means the secretary of agriculture who is the director of the department of agriculture and land stewardship.

2003 Acts, ch 104, §1, 21; 2003 Acts, ch 108, §43; 2003 Acts, ch 149, §13, 23

With respect to proposed amendments to former subsections 12 and 18, see Code editor's note  
Section stricken and rewritten

### 190C.1A Other definitions.

For purposes of this chapter, words and phrases that are not defined in section 190C.1 shall have the same meanings as provided in 7 C.F.R. pt. 205.

2003 Acts, ch 104, §2, 21  
NEW section

### 190C.1B General authority.

Any provision in this chapter referring generally to compliance with the requirements of this chapter also includes compliance with requirements in rules adopted by the department pursuant to this chapter, orders issued by the department as authorized under this chapter, and the terms and conditions applicable to any certification made pursuant to this chapter.

2003 Acts, ch 104, §3, 21  
NEW section

### 190C.2 Organic products — advisory council.

1. An organic advisory council is established within the department. The council is composed of eleven members appointed by the governor and secretary, as provided in this section. The governor and secretary shall accept nominations from persons or organizations representing persons who serve on the council, as determined by the governor and secretary making appointments under this section.

2. The members shall serve staggered terms of four years beginning and ending as provided in section 69.19. Members appointed under this section shall be persons knowledgeable regarding the production, handling, processing, and retailing of organic agricultural products. The members of the council shall be appointed as follows:

a. Five persons who operate farms producing organic agricultural products. The governor shall appoint two of the persons, at least one of which shall be a producer of livestock, who may be a dairy or egg producer. The secretary shall appoint three of the persons, at least one of which shall be a producer of an agricultural commodity other than livestock. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from the production of organic agricultural products for three years prior to appointment.

b. Two persons who operate businesses processing organic agricultural products. One person shall be appointed by the governor and one person shall be appointed by the secretary. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from processing organic agricultural products for three years prior to appointment.

c. One person appointed by the secretary, who shall be either of the following:

(1) A person who operates a business handling organic agricultural products. To qualify for appointment, a person must have derived a substan-

tial portion of the person's income, wages, or salary from handling organic agricultural products for three years prior to appointment.

(2) A person who operates a business selling organic agricultural products. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from selling organic agricultural products on a retail basis for three years prior to appointment.

*d.* Two persons who have an educational degree and experience in agricultural or food science. One person shall be appointed by the governor and one person shall be appointed by the secretary. To qualify for appointment, a person must not have a financial interest in the production, handling, processing, or selling of organic agricultural products.

*e.* One person appointed by the governor, who represents the public interest, the natural environment, or consumers. To qualify for appointment, the person must be a member of an organization representing the public interest, consumers, or the natural environment. The person must not have a financial interest in the production, handling, processing, or selling of organic agricultural products.

3. A vacancy on the council shall be filled in the same manner as an original appointment. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. The governor may remove a member appointed by the governor and the secretary may remove a member appointed by the secretary, if the removal is based on the member's misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

4. Six members of the council constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the council. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the council.

5. The members are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

6. If a member has an interest, either direct or indirect, in a contract to which the council is or is to be a party, the member shall disclose the interest to the council in writing. The writing stating the conflict shall be set forth in the minutes of the council. The member having the interest shall not participate in any action by the council relating to the contract.

7. The council shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more members. The department shall provide administrative support to the council.

2003 Acts, ch 104, §4 – 6, 21  
Subsection 1 amended  
Subsection 2, unnumbered paragraph 1 amended  
Subsections 3, 4, 6, and 7 amended

#### **190C.2A Duties of the council.**

The organic advisory council shall assist the department in implementing and administering the provisions of this chapter as requested by the department. Upon request by the department, the council shall do all of the following:

1. Develop rules, policies, and procedures required to implement and administer this chapter.

2. Collect information required by the department in implementing and administering this chapter.

3. Interpret the requirements of this chapter, including rules adopted and orders issued pursuant to this chapter, and requirements of the national organic program.

4. Establish and change fees as provided in section 190C.5.

5. Provide advice regarding the most effective manner to use services provided by regional organic associations as provided in section 190C.6.

6. Provide information and expert opinions relating to organic agricultural products to the department.

7. Provide information relating to organic agricultural products to interested persons.

8. Promote organic agricultural products to consumers.

2003 Acts, ch 104, §7, 21  
NEW section

#### **190C.2B Establishment and implementation of this chapter.**

1. The department shall implement and administer the provisions of this chapter for agricultural products that have been produced and handled within this state using organic methods as provided in this chapter. The department may consult with the council in implementing and administering this chapter. The department may certify agricultural products that have been produced and handled outside this state using an organic method as provided in this chapter.

2. The department may establish a state organic program as provided in 7 U.S.C. § 6501 et seq. and 7 C.F.R. pt. 205. The secretary may apply for any approval or accreditation or execute any agreement required under the national organic program in order to implement, administer, and enforce this chapter.

3. Unless prohibited by the national organic program, the attorney general may be joined as a party authorized to enforce the provisions of this chapter.

4. All provisions of this chapter shall be

deemed in compliance with the national organic program, unless expressly provided otherwise by the United States department of agriculture.

2003 Acts, ch 104, §8, 21  
NEW section

### 190C.3 Duties and powers of the department.

In implementing the provisions of this chapter consistent with the national organic program, the department shall provide for the administration and enforcement of this chapter, including by adopting rules and issuing orders pursuant to chapter 17A. The department may adopt any part of the national organic program by reference.

1. The department shall be a state certifying agent and the department shall be the certifying agent's operation as provided in the national organic program.

2. The department may request assistance from the council as provided in section 190C.2A or from one or more regional organic associations as provided in section 190C.6.

3. *a.* The secretary may serve as the state organic program's governing state official. However, no other person shall serve in that position without approval by the secretary.

*b.* The secretary may designate a person within the department to act on the secretary's behalf in carrying out the duties of the state organic program's governing state official.

4. The department may assume enforcement obligations under the national organic program in this state for the requirements of this chapter. The department shall provide for on-site inspections. The department and the attorney general may coordinate the enforcement activities as provided in section 190C.21.

2003 Acts, ch 104, §9, 21  
Section stricken and rewritten

**190C.4 Administrative authority.** Repealed by 2003 Acts, ch 104, § 20, 21. See § 190C.3.

### 190C.5 State fees — deposit into general fund of the state.

1. *a.* The department acting as a state certifying agent shall establish a schedule of fees by rule. The fees shall be charged to persons who are certified under this chapter, including production operations and handling operations, in a manner that is consistent with the national organic program.

The department shall establish the rate of fees based on an estimate of the amount of revenues from the fees required by the department to administer and enforce this chapter.

*b.* The department shall annually review the estimate and may change the rate of fees. The fees must be adjusted in order to comply with this subsection.

2. *a.* The department acting as a state certifying agent may charge additional fees for carrying out the duties of that position to the extent that the fees are consistent with the national organic program.

*b.* The secretary acting as the state organic program's governing state official may charge fees for carrying out the duties of that position to the extent consistent with the national organic program.

3. The department shall collect state fees under this chapter which shall be deposited into the general fund of the state.

2003 Acts, ch 104, §10, 21  
Section amended

### 190C.6 Regional organic associations.

1. Regional organic associations may be established as provided in this section. A regional organic association must be organized as a corporation under chapter 504A which has certified members, elects its own officers and directors, and is independent from the department.

2. The department may authorize a regional organic association to assist the department in acting as a state certifying agent pursuant to section 190C.3. The regional organic association must be registered with the department. Upon request by the department, a registered regional organic association may do all of the following:

*a.* Review applications and provide applicants with technical assistance in completing applications. The department may authorize a regional organic association to process applications, including collecting and forwarding applications to the department.

*b.* Prepare a summary of an application, including materials accompanying the application, for review by the department. A regional organic association may include a recommendation for approval, modification, or disapproval of an application.

2003 Acts, ch 104, §11, 21  
Section amended

**190C.12 Standards.** Repealed by 2003 Acts, ch 104, § 20, 21.

**190C.13 Certification.** Repealed by 2003 Acts, ch 104, § 20, 21.

**190C.14 Labeling and organic certification seal.** Repealed by 2003 Acts, ch 104, § 20, 21.

**190C.15 Records.** Repealed by 2003 Acts, ch 104, § 20, 21.

### 190C.21 General enforcement.

1. The department acting as a state certifying agent and on behalf of the secretary who elects to

act as the state organic program's governing state official shall enforce this chapter.

2. To the extent authorized by the national organic program, the attorney general shall assist the department in enforcing this chapter. The department or the attorney general may commence legal proceedings in district court to enforce a provision of this chapter. If the attorney general assists the department under this section, the attorney general may commence the legal proceedings at the request of the department or upon the attorney general's own initiative.

3. This chapter does not require the department or attorney general to institute a proceeding for a minor violation if the department or attorney general concludes that the public interest will be best served by a suitable notice of warning in writing.

2003 Acts, ch 104, §12, 21  
Section amended

#### **190C.22 Investigations, complaints, inspections, and examinations.**

In enforcing the provisions of this chapter consistent with the national organic program, the department may conduct an investigation to determine if a person is complying with the requirements of this chapter. To the extent consistent with the national organic program, all of the following shall apply:

1. The department may receive a complaint from any person regarding a violation of this chapter. The department shall adopt procedures for persons filing complaints. The department shall establish procedures for processing complaints including requiring minimum information to determine the verifiability of a complaint.

2. The department may conduct inspections at times and places and to an extent that the department determines necessary in order to conclude whether there is a violation of this chapter. The department may enter upon any public or private premises during regular business hours in a manner consistent with the laws of this state and the United States, including Article I, section 8, of the Constitution of the State of Iowa, or the fourth amendment to the Constitution of the United States for purposes of carrying out an inspection.

3. The department may conduct examinations of agricultural products in order to determine if the agricultural products are in compliance with this chapter. Unless the national organic program otherwise requires, all of the following shall apply:

a. The methods for examination shall be the official methods adopted by the association of official agricultural chemists in all cases where methods have been adopted by the association.

b. A sworn statement by the state chemist or the state chemist's deputy stating the results of an analysis of a sample taken from a lot of agricultural products shall constitute prima facie evidence of the correctness of the analysis of that lot in a con-

tested case proceeding or court proceeding.

2003 Acts, ch 104, §13, 21  
Section amended

#### **190C.23 Disciplinary action.**

1. The department may take disciplinary action against a person who is certified pursuant to this chapter for noncompliance with a provision of this chapter or a willful violation of this chapter. The procedures of the disciplinary action shall be consistent with the national organic program. The disciplinary action shall proceed as provided in chapter 17A unless contrary to the national organic program. The department may do any of the following:

a. Issue a letter of warning or reprimand.  
b. Suspend or revoke the person's certification.

2. Any other disciplinary action provided in the national organic program shall be implemented by the secretary acting as the state organic program's governing state official.

2003 Acts, ch 104, §14, 21  
Section stricken and rewritten

#### **190C.24 Stop sale order.**

Unless prohibited by the national organic program, the department may issue a stop order to a person who sells, labels, or represents an agricultural product as organic in violation of this chapter.

1. The department may issue a written order to stop the sale of the agricultural product by a person in control of the agricultural product. The person named in the order shall not sell, label, or represent the agricultural product as organic until the department determines that the agricultural product is in compliance with this chapter.

2. The department may require that the product be held at a designated place until released by the department.

3. The department or the attorney general may enforce the order by petitioning the district court in the county where the agricultural product is being sold.

4. The department shall release the agricultural product when the department issues a release order upon satisfaction that legal requirements compelling the issuance of the stop sale order are satisfied. If the person is found to have violated this chapter, the person shall pay all expenses incurred by the department in connection with the agricultural product's removal.

2003 Acts, ch 104, §15, 16, 21  
Subsection 1 amended and divided into unnumbered paragraph 1 and subsection 1  
Subsection 4 amended

#### **190C.25 Injunctions.**

Unless prohibited by the national organic program, the department, the attorney general, an individual, a private organization or association, a county, or a city may bring an action in district court to restrain a producer, handler, or retailer

from selling an agricultural product by false or misleading advertising claiming that the agricultural product is organic. A petitioner shall not be required to allege facts necessary to show, or tending to show, a lack of adequate remedy at law, or that irreparable damage or loss will result if the action is brought at law or that unique or special circumstances exist.

2003 Acts, ch 104, §17, 21  
Section amended

**190C.26 Selling, labeling, or representing agricultural products as organic — penalties.**

A person shall not knowingly sell, label, or rep-

resent an agricultural product as organic, except in accordance with this chapter. A person who violates this section shall be subject to a civil penalty of not more than ten thousand dollars. Civil penalties shall be assessed by the district court in an action initiated by the department or attorney general as provided in section 190C.21. Unless prohibited by the national organic program, each day that the violation continues constitutes a separate violation. Civil penalties collected under this section shall be deposited in the general fund of the state.

2003 Acts, ch 104, §18, 21  
Section amended

## CHAPTER 192

### GRADE “A” MILK INSPECTION

**192.101A Definitions.**

As used in this chapter, all terms shall have the same meaning as defined in the “Grade ‘A’ Pasteurized Milk Ordinance, 2001 Revision”. However, notwithstanding the ordinance, the following definitions shall apply:

1. “*Bulk milk tanker*” means a mobile bulk container used to transport milk or fluid milk products from a dairy farm to a milk plant or from a milk plant to another milk plant, including an over-the-road semitrailer or a tanker that is permanently mounted on a motor vehicle.

2. “*Milk grader*” means a person, including dairy industry milk intake personnel, other than a milk hauler, who collects a milk sample from a bulk tank or a bulk milk tanker.

3. “*Milk hauler*” means a person who takes farm samples or transports raw milk or raw milk products to or from a milk plant, receiving station, or transfer station, including a dairy industry milk field person. However, a milk hauler does not include a person who drives a bulk milk tanker, if the person does not take a milk sample or handle raw milk or raw milk products.

2003 Acts, ch 44, §44  
Further definitions; see §189.1, 191.4  
Unnumbered paragraph 1 amended

**192.102 Grade “A” pasteurized milk ordinance.**

The department shall adopt, by rule, the “Grade ‘A’ Pasteurized Milk Ordinance, 2001 Revision”, including a subsequent revision of the ordinance. If the ordinance specifies that compliance with a provision of the ordinance’s appendices is mandatory, the department shall also adopt that provi-

sion. The department shall not amend the ordinance, unless the department explains each amendment and reasons for the amendment in the Iowa administrative bulletin when the rules are required to be published pursuant to chapter 17A. The department shall administer this chapter consistent with the provisions of the ordinance.

2003 Acts, ch 44, §45  
Section amended

**192.110 Rating required to receive or retain a permit.**

A person shall not receive or retain a permit under section 192.107, unless both of the following conditions are satisfied:

1. The person has a pasteurized milk and milk products sanitation compliance rating of ninety percent or more as calculated according to the rating system as contained in the federal public health service publications, “Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers 2001” and “Method of Making Sanitation Ratings of Milk Supplies, 2001 Revision”. The applicable provisions of these publications are incorporated into this section by this reference. A copy of each publication shall be on file with the department or in the office of the person subject to an inspection contract as provided in section 192.108.

2. The facilities and equipment used to produce, store, or transport milk or milk products comply with requirements of the “Grade ‘A’ Pasteurized Milk Ordinance” as provided in section 192.102.

2003 Acts, ch 44, §46  
Subsection 1 amended

## CHAPTER 202B

### SWINE AND BEEF PROCESSORS

Transferred from portions of chapter 9H in Code Supplement 2003 pursuant to Code editor directive in 2003 Acts, ch 115, §16, 19

#### SUBCHAPTER I

##### 202B.101 Purpose.

The purpose of this chapter is to preserve free and private enterprise, prevent monopoly, and also to protect consumers by regulating the balance of competitive forces in beef and swine production, by enhancing the welfare of the farming community, and also by preventing processors from gaining control of beef or swine production.

2003 Acts, ch 115, §4, 16, 19

Section transferred from §9H.2, unnumbered paragraph 1, in Code Supplement 2003 pursuant to Code editor directive in 2003 Acts, ch 115, §16, 19

Section amended

##### 202B.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *“Base price”* means the price paid for swine, delivered to the processor, before application of any premiums or discounts, and expressed in dollars per hundred pounds of hot carcass weight as calculated in the same manner as provided in 7 C.F.R. § 59.30.

2. *“Business association”* means a person organized under statute or common law in this state or another jurisdiction for purposes of engaging in a commercial activity on a profit, cooperative, or not-for-profit basis, including but not limited to a corporation or entity taxed as a corporation under the Internal Revenue Code, nonprofit corporation, cooperative association, partnership, limited partnership, limited liability company, limited liability partnership, investment company, joint stock company, joint stock association, or trust, including but not limited to a business trust.

3. *“Cash or spot market purchase”* means the purchase of swine by a processor from a seller, if the swine are slaughtered not more than fourteen days after the date that the seller and the processor agree on a date of delivery of the swine for slaughter and the base price for purchasing the swine is determined by an oral or written agreement between seller and processor executed on the day the swine are delivered for slaughter.

4. *“Cattle operation”* means a location including but not limited to a building, lot, yard, corral, or other place where cattle for slaughter are fed or otherwise maintained.

5. *“Contract feeder”* means a person owning in the applicable reporting year, as provided in section 202B.301, more than two thousand five hundred swine or five thousand head of poultry, if the swine or poultry are subject to a contract or contracts for care and feeding by a person or persons

other than the owner on land which is not owned, leased, or held by the owner.

6. *“Contract for the care and feeding of swine”* means an oral or written agreement executed between a person and the owner of swine, under which the person agrees to care for and feed the owner’s swine on the person’s premises. A contract for the care and feeding of swine does not include an agreement for the sale or purchase of swine.

7. *“Cooperative association”* means the same as defined in section 10.1.

8. *“Indirect”* means to act or attempt to accomplish an act through an interest in a business association, through one or more affiliates or intermediaries, or by any method other than a direct approach, including by any circuitous or oblique method.

9. *“Person”* means an individual, business association, government or governmental subdivision or agency, or any other legal entity.

10. *“Processor”* means a person who alone or in conjunction with others directly or indirectly controls the manufacturing, processing, or preparation for sale of beef or pork products, including the slaughtering of cattle or swine or the manufacturing or preparation of carcasses or goods originating from the carcasses, if the beef or pork products have a total annual wholesale value of eighty million dollars or more for the person’s tax year. A person shall be deemed to be a processor if any of the following apply:

a. The person has a threshold interest in a processor which is a business association. *“Threshold interest”* means a direct or indirect interest in the business association, calculated as follows:

(1) For a processor of beef products, the person’s threshold interest begins at ten percent.

(2) For a processor of pork products, the person’s threshold interest begins at ten percent for a processor of pork products having a total annual wholesale value of at least eighty million dollars and decreases to one percent for a processor of pork products having a total annual wholesale value of at least two hundred sixty million dollars. The amount of the decrease in the amount of the threshold interest shall equal one percent for each increased increment of twenty million dollars in total annual wholesale value.

b. The person holds an executive position in a processor of pork products or owes a processor of pork products a fiduciary duty if the processor directly or indirectly controls the processing of pork products having a total annual wholesale value of

two hundred sixty million dollars or more. A person who held such an executive position or owed a fiduciary duty shall be deemed to still hold the position or owe the duty for a two-year period following the date that the person relinquishes the position or duty. An executive position in a processor organized as a business association includes but is not limited to a member of a board of directors or an officer of a corporation or cooperative association, a director or officer of a joint stock company or joint stock association, a manager of a limited liability company, a general partner of a limited partnership, or a trustee of a trust.

11. “*Qualified processor*” means a processor of pork products if all of the following apply:

a. (1) (a) Swine producers exercise a controlling interest in the processor. “*Controlling interest*” means actual control or the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a processor, whether through the ownership of voting securities, by contract, or otherwise.

(b) Of the total interest held by all persons in the processor, swine producers hold at least sixty percent of the interest. In addition, of the total interest held by all persons in the processor, swine producers hold at least sixty percent of interests with voting rights.

(2) Of the total interest held by all persons in the processor, all retailers hold a total of not more than twenty percent of the interest.

b. Another processor does not hold a direct or indirect interest in the processor. However, this paragraph does not apply to a person deemed to be a processor solely because the person holds a threshold interest in the processor.

c. Not less than ten percent of the swine slaughtered by the processor each day are purchased through cash or spot market purchases.

d. The processor makes cash or spot market purchases of swine under the same terms and conditions from both sellers of swine who hold a direct or indirect interest in the processor and sellers of swine who do not hold a direct or indirect interest in the processor. In making such cash or spot market purchases of swine, the processor shall not provide sellers of swine who hold a direct or indirect interest in the processor with a preference over sellers of swine who do not hold a direct or indirect interest in the processor.

12. “*Retailer*” means a person who is engaged in the business of selling pork products, if all of the following apply:

a. The pork products are sold only on a retail basis directly to the ultimate purchasers of the pork products for consumption and not for resale.

b. The person is not engaged in the slaughter of swine.

c. A processor does not have a direct or indirect interest in the person.

13. “*Swine operation*” means a location where

swine are fed or otherwise maintained, including a building, lot, yard, or corral; and swine which are fed or otherwise maintained at the location.

14. “*Swine producer*” means a person who owns, controls, or operates a swine operation or who contracts for the care and feeding of swine.

2003 Acts, ch 115, §1 – 3, 10, 16, 19  
 With exception of new provisions enacted in 2003 Acts, contents of section transferred from §9H.1 in Code Supplement 2003 pursuant to Code editor directive in 2003 Acts, ch 115, §16, 19  
 Subsections 1 – 8 transferred from §9H.1, subsections 6, 8 – 13, and 22 respectively  
 NEW subsection 9  
 Subsections 10 – 14 transferred from §9H.1, subsections 27 – 29, 31, and 32 respectively  
 Subsection 11, paragraph c amended and NEW paragraph d  
 Subsection 12, unnumbered paragraph 1 amended  
 Subsection 14 amended

SUBCHAPTER II

**202B.201 Prohibited operations and activities — exceptions.**

1. Except as provided in subsections 2 and 3, and section 202B.202, all of the following apply:

a. For cattle, a processor shall not own, control, or operate a cattle operation in this state.

b. For swine, a processor shall not do any of the following:

(1) (a) Directly or indirectly own, control, or operate a swine operation in this state.

(b) Finance a swine operation in this state or finance a person who directly or indirectly contracts for the care and feeding of swine in this state.

For purposes of subparagraph subdivision (a) and this subparagraph subdivision, all of the following apply:

(i) “*Finance*” means an action by a processor to directly or indirectly loan money or to guarantee or otherwise act as a surety.

(ii) “*Finance*” or “*control*” does not include executing a contract for the purchase of swine by a processor, including but not limited to a contract that contains an unsecured ledger balance or other price risk sharing arrangement. “*Finance*” also does not include providing an unsecured open account or an unsecured loan, if the unsecured open account or unsecured loan is used for the purchase of feed for the swine and the outstanding amount due by the debtor does not exceed five hundred thousand dollars. However, the outstanding amount due to support a single swine operation shall not exceed two hundred fifty thousand dollars.

(c) Obtain a benefit of production associated with feeding or otherwise maintaining swine, by directly or indirectly assuming a morbidity or mortality production risk, if the swine are fed or otherwise maintained as part of a swine operation in this state or by a person who contracts for the care and feeding of swine in this state.

(d) Directly or indirectly receive the net revenue derived from a swine operation in this state or

from a person who contracts for the care and feeding of swine in this state.

(2) Directly or indirectly contract for the care and feeding of swine in this state.

2. Subsection 1 shall not apply to a swine producer who holds a threshold interest in a qualified processor in the manner provided in section 202B.102, if all of the following apply:

*a.* The swine producer's threshold interest in the qualified processor is not more than ten percent.

*b.* The swine producer is not a processor. However, this paragraph does not apply to a swine producer deemed to be a processor solely because the swine producer holds a threshold interest in the qualified processor as otherwise allowed under this subsection or because the swine producer holds an executive position in the qualified processor or owes the qualified processor a fiduciary duty.

3. This section shall not preclude a processor from doing any of the following:

*a.* Contracting for the purchase of cattle or swine, provided that where the contract sets a date for delivery which is more than twenty days after the making of the contract, the contract shall do one of the following:

(1) Specify a calendar day for delivery of the cattle or swine.

(2) Specify the month for the delivery, and shall allow the farmer to set the week for the delivery within such month and the processor to set the date for delivery within such week.

*b.* Carrying on legitimate research, educational, or demonstration activities.

*c.* Owning and operating facilities to provide normal care and feeding of cattle or swine for a period not to exceed ten days immediately prior to slaughter, or for a longer period in an emergency.

2003 Acts, ch 115, §5, 16, 19  
Transferred from §9H.2, subsections 1 – 3, in Code Supplement 2003 pursuant to Code editor directive in 2003 Acts, ch 115, §16, 19  
Subsection 1, paragraph b, subparagraph (2) amended

#### **202B.202 Compliance requirements.**

1. A cooperative association which is a party to a contract for the care and feeding of swine in compliance with section 9H.2\* prior to May 9, 2003, and which is in violation of section 9H.2,\* as amended by 2003 Iowa Acts, ch 115, shall have until June 30, 2007, to comply with section 9H.2,\* as amended by 2003 Iowa Acts, ch 115.

Notwithstanding any provision of this section, a cooperative association shall not take an action on or after May 9, 2003, that would be in violation of section 9H.2,\* as amended by 2003 Iowa Acts, ch 115.

2. A processor that was in compliance with section 9H.2,\* Code 2001, prior to January 1, 2002, and which is in violation of section 9H.2,\* as amended by 2002 Acts, chapter 1095, shall have

until June 30, 2006, to comply with section 9H.2,\* as amended by 2002 Acts, chapter 1095.

3. Notwithstanding any provision of this section,\* a processor shall not take an action on or after January 1, 2002, that would be in violation of section 9H.2,\* as amended by 2002 Acts, chapter 1095.

4. The two-year period that a person who holds an executive position in a processor or owes a processor a fiduciary duty and thus is deemed to be a processor as provided in section 202B.102, subsection 10, paragraph "b", shall not apply if the person held the position or owed the duty on January 1, 2002, and relinquishes the position or duty on or before June 30, 2006.

5. A processor which was in compliance with this section prior to April 5, 2000, and which was in violation of this section as a result of 2000 Iowa Acts, chapter 1048, shall have until June 30, 2006, to comply with 2000 Iowa Acts, chapter 1048. A processor shall not take action on or after April 5, 2000, which would be in violation of this section.

2003 Acts, ch 115, §6 – 9, 16, 19  
\*Subsection 5 of this section transferred from §9H.2, subsection 4, with unnumbered paragraph 1 and subsections 1 – 3 of §9H.2 transferred to §202B.101 and 202B.201 respectively in Code Supplement 2003, pursuant to directive in 2003 Acts, ch 115, §16, 19

Subsection 5 to be stricken from 2005 Code; 2002 Acts, ch 1095, §10  
With the exception of subsection 1 enacted in 2003 Acts, ch 115, §7, and subsection 5 transferred from §9H.2, subsection 4, this section transferred from §9H.2A in Code Supplement 2003 pursuant to Code editor directive in 2003 Acts, ch 115, §16, 19

NEW subsection 1 and former subsections 1 and 2 amended and renumbered as 2 and 3

Subsection 4 stricken and former subsection 3 amended and renumbered as 4

Subsection 5 transferred from §9H.2, subsection 4  
Subsection 5 amended

### SUBCHAPTER III

#### **202B.301 Reports by contract feeders.**

A contract feeder shall file with the secretary of state on or before March 31 of each year on forms adopted pursuant to chapter 17A and supplied by the secretary of state an annual report containing all of the following information, if applicable:

1. The name and address of the person.

2. For each county, which the contractor shall identify, the approximate total number of swine or head of poultry subject to a contract for feeding and care as described in section 202B.102, subsection 6.

3. The name and address of the purchaser of the swine or poultry.

2003 Acts, ch 115, §16, 19  
Section transferred from §9H.5B in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19

#### **202B.302 Reports by processors.**

A processor shall file a report with the secretary of state on or before March 31 of each year, as follows:

1. For all processors, the report shall include all of the following:

a. The number of swine and the number of cattle owned and fed more than thirty days by the processor in this state during the processor's preceding tax year.

b. The total number of swine and the total number of cattle owned and fed more than thirty days by the processor during the processor's preceding tax year.

c. The number of swine and the number of cattle slaughtered in this state by the processor during the processor's preceding tax year.

d. The total number of swine and the total number of cattle slaughtered by the processor during the processor's preceding tax year.

e. The total wholesale value of beef or pork products that have been processed by the processor during the preceding tax year.

f. The total number of swine for which the processor has contracted for feeding as provided in section 202B.201.

2. For a qualified processor, the report shall include all of the following:

a. The total number of swine slaughtered each day during the qualified processor's preceding tax year.

b. The total number of swine slaughtered each day that are purchased through cash or spot market purchases during the qualified processor's preceding tax year.

2003 Acts, ch 115, §16, 19  
Section transferred from §9H.9 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19

**202B.303 Signing reports.**

Reports by corporations shall be signed by the president or other officer or authorized representative. Reports by limited liability companies shall be signed by a manager or other authorized representative. Reports by limited partnerships shall be signed by the president or other authorized representative of the partnership. Reports by individuals shall be signed by the individual or an authorized representative.

2003 Acts, ch 115, §16, 19  
Section transferred from §9H.10 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19

**202B.304 Duties of secretary of state.**

The secretary of state shall notify the attorney general when the secretary of state has reason to believe a violation of this chapter has occurred. It is the intent of this section that information shall be made available to members of the general assembly and appropriate committees of the general assembly in order to determine the extent of production operations being carried out in this state by contract feeders and processors and the effect of such practices upon the economy of this state. The reports of contract feeders and processors required in this chapter shall be confidential reports except as to the attorney general for review and appropriate action when necessary. The secretary

of state shall assist any committee of the general assembly existing or established for the purposes of studying the effects of this chapter and the practices this chapter seeks to study and regulate.

2003 Acts, ch 115, §13, 16, 19  
Section transferred from §9H.14 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19  
Section amended

**202B.305 Additional information.**

The secretary of state shall request additional information as may be necessary or appropriate to enable the secretary of state to administer this chapter.

2003 Acts, ch 115, §16, 19  
Section transferred from §9H.15 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19

SUBCHAPTER IV

**202B.401 Penalties — injunctive relief.**

1. The courts of this state may prevent and restrain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this chapter.

2. a. A processor who violates section 202B.201 is subject to a civil penalty of not more than twenty-five thousand dollars. Each day that a violation continues shall be considered a separate offense.

b. If the attorney general or a county attorney is the prevailing party in an action for a violation of section 202B.201, the prevailing party shall be awarded court costs and reasonable attorney fees, which shall be taxed as part of the costs of the action. If the attorney general is the prevailing party, the moneys shall be deposited in the general fund of the state. If the county is the prevailing party, the moneys shall be deposited in the general fund of the county.

2003 Acts, ch 115, §16, 19  
Section transferred from §9H.3 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19

**202B.402 Penalties — reports.**

Failure to timely file a report or the filing of false information is punishable by a civil penalty not to exceed one thousand dollars.

For purposes of this section a report is timely filed if the report is filed prior to May 1 of the year in which it is required to be filed.

The secretary of state shall notify a person who the secretary has reason to believe is required to file a report as provided by this chapter and who has not filed a timely report, that the person may be in violation of this section. The secretary of state shall include in the notice, a statement of the penalty which may be assessed if the required report is not filed within thirty days. The secretary of state shall refer to the attorney general any person who the secretary has reason to believe is re-

quired to report under this chapter if, after thirty days from receipt of the notice, the person has not filed the required report. The attorney general may, upon referral from the secretary of state, file an action in district court to seek the assessment

of a civil penalty of one hundred dollars for each day the report is not filed.

2003 Acts, ch 115, §16, 19  
Section transferred from §9H.11 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 115, §16, 19

## CHAPTER 202C

### FEEDER PIG DEALERS

#### 202C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Dealer*” means a person required to be licensed as a dealer pursuant to section 163.30. However, a dealer does not include a person who operates a livestock market, as defined in section 459.102.

2. “*Department*” means the department of agriculture and land stewardship.

3. “*Feeder pig*” means an immature swine fed for purposes of direct slaughter which weighs one hundred pounds or less.

4. “*Financial institution*” means a bank or savings and loan association authorized by this state or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation.

5. “*Purchaser*” means the owner or operator of a farm as provided in section 163.30 who is delivered feeder pigs pursuant to a sales agreement in which the owner or operator is a party.

6. “*Sales agreement*” means an oral or written contract executed between a dealer and a purchaser for the sale of feeder pigs.

2003 Acts, ch 90, §2  
NEW section

#### 202C.2 Evidence of financial responsibility — requirements.

1. A dealer shall provide the department with evidence of financial responsibility as required by the department. The evidence of financial responsibility shall consist of a surety bond furnished by a surety or an irrevocable letter of credit issued by a financial institution.

2. The evidence of financial responsibility shall be provided to the department before the dealer’s license is issued or renewed pursuant to section 163.30.

3. The amount of the evidence of financial responsibility shall be established by rules which shall be adopted by the department. Unless the department otherwise has good cause, the rules shall be based upon the volume of sales reported by the dealer to the United States packers and stockyards administration. However, the evidence of financial responsibility shall not be for less than fifty thousand dollars or for more than

three hundred thousand dollars.

4. The evidence of financial responsibility must be conditioned upon the dealer’s faithful performance of the terms and conditions of the sales agreement. The surety’s or issuer’s liability extends to each such sales agreement executed while the surety bond or letter of credit is in force and until performance or the rescission of the sales agreement.

5. The evidence of financial responsibility shall be continuous in nature until canceled by the surety or issuer. The surety or issuer shall provide at least ninety days’ notice in writing to the dealer and the department indicating the surety’s or issuer’s intent to cancel the surety bond or letter of credit and the effective date of the cancellation. The dealer shall have sixty days from the date of receipt of the surety’s or issuer’s notice of cancellation to file a replacement. However, the surety or issuer remains liable for damages arising from sales agreements which were executed during the effective period of the evidence of financial responsibility.

2003 Acts, ch 90, §3  
NEW section

#### 202C.3 Surety or issuer — liability.

1. The purchaser may bring a legal action arising from the breach of a sales agreement against the surety on the bond or issuer on the irrevocable letter of credit in the purchaser’s own name in district court to recover any damages as allowed by law. The purchaser may also be awarded interest as determined pursuant to section 668.13, beginning from the date that the sales agreement was executed. The purchaser may also be awarded court costs and reasonable attorney fees, which shall be taxed as part of the costs of the legal action.

2. The aggregate liability of the surety or issuer due to a breach of a sales agreement shall not exceed the amount of the evidence of financial responsibility.

2003 Acts, ch 90, §4  
NEW section

#### 202C.4 Departmental rules.

The department shall adopt rules as required to administer this chapter, including but not limited to rules providing for amounts of evidence of financial responsibility, qualifications for a surety or fi-

financial institution, procedures for filing evidence of financial responsibility, including replacement bonds or letters of credit, requirements for the cancellation of the evidence of financial responsi-

bility, and the liability of a surety or issuer after cancellation.

2003 Acts, ch 90, §5  
NEW section

## CHAPTER 203

### GRAIN DEALERS

#### 203.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *“Bond”* means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 7.

2. *“Check”* means a paper instrument used for ordering, instructing, or authorizing a financial institution to make payment or credit a presenter’s account and debit the issuer’s account. *“Check”* includes instruments commonly referred to as a check, draft, share draft, or other negotiable instrument for the payment of money. An instrument may be a check even though it is described on its face by another term, such as “money order”.

3. *“Credit-sale contract”* means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

4. *“Custom livestock feeder”* means a person who buys grain for the sole purpose of feeding it to livestock owned by another person in a feedlot as defined in section 172D.1, subsection 6, or a confinement building owned or operated by the custom livestock feeder and located in this state.

5. *“Department”* means the department of agriculture and land stewardship.

6. *“Electronic funds transfer”* means a remote electronic transmission used for ordering, instructing, or authorizing a financial institution to pay money to or credit the account of the payee and debit the account of the payer. The remote electronic transmission may be initiated by telephone, terminal, computer, or similar device.

7. *“Financial institution”* means a bank or savings and loan association authorized by the state of Iowa or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively; or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

8. *“Good cause”* means that the department has cause to believe that the net worth or current

asset to current liability ratio of a grain dealer presents a danger to sellers with whom the grain dealer does business, based on evidence of any of the following:

a. The making of a payment by use of a check or electronic funds transfer, and a financial institution refuses payment because of insufficient moneys in a grain dealer’s account.

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in section 203.22.

9. *“Grain”* means any grain for which the United States department of agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

10. *“Grain dealer”* means a person who buys during any calendar month one thousand bushels of grain or more directly from the producers of the grain for purposes of resale, milling, or processing. However, *“grain dealer”* does not include any of the following:

a. A producer of grain who is buying grain for the producer’s own use as seed or feed.

b. A person solely engaged in buying grain future contracts on the board of trade.

c. A person who purchases grain only for sale in a feed regulated under chapter 198.

d. A person who purchases grain only from grain dealers licensed under this chapter.

e. A person engaged in the business of selling agricultural seeds regulated by chapter 199.

f. A person buying grain only as a farm manager.

g. An executor, administrator, trustee, guardian, or conservator of an estate.

h. A custom livestock feeder.

i. A cooperative organized under chapter 501, if the cooperative only purchases grain from its members who are producers or from a licensed grain dealer, and the cooperative does not resell that grain.

j. A limited liability company as defined in section 490A.102 that meets all of the following requirements:

(1) The majority of voting rights in the limited liability company are held by its members who are producers.

(2) The purpose of the limited liability company is to produce renewable fuel as defined in section 159A.2.

(3) The limited liability company only purchases grain from its members who are producers or from a licensed grain dealer.

(4) The limited liability company does not resell grain that it purchases.

11. “*Person*” means the same as defined in section 4.1 and includes a business association as defined in section 202B.102 or joint or common venture regardless of whether it is organized under a chapter of the Code.

12. “*Producer*” means the owner, tenant, or operator of land in this state who has an interest in and receives all or a part of proceeds from the sale of grain produced on that land.

13. “*Seller*” means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes a person who executes a credit-sale contract as a seller.

2003 Acts, ch 69, §1, 2, 46  
Internal reference changes applied  
NEW subsection 2, and former subsections 2 – 4 renumbered as 3 – 5  
NEW subsection 6 and former subsections 5 – 8 renumbered as 7 – 10  
Subsection 8, paragraph a amended  
Subsection 10, paragraph h stricken  
NEW subsection 11 and former subsections 9 and 10 renumbered as 12 and 13

#### **203.4 Participation in indemnity fund required.**

A grain dealer licensed or required to be licensed pursuant to section 203.3 shall participate in and comply with the grain depositors and sellers indemnity fund provided in chapter 203D.

2003 Acts, ch 69, §3  
Section amended

#### **203.5 License.**

Upon the filing of the application and compliance with the terms and conditions of this chapter and rules of the department, the department shall issue a license to the applicant. The license shall terminate at the end of the third calendar month following the close of the grain dealer’s fiscal year. A grain dealer’s license may be renewed annually by the filing of a renewal fee and a renewal application on a form prescribed by the department. An application for renewal shall be received by the department on or before the end of the third calendar month following the close of the grain dealer’s fiscal year. A grain dealer license which has terminated may be reinstated by the department upon receipt of a proper renewal application, the renewal fee, and the reinstatement fee as provided in section 203.6 if filed within thirty days from the date of termination of the grain dealer license. The department may cancel a license upon request of the licensee unless a complaint or information

is filed against the licensee alleging a violation of a provision of this chapter. Fees for licenses issued for less than a full year shall be prorated from the date of the application.

If an applicant has had a license under chapter 203 or 203C revoked for cause within the past three years, or has been convicted of a felony involving violations of chapter 203 or 203C, or is owned or controlled by a person who has had a license so revoked or who has been so convicted, the department may deny a license to the applicant.

The department may deny a license to an applicant if any of the following apply:

1. The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund in regard to a license issued under this chapter or chapter 203C, and the liability has not been discharged, settled, or satisfied.

2. The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 203C and the liability has not been discharged, settled, or satisfied.

2003 Acts, ch 69, §47  
Unnumbered paragraph 2 amended

#### **203.8 Payment.**

1. *a.* A grain dealer licensed or required to be licensed pursuant to section 203.3 shall pay the purchase price to the seller for grain upon delivery or demand by the seller, but not later than thirty days after delivery by the seller unless in accordance with the terms of a credit-sale contract that satisfies the requirements of this chapter. The department shall adopt rules for payment by check and electronic funds transfer.

*b.* A grain dealer licensed or required to be licensed pursuant to section 203.3 shall not hold a check for the purchase of grain more than five days after the grain dealer issues a check to the seller. After that date, the grain dealer shall deliver the check in person or by mail to the seller’s last known address.

2. As used in this section:

*a.* “*Delivery*” means the transfer of title to and possession of grain by a seller to a grain dealer or to another person in accordance with the agreement of the seller and the grain dealer.

*b.* “*Payment*” means the actual payment or tender of payment by a grain dealer to a seller of the agreed purchase price, or in the case of disputes as to sales of grain, the undisputed portion of the purchase price without reduction for any separate claim of the grain dealer against the seller.

2003 Acts, ch 69, §4  
See §203.15  
Section amended

#### **203.9 Inspection of premises and records — reconstruction of records.**

1. The department may inspect the premises used by any grain dealer in the conduct of the deal-

er's business at any time. The department may inspect a grain dealer's records that pertain to grain transactions during ordinary business hours. The department shall inspect a grain dealer's records at least once each eighteen-month period without justification. The department shall prioritize inspections based on the system provided in section 203.22. The department may use a risk rating produced by a statistical model provided in section 203.22 as justification to conduct an inspection. A transporter of grain in transit shall possess bills of lading or other documents covering the grain, and shall present them to any law enforcement officer on demand. If there is justification to believe that a grain dealer is engaged without a license as required pursuant to section 203.3, the department may inspect the grain dealer's records which pertain to grain transactions at any time.

2. If a grain dealer does not maintain a place of business in this state, the department is not required to inspect the grain dealer's records. A grain dealer shall submit the grain dealer's records relating to grain transactions occurring within this state to the department for purposes of an inspection as provided in this section at any reasonable time and place, including the offices of the department during regular business hours, as ordered by the department.

3. A grain dealer shall keep complete and accurate records. A grain dealer shall keep records for the previous six years. If the grain dealer's records are incomplete or inaccurate, the department may reconstruct the grain dealer's records in order to determine whether the grain dealer is in compliance with the provisions of this chapter. The department may charge the grain dealer the actual cost for reconstructing the grain dealer's records, which shall be considered repayment receipts as defined in section 8.2.

2003 Acts, ch 69, §5  
Section amended

### **203.10 Suspension or revocation of license.**

The department may issue an order to suspend or revoke the license of a grain dealer who violates a provision of this chapter, including a rule adopted under this chapter, as provided in chapter 17A. If a grain dealer fails to consent to a departmental inspection or cooperate with the department during an inspection as provided in section 203.9, the department may issue an order to immediately suspend or revoke the grain dealer's license pursuant to section 17A.18.

2003 Acts, ch 69, §6  
Section stricken and rewritten

### **203.11 Penalties — injunctions.**

1. A person who knowingly submits false information to or knowingly withholds information from the department or any of its employees when required to be submitted or maintained under this

chapter, commits a fraudulent practice.

2. *a.* Except as provided in paragraph "b", a person commits a serious misdemeanor if the person does any of the following:

(1) Engages in business as a grain dealer without a license as required in section 203.3.

(2) Obstructs an inspection of the person's business premises or records required to be kept by a grain dealer pursuant to section 203.9.

(3) Uses a scale ticket or credit-sale contract in violation of this chapter or a requirement established by the department under this chapter.

*b.* A person who commits an offense specified in paragraph "a" after having been found guilty of the same offense commits an aggravated misdemeanor.

3. Except as provided in subsections 1 and 2, a person who violates any provision of this chapter commits a simple misdemeanor. With respect to a continuing violation, each day that the violation continues is a separate offense.

4. A person in violation of this chapter, or in violation of chapter 714 or 715A, which violation involves the business of a grain dealer, is subject to prosecution by the county attorney in the county where the business is located. However, if the county attorney fails to initiate prosecution within thirty days and upon request by the department, the attorney general may initiate and carry out the prosecution in cooperation, if possible, with the county attorney. The person in violation may be restrained by an injunction in an action brought by the department or the attorney general upon request by the department.

2003 Acts, ch 69, §7  
Subsection 2 amended

**203.13 Enforcement officers.** Repealed by 2003 Acts, ch 69, § 21.

### **203.15 Credit-sale contracts.**

A grain dealer shall not purchase grain by a credit-sale contract except as provided in this section.

1. The grain dealer shall be licensed pursuant to section 203.3. All of the following shall apply to a grain dealer required to be licensed under that section who purchases grain by credit-sale contract:

*a.* The grain dealer shall give written notice to the department prior to engaging in the purchase of grain by credit-sale contract. The notice shall contain information required by the department.

*b.* All credit-sale contract forms in the possession of the grain dealer shall have been permanently and consecutively numbered at the time of printing of the forms. The grain dealer shall maintain an accurate record of all credit-sale contract forms and numbers obtained by that dealer. The record shall include the disposition of each numbered form, whether by execution, destruction, or otherwise.

c. The grain dealer who purchases grain by credit-sale contract shall maintain records as required by the department in compliance with this section.

2. In addition to other information as may be required, a credit-sale contract shall contain or provide for all of the following:

- a. The seller's name and address.
- b. The conditions of delivery.
- c. The amount and kind of grain delivered.
- d. The price per bushel or basis of value.
- e. The date payment is to be made.
- f. The duration of the credit-sale contract,

which shall not exceed twelve months from the date the contract is executed.

3. Title to all grain sold by a credit-sale contract is in the purchasing grain dealer as of the time the contract is executed, unless the contract provides otherwise. The contract must be signed and dated by both parties and executed in duplicate. One copy shall be retained by the grain dealer and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of the grain dealer's license, the payment date for all credit-sale contracts shall be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. However, if the business of the grain dealer is sold to another licensed grain dealer, credit-sale contracts may be assigned to the purchaser of the business.

4. a. A grain dealer shall not purchase grain on credit-sale contract during any time period in which the grain dealer fails to maintain fifty cents of net worth for each outstanding bushel of grain purchased under credit. The grain dealer may maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of deficiency in net worth.

b. A grain dealer holding a federal or state warehouse license who does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department or the United States department of agriculture shall not purchase grain on credit-sale contract to correct the shortage of grain.

c. A grain dealer must meet at least either of the following conditions:

(1) The grain dealer's last financial statement required to be submitted to the department pursuant to section 203.3 is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state.

(2) The grain dealer files a bond with the department in the amount of one hundred thousand dollars payable to the department. The bond shall

be used to indemnify sellers for losses resulting from a breach of a credit-sale contract as provided by rules adopted by the department. The rules shall include, but are not limited to, procedures and criteria for providing notice, filing claims, valuing losses, and paying claims. The bond provided in this paragraph shall be in addition to any other bond required in this chapter.

A bond filed with the department under this paragraph shall not be canceled by the issuer on less than ninety days notice by certified mail to the department and the principal. However, if an adequate replacement bond is filed with the department, the department may authorize the cancellation of the original bond before the end of the ninety-day period. If an adequate replacement bond is not received by the department within sixty days of the issuance of the notice of cancellation, the department shall automatically suspend the grain dealer's license. The department shall cause an inspection of the licensed grain dealer immediately at the end of the sixty-day period. If a replacement bond is not filed within another thirty days following the suspension, the grain dealer license shall be automatically revoked. When a license is revoked, the department shall provide notice of the revocation by ordinary mail to the last known address of each holder of an outstanding credit-sale contract and all known sellers.

5. The department may adopt rules to suspend the right of a grain dealer to purchase grain by credit-sale contract based on any of the following conditions:

a. The grain dealer holding a federal or state warehouse license does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department or the United States department of agriculture.

b. The grain dealer holding a state or federal warehouse license issues back to the grain dealer a warehouse receipt for purposes of providing collateral, if the grain which is the subject of the warehouse receipt was purchased on credit and is unpaid for by the grain dealer.

c. The grain dealer fails to maintain requirements relating to net worth or fails to maintain a ratio of current assets to current liabilities, as required in section 203.3.

d. The grain dealer violates this section.

e. The grain dealer's total liabilities are greater than seventy-five percent of the grain dealer's total assets.

f. The grain dealer has made payment by use of a check or electronic funds transfer, and a financial institution refuses payment because of insufficient funds in a grain dealer's account.

g. The department discovers that a grain dealer has delayed payment for grain purchased since the department last inspected the grain dealer pursuant to section 203.9.

6. A grain dealer who purchases grain by credit-sale contract shall obtain from the seller a signed acknowledgment stating that the seller has received notice that grain purchased by credit-sale contract is not protected by the grain depositors and sellers indemnity fund. The form for the acknowledgment shall be prescribed by the department, and the licensed grain dealer and the seller shall each be provided a copy.

2003 Acts, ch 69, §8 - 11  
Former subsections 1 - 4 amended and redesignated as unnumbered paragraph 1 and subsection 1, unnumbered paragraph 1 and paragraphs a - c

Former subsections 5 - 9 renumbered as 2 - 6  
Subsection 3 amended  
Subsection 5, paragraph f amended  
Subsection 6 amended

**203.17 Standardization of records and documents.**

The department may adopt rules specifying the form, content and use of scale tickets, and credit-sale contracts. All scale ticket forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing. A grain dealer shall maintain an accurate record of all scale ticket numbers. The record shall include the disposition of each numbered form, whether issued, destroyed, or otherwise disposed of.

2003 Acts, ch 69, §12  
Subsection 2 stricken and former subsection 1 redesignated as an unnumbered paragraph

**CHAPTER 203A**

**GRAIN BARGAINING AGENTS**

Repealed by 2003 Acts, ch 69, §50

**CHAPTER 203C**

**WAREHOUSES FOR AGRICULTURAL PRODUCTS**

**203C.1 Definitions.**

As used in this chapter:

1. *"Agricultural product"* shall mean any product of agricultural activity suitable for storage in quantity, including refined or unrefined sugar and canned agricultural products and shall also mean any product intended for consumption in the production of other agricultural products, such as stock salt, binding twine, bran, cracked corn, soybean meal, commercial feeds, and cottonseed meal.

2. *"Bond"* means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution.

3. *"Bulk grain"* shall mean grain which is not contained in sacks.

4. *"Check"* means the same as defined in section 203.1.

5. *"Credit-sale contract"* means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

6. *"Department"* means the department of agriculture and land stewardship.

7. *"Depositor"* means any person who deposits an agricultural product in a warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the

agricultural product.

8. *"Electronic funds transfer"* means the same as defined in section 203.1.

9. *"Financial institution"* means a bank or savings and loan association authorized by the state of Iowa or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively; or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

10. *"Good cause"* means that the department has cause to believe that the net worth or current asset to current liability ratio of a warehouse operator presents a danger to depositors with whom the warehouse operator does business, based on evidence of any of the following:

a. The making of a payment by use of a check or electronic funds transfer, and a financial institution refuses payment because of insufficient funds in the warehouse operator's account.

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A quality or quantity shortage in the warehouse facility.

d. A high risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the warehouse operator based on a statistical model provided in section 203C.40.

11. *"Grain"* shall mean wheat, corn, oats, barley, rye, flaxseed, field peas, soybeans, grain sorghums, spelt, and similar agricultural prod-

ucts, as defined in the Grain Standards Act.

12. “*Grain bank*” means grain owned by a depositor and held temporarily by the warehouse operator for use in the formulation of feed or to be processed and returned to the depositor on demand.

13. “*Grain Standards Act*” means the United States Grain Standards Act, 7 U.S.C. ch. 3.

14. “*Incidental warehouse operator*” means a person regulated under chapter 198 whose grain storage capacity does not exceed twenty-five thousand bushels which is used exclusively for grain owned or grain which will be returned to the depositor for use in a feeding operation or as an ingredient in a feed.

15. “*Incidental warehouse operator’s obligation*” means a sufficient quantity and quality of grain to cover company owned grain and deposits of grain for which actual payment has not been made.

16. “*License*” means a license issued under this chapter.

17. “*Licensed warehouse*” shall mean a warehouse for the operation of which the department has issued a license in accordance with the provisions of section 203C.6.

18. “*Licensed warehouse operator*” shall mean a warehouse operator who has obtained a license for the operation of a warehouse under the provisions of section 203C.6.

19. “*Official grain standards*” means the standards of quality and condition of grain which establishes the grade, fixed and established by the secretary of agriculture under the Grain Standards Act.

20. “*Open storage*” means grain or agricultural products which are received by a warehouse operator from a depositor for which warehouse receipts have not been issued or a purchase made and the records documented accordingly.

21. “*Person*” means the same as defined in section 4.1 and includes a business association as defined in section 202B.102 or a joint or common venture regardless of whether it is organized under a chapter of the Code.

22. “*Receiving and loadout charge*” shall mean the charge made by the warehouse operator for receiving grain into and loading grain from the warehouse, exclusive of the warehouse operator’s other charges.

23. “*Scale weight ticket*” means a load slip or other evidence, other than a receipt, given to a depositor by a warehouse operator licensed under this chapter upon initial delivery of the agricultural product to the warehouse.

24. “*Station*” means a warehouse located more than three miles from the central office of the warehouse.

25. “*Storage*” means any grain or other agricultural products that have been received and have come under care, custody or control of a warehouse operator either for the depositor for which

a contract of purchase has not been negotiated or for the warehouse operator operating the facility.

26. “*Unlicensed warehouse operator*” means a warehouse operator who retains grain in the warehouse not to exceed thirty days and is not licensed under the provisions of this chapter or Title VII, U.S.C.

27. “*Warehouse*” shall mean any building, structure, or other protected enclosure in this state used or usable for the storage of agricultural products. Buildings used in connection with the operation of the warehouse shall be deemed to be a part of the warehouse.

28. “*Warehouse operator*” means a person engaged in the business of operating or controlling a warehouse for the storing, shipping, handling or processing of agricultural products, but does not include an incidental warehouse operator.

29. “*Warehouse operator’s obligation*” means a sufficient quantity and quality of grain or other products for which a warehouse operator is licensed including company owned grain and grain of depositors as the warehouse operator’s records indicate. For an unlicensed warehouse operator it means a sufficient quantity and quality of grain to cover company owned grain and all deposits of grain for which actual payment has not been made.

2003 Acts, ch 69, §13 – 16

Internal reference change applied

Subsection 2 amended

NEW subsection 4 and former subsections 4 – 6 renumbered as 5 – 7

NEW subsection 8 and former subsections 7, 7A, and 8 – 26 renumbered as 9, 10, and 11 – 29 respectively

Subsection 10, paragraph a amended

Subsection 21 stricken and rewritten

### **203C.2 Duties and powers of the department — operator recordkeeping.**

1. The department shall administer this chapter and may exercise general supervision over the storage, warehousing, classifying according to grade or otherwise, weighing, and certification of agricultural products.

2. The department may inspect or cause to be inspected any warehouse including warehouse records as provided in this section. Inspections may be made at times and for purposes as the department determines. Except as provided in section 203C.6, the department shall inspect every licensed warehouse and its contents once every twelve months. The department shall prioritize inspections based on the system provided in section 203C.40. The department may require the filing of reports relating to a warehouse or its operation.

a. A licensed warehouse operator operating a licensed warehouse shall provide for complete and correct recordkeeping. The records shall account for the storage and withdrawal of all agricultural products handled in each warehouse which the warehouse operator is licensed to operate. The records shall include all original and duplicate receipts issued by, returned to, and canceled by the

warehouse operator. A licensed warehouse operator shall keep records for the previous six years. If the licensed warehouse operator's records are incomplete or inaccurate, the department may reconstruct the warehouse operator's records in order to determine whether the warehouse operator is in compliance with the provisions of this chapter. The department may charge the licensed warehouse operator the actual cost for reconstructing the warehouse operator's records.

*b.* If upon inspection of a warehouse a deficiency is found to exist as to the quantity or quality of agricultural products stored, as indicated on the warehouse operator's books and records according to official grain standards, the department may require an employee of the department to remain at the licensed warehouse and supervise all operations involving agricultural products stored there under this chapter until the deficiency is corrected. The charge for the cost of maintaining an employee of the department at a warehouse to supervise the correction of a deficiency is one hundred fifty dollars per day.

3. The department may make available to the United States government, or any of its agencies, including the commodity credit corporation, the results of inspections made and inspection reports submitted to it by employees of the department, upon payment to it of charges as determined by the department, but the charges shall not be less than the actual cost of services rendered, as determined by the department. The department may enter into contracts and agreements for such purpose and shall keep a record of all money thus received.

4. The department may classify any warehouse in accordance with its suitability for the storage of agricultural products and shall specify in any license issued for the operation of a warehouse the only type or types and the quantity of agricultural products which may be stored in the warehouse. The department may prescribe, within the limitations of this chapter, the duties of licensed warehouse operators with respect to the care of and responsibility for the contents of licensed warehouses. Grain grades shall be determined under the official grain standards. The department may from time to time publish data in connection with the administration of this chapter as may be of public interest.

5. Moneys received by the department in administering this section shall be considered repayment receipts as defined in section 8.2.

2003 Acts, ch 69, §17  
Section amended

### **203C.6 Issuance of license and financial responsibility.**

1. The department, upon application to it, may issue to a warehouse operator or to a person about to become a warehouse operator a license for the operation of a warehouse in accordance with this

chapter and the rules adopted by the department under section 203C.5. A single license to operate two or more warehouses located anywhere within the state may be issued.

2. The type of license required shall be determined as follows:

*a.* A class 1 license is required if the storage capacity of a warehouse is more than one hundred thousand bushels.

*b.* A class 2 license is required for a warehouse that is not required to have a class 1 license.

3. An application for a warehouse license shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and net worth of the applicant. The financial statement must be prepared according to generally accepted accounting principles. Assets shall be shown at original cost less depreciation. Upon written request, the department may allow asset valuations in accordance with a competent appraisal. Unpriced contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared.

4. In order to receive and retain a class 1 license, the following conditions must be satisfied:

*a.* The warehouse operator shall have and maintain a net worth of at least twenty-five cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 warehouse operator if the person has a net worth of less than twenty-five thousand dollars.

*b.* The warehouse operator shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause.

5. In order to receive and maintain a class 2 license, the following conditions must be satisfied:

*a.* The warehouse operator shall have and maintain a net worth of at least twenty-five cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 2 warehouse operator if the person has a net worth of less than ten thousand dollars.

*b.* The warehouse operator shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause.

6. The department may adopt rules governing the timing and form of financial statements to be submitted to it. The department may require additional information or verification with respect to the financial resources of the applicant or licensee and the applicant's or licensee's ability to maintain the quantity and quality of stored grain.

7. If an applicant has had a license under chapter 203 or 203C revoked for cause within the past three years, or has been convicted of a felony involving violations of chapter 203 or 203C, or is owned or controlled by a person who has had a license so revoked or who has been so convicted, the department may deny a license to the applicant.

8. The department may deny a license to an applicant if any of the following apply:

*a.* The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund through operations under a license issued under this chapter or chapter 203, and the liability has not been discharged, settled, or satisfied.

*b.* The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 203, and the liability has

not been discharged, settled, or satisfied.

9. A deficiency bond or irrevocable letter of credit filed with the department pursuant to this section shall not be canceled by the issuer on less than one hundred twenty days' notice by certified mail to the department and the principal.

2003 Acts, ch 69, §48  
Subsection 7 amended

#### **203C.10 Suspension or revocation of license.**

The department may issue an order to suspend or revoke the license of a warehouse operator who violates a provision of this chapter, including a rule adopted under this chapter, as provided in chapter 17A. If a warehouse operator fails to consent to a departmental inspection during an inspection as provided in section 203C.2, the department may issue an order to immediately suspend or revoke the grain dealer's license pursuant to section 17A.18.

2003 Acts, ch 69, §18  
Section stricken and rewritten

#### **203C.35 Licensed warehouse operator to keep records.** Repealed by 2003 Acts, ch 69, § 22.

#### **203C.36 Penalties — injunction.**

1. A person who knowingly withholds information from or knowingly submits false information to the department or any of its employees in a record required to be maintained or submitted to the department under this chapter commits a fraudulent practice as provided in chapter 714.

2. *a.* Except as provided in paragraph "b", a person commits a serious misdemeanor if the person does any of the following:

(1) Engages in business as a warehouse operator without a license as required in section 203C.6.

(2) Obstructs the inspection of the person's business premises or records required to be kept by a licensed warehouse operator pursuant to section 203C.2.

(3) Uses a scale ticket, warehouse receipt, or other document in violation of this chapter or requirements established by the department under this chapter.

*b.* A person who commits an offense specified in paragraph "a" after having been found guilty of the same offense commits an aggravated misdemeanor.

3. Except as provided in subsections 1 and 2, a person who violates any provision of this chapter commits a simple misdemeanor. With respect to a continuing violation, each day that the violation continues is a separate offense.

4. A person in violation of this chapter, or in violation of chapter 714 or 715A, which violation involves the business of a warehouse operator, is subject to prosecution by the county attorney in the county where the business is located. However, if the county attorney fails to initiate prosecu-

tion within thirty days, and upon request by the department, the attorney general may initiate and carry out the prosecution in cooperation, if possible, with the county attorney. The person in violation may be restrained by injunction in an action brought by the department or the attorney general upon request by the department.

2003 Acts, ch 69, §19  
Subsections 1 and 2 amended

**203C.39 Grain stored in another warehouse.**

A licensed warehouse operator may store grain in any other warehouse in Iowa licensed in accordance with section 203C.6 or the United States Warehouse Act, 7 U.S.C. ch. 10, subject to the following conditions:

1. The warehouse operator must obtain from such warehouse operator a nonnegotiable warehouse receipt and such receipt must show clearly the following notation: “Held in trust for depositors of” (name of original receiving warehouse).

2. When the warehouse operator begins to use the additional facilities described in this section, the operator must have sufficient net worth under section 203C.6 or provide a deficiency bond or an irrevocable letter of credit to cover the increase in the operator’s gross capacity.

3. A licensed warehouse operator may transfer grain for storage to another licensed warehouse operator while the warehouse operator receiving such grain has grain stored elsewhere under the provisions of this section.

2003 Acts, ch 69, §20  
Subsection 3 amended

CHAPTER 206

PESTICIDES

**206.2 Definitions.**

When used in this chapter:

1. The term “*active ingredient*” means:

a. In the case of a pesticide other than a plant growth regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests.

b. In the case of a plant growth regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof.

c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

2. The term “*adulterated*” shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

3. The term “*antidote*” means the most practical immediate treatment in case of poisoning and includes first aid treatment.

4. “*Certified applicator*” means any individual who is certified under this chapter as authorized to use any pesticide.

5. “*Certified commercial applicator*” means a pesticide applicator or individual who applies or uses a pesticide or device on any property of another for compensation.

6. “*Certified private applicator*” means a certi-

fied applicator who uses or supervises the use of any pesticide which is classified for restricted use on property owned or rented by the applicator or the applicator’s employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

7. “*Chlordane*” means 1,2,4,5,6,7,8,8-octachloro-4,7-methano-3a,4,7,7a-tetrahydroindane; Octa klor: 1068; Velsicol 1068; Dowklor.

8. “*Commercial applicator*” means a person, corporation, or employee of a person or corporation who enters into a contract or an agreement for the sake of monetary payment and agrees to perform a service by applying a pesticide but does not include a farmer trading work with another, a person employed by a farmer not solely as a pesticide applicator who applies pesticide as an incidental part of the person’s general duties, or a person who applies pesticide as an incidental part of a custom farming operation.

9. “*Department*” means the department of agriculture and land stewardship.

10. The term “*device*” means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects, birds, or rodents or destroying, repelling, or mitigating fungi, nematodes, weeds or such other pests as may be designated by the secretary, but not including equipment used for the application of pesticides when sold separately therefrom.

11. The term “*distribute*” means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

12. “*Financial institution*” means a bank or savings and loan association authorized by this

state or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation.

13. The term “*hazard*” means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

14. The term “*inert ingredient*” means an ingredient which is not an active ingredient.

15. The term “*ingredient statement*” means either:

*a.* A statement of the name and percentage by weight of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide.

*b.* When the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

16. The term “*label*” means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide or device.

17. The term “*labeling*” means all labels and other written, printed or graphic matter:

*a.* Upon the pesticide or device or any of its containers or wrappers.

*b.* Accompanying the pesticide or device at any time.

*c.* To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States department of agriculture or interior, the United States public health service, the state agricultural experiment stations, the Iowa state university, the Iowa department of public health, the department of natural resources, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

18. The term “*misbranded*” shall apply:

*a.* To any pesticide or device if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

*b.* To any pesticide:

(1) If it is an imitation of or is offered for sale under the name of another pesticide.

(2) If its labeling bears any reference to registration under this chapter, when not so registered.

(3) If the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public.

(4) If the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living persons and other vertebrate animals.

(5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there is to be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase.

(6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness as compared with other words, statements, designs, or graphic matter in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living persons or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such pesticide.

(8) If in the case of a plant growth regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant growth regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

19. The term “*permit*” means a written certificate, issued by the secretary or the secretary’s agent under rules adopted by the department authorizing the use of certain state restricted use pesticides.

20. The term “*person*” means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

21. The term “*pesticide*” shall mean (*a*) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating directly or indirectly any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living persons, which the secretary shall declare to be a pest, and (*b*) any substances intended for use as a plant growth regulator, defoliant, or desiccant.

22. The term “*pesticide dealer*” means any person who distributes restricted use pesticides; pesticide for use by commercial or public pesticide ap-

plicators; or general use pesticides labeled for agricultural or lawn and garden use with the exception of dealers whose gross annual pesticide sales are less than ten thousand dollars for each business location owned or operated by the dealer.

23. The term “*plant growth regulator*” means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

24. “*Poison control center*” means an entity existing as part of a hospital licensed under chapter 135B which is an institutional member of the American association of poison control centers.

25. “*Public applicator*” means an individual who applies pesticides as an employee of a state agency, county, municipal corporation, or other governmental agency. This term does not include employees who work only under the direct supervision of a public applicator.

26. The term “*registrant*” means the person registering any pesticide or device or who has obtained a certificate of license from the department pursuant to the provisions of this chapter.

27. The term “*restricted use pesticide*” means any pesticide restricted as to use by rule of the secretary as adopted under section 206.20.

28. “*State restricted use pesticide*” means a pesticide which is restricted for sale, use, or distribution under section 455B.491.

29. “*Toxic to humans*” means not generally recognized as safe as provided by the United States food and drug administration pursuant to 21 C.F.R. pt. 182.

30. The term “*under the direct supervision of*” means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator or a state licensed commercial applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

31. The term “*unreasonable adverse effects on the environment*” means any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and

benefits of the use of any pesticide.

2003 Acts, ch 86, §1, 3  
 Further definitions, see §189.1  
 NEW subsection 9 and former subsections 9 and 10 renumbered as 10 and 11  
 NEW subsection 12 and former subsections 11 – 29 renumbered as 13 – 31

**206.13 Evidence of financial responsibility required by commercial applicator.**

The department shall not issue a commercial applicator’s license as required in section 206.6 until the applicant has furnished evidence of financial responsibility with the department. The evidence of financial responsibility shall consist of a surety bond, a liability insurance policy, or an irrevocable letter of credit issued by a financial institution. The department may accept a certification of the evidence of financial responsibility. The evidence of financial responsibility shall pay the amount that the beneficiary is legally obligated to pay as damages caused by the pesticide operations of the applicant. However, the evidence of financial responsibility does not apply to damages or an injury which is expected or intended from the standpoint of the beneficiary. A liability insurance policy shall be subject to the insurer’s policy provisions filed with and approved by the commissioner of insurance. The evidence of financial responsibility need not apply to damages or injury to agricultural crops, plants, or land being worked upon by the applicant.

The amount of the evidence of financial responsibility as provided for in this section shall be not less than fifty thousand dollars for property damage and public liability insurance, each separately. The evidence of financial responsibility shall be maintained at not less than that amount at all times during the licensed period. The department shall be notified ten days prior to any reduction in the surety bond or liability insurance made at the request of the applicant or cancellation of the surety bond by the surety or the liability insurance by the insurer. The department shall be notified ninety days prior to any reduction of the amount of the irrevocable letter of credit at the request of the applicant or the cancellation of the irrevocable letter of credit by the financial institution. The total and aggregate liability of the surety, insurer, or financial institution for all claims shall be limited to the face of the surety bond, liability insurance policy, or irrevocable letter of credit.

2003 Acts, ch 86, §2, 3  
 Section amended

**CHAPTER 214A**

**MOTOR VEHICLE FUEL**

**214A.2 Tests and standards.**

1. The secretary shall adopt rules pursuant to

chapter 17A for carrying out this chapter. The rules may include, but are not limited to, specifica-

tions relating to motor fuel or oxygenate octane enhancers. In the interest of uniformity, the secretary shall adopt by reference or otherwise specifications relating to tests and standards for motor fuel or oxygenate octane enhancers, established by the American society for testing and materials (A.S.T.M.), unless the secretary determines those specifications are inconsistent with this chapter or are not appropriate to the conditions which exist in this state.

2. Octane number shall conform to the average of values obtained from the A.S.T.M. D-2699 research method and the A.S.T.M. D-2700 motor method.

Octane number for regular grade leaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than eighty-eight.

Octane number for premium grade leaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than ninety-three.

Octane number for regular grade unleaded gas-

oline shall follow the specifications of A.S.T.M. but shall not be less than eighty-seven.

Octane number for premium grade unleaded gasoline shall follow the specifications of A.S.T.M. but shall not be less than ninety.

3. *a.* Gasoline with a mixture of ten percent or more ethanol, but not more than thirteen percent, shall be known as conventional blend ethanol.

*b.* Gasoline with a mixture of more than thirteen percent ethanol, but not more than twenty-five percent, shall be known as high blend ethanol. For purposes of chapters 323A, 422, and 452A, high blend ethanol shall be treated as conventional blend ethanol.

4. Motor vehicle fuel shall not contain more than trace amounts of MTBE, as provided in section 214A.18.

2003 Acts, ch 167, §1, 4  
2003 strike of subsection 3, paragraph c, applies retroactively to January 1, 2002; 2003 Acts, ch 167, §4  
Subsection 3, paragraph c stricken

## CHAPTER 215

### INSPECTION OF WEIGHTS AND MEASURES

#### **215.14 Approval by department.**

A commercial weighing and measuring device shall not be installed in this state unless approved by the department.

1. A pit type scale or any other scale installed in a pit, regardless of capacity, that is installed on or after July 1, 1990, shall have a clearance of not less than four feet from the finished floor line of the scale to the bottom of the "T" beam of the scale bridge. Livestock shall not be weighed on any scale other than a livestock scale or pit type scale.

2. An electronic pitless scale shall be placed on concrete footings with concrete floor. The concrete floor shall allow for adequate drainage away from

the scale as required by the department. There shall be a clearance of not less than eight inches between the weigh bridge and the concrete floor to facilitate inspection and cleaning.

3. After approval by the department, the specifications for a commercial weighing and measuring device shall be furnished to the purchaser of the device by the manufacturer. The approval shall be based upon the recommendation of the United States national institute of standards and technology.

2003 Acts, 1st Ex, ch 2, §16, 209  
Section amended

## CHAPTER 216A

### DEPARTMENT OF HUMAN RIGHTS

#### **216A.2 Appointment of department director and administrators.**

The governor shall appoint a director of the department of human rights, subject to confirmation by the senate. The department director shall serve at the pleasure of the governor. The department director shall:

1. Establish general operating policies for the department to provide general uniformity among the divisions while providing for necessary flexibility.

2. Receive budgets submitted by each commis-

sion and reconcile the budgets among the divisions. The department director shall submit a budget for the department, subject to the budget requirements pursuant to chapter 8.

3. Coordinate and supervise personnel services and shared administrative support services to assure maximum support and assistance to the divisions.

4. Identify and, with the chief administrative officers of each division, facilitate the opportunities for consolidation and efficiencies within the department.

5. In cooperation with the commissions, make recommendations to the governor regarding the appointment of the administrator of each division.

6. Serve as an ex officio member of all commissions or councils within the department.

7. Serve as chairperson of the human rights administrative-coordinating council.

8. Evaluate each administrator, after receiving recommendations from the appropriate commissions or councils, and submit a written report of the completed evaluations to the governor and the appropriate commissions or councils, annually.

The governor shall appoint the administrators of each of the divisions subject to confirmation by the senate. Each administrator shall serve at the pleasure of the governor and is exempt from the merit system provisions of chapter 8A, subchapter IV. The governor shall set the salary of the division administrators within the ranges set by the general assembly.

2003 Acts, ch 145, §205  
Confirmation, see §2.32  
Unnumbered paragraph 2 amended

**216A.73 Ex officio members.**

The following or designee shall serve as ex officio members of the commission:

1. The director of public health.
2. The director of the department of human services and any administrators of that department so assigned by the director.
3. The director of the department of education.
4. The administrator of the division of vocational rehabilitation of the department of education.
5. The director of the department for the blind.
6. The labor commissioner.
7. The workers' compensation commissioner.
8. The director of the department of workforce development.
9. The director of the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

**216A.114 Duties of commission.**

The commission shall:

1. Interpret to communities and to interested persons the needs of the deaf and hard-of-hearing and how their needs may be met through the use of service providers.
2. Obtain without additional cost to the state available office space in public and private agencies which service providers may utilize in carrying out service projects for deaf and hard-of-hearing persons. However, if space is not available in a specific service area without additional cost to the state, the commission may obtain other office space which is located with other public or private agencies. The space shall be obtained at the lowest cost available and the terms of the lease must

be approved by the director of the department of administrative services.

3. Establish service projects for deaf and hard-of-hearing persons throughout the state. Projects shall not be undertaken by service providers for compensation which would duplicate existing services when those services are available to deaf and hard-of-hearing persons through paid interpreters or other persons able to communicate with deaf and hard-of-hearing persons.

As used in this section, "service projects" includes interpretation services for persons who are deaf and hard-of-hearing, referral and counseling services for deaf and hard-of-hearing persons in the areas of adult education, legal aid, employment, medical, finance, housing, recreation, and other personal assistance and social programs.

"Service providers" are persons who, for compensation or on a volunteer basis, carry out service projects.

4. Identify agencies, both public and private, which provide community services, evaluate the extent to which they make services available to deaf and hard-of-hearing persons, and cooperate with the agencies in coordinating and extending these services.

5. Collect information concerning deafness or hearing loss and provide for the dissemination of the information.

6. Provide for the mutual exchange of ideas and information on services for deaf and hard-of-hearing persons between federal, state, and local governmental agencies and private organizations and individuals.

7. Pursuant to section 216A.2, be responsible for budgeting and personnel decisions for the commission and division.

2003 Acts, ch 145, §286  
Terminology change applied

**216A.145 Employees and responsibility.**

The administrator shall be the administrative officer of the division and shall be responsible for implementing policies and programs. The administrator may employ, in accordance with chapter 8A, subchapter IV, other persons necessary to carry out the programs of the division.

2003 Acts, ch 145, §206  
Section amended

**216A.146 Duties.**

The commission shall do all of the following:

1. Serve as an information clearinghouse on programs and agencies operating to assist African-Americans. Clearinghouse duties shall include, but are not limited to:
  - a. Service as a referral agency to assist African-Americans in securing access to state agencies and programs.
  - b. Service as a liaison with federal, state, and local governmental units and private organizations on matters relating to African-Americans.
  - c. Service as a communications conduit to

state government for African-American organizations in the state.

d. Stimulation of public awareness of the problems of African-Americans.

2. Conduct conferences and training programs for African-Americans, public and private agencies and organizations, and the general public.

3. Coordinate, assist, and cooperate with public and private agencies in efforts to expand equal rights and opportunities for African-Americans in the areas of: employment, economic development, education, health, housing, recreation, social welfare, social services, and the legal system.

4. Serve as the central permanent agency for the advocacy of services for African-Americans.

5. Provide assistance to and cooperate with individuals and public and private agencies and organizations in joint efforts to study and resolve problems relating to the improvement of the status of African-Americans.

6. Publish and disseminate information relat-

ing to African-Americans, including publicizing their accomplishments and contributions to this state.

7. Evaluate existing and proposed programs and legislation for their impact on African-Americans.

8. Coordinate or conduct training programs for African-Americans to enable them to assume leadership positions.

9. Conduct surveys of African-Americans to ascertain their needs.

10. Assist the department of administrative services in the elimination of underutilization of African-Americans in the state's workforce.

11. Recommend legislation to the governor and the general assembly designed to improve the educational opportunities and the economic and social conditions of African-Americans in this state.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 216B

### DEPARTMENT FOR THE BLIND

#### 216B.3 Commission duties.

The commission shall:

1. Prepare and maintain a complete register of the blind of the state which shall describe the condition, cause of blindness, ability to receive education and industrial training, and other facts the commission deems of value.

2. Assist in marketing of products of blind workers of the state.

3. Ameliorate the condition of the blind by promoting visits to them in their homes for the purpose of instruction and by other lawful methods as the commission deems expedient.

4. Make inquiries concerning the causes of blindness to ascertain what portion of cases are preventable, and cooperate with the other organized agents of the state in the adoption and enforcement of proper preventive measures.

5. Provide for suitable vocational training if the commission deems it advisable and necessary. The commission may establish workshops for the employment of the blind, paying suitable wages for work under the employment. The commission may provide or pay for, during their training period, the temporary lodging and support of persons receiving vocational training. The commission may use receipts or earnings that accrue from the operation of workshops as provided in this chapter, but a detailed statement of receipts or earnings and expenditures shall be made monthly to the director of the department of management.

6. Establish, manage, and control a special training, orientation, and adjustment center or

centers for the blind. Training in the centers shall be limited to persons who are sixteen years of age or older, and the department shall not provide or cause to be provided any academic education or training to children under the age of sixteen except that the commission may provide library services to these children. The commission may provide for the maintenance, upkeep, repair, and alteration of the buildings and grounds designated as centers for the blind including the expenditure of funds appropriated for that purpose. Nonresidents may be admitted to Iowa centers for the blind as space is available, upon terms determined by rule.

7. Establish and maintain offices for the department and commission.

8. Accept gifts, grants, devises, or bequests of real or personal property from any source for the use and purposes of the department. Notwithstanding sections 8.33 and 12C.7, the interest accrued from moneys received under this section shall not revert to the general fund of the state.

9. Provide library services to persons who are blind and persons with physical disabilities.

10. Act as a bureau of information and industrial aid for the blind, such as assisting the blind in finding employment.

11. Be responsible for the budgetary and personnel decisions for the department and commission.

12. Manage and control the property, both real and personal, belonging to the department. The commission shall, according to the schedule estab-

lished in this subsection, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and plastic products with recycled content, including but not limited to plastic garbage can liners. For purposes of this subsection, “*recycled content*” means that the content of the product contains a minimum of thirty percent postconsumer material.

a. By July 1, 1991, one hundred percent of the purchases of inks which are used for newsprint paper for printing services performed internally or contracted for by the commission shall be soybean-based.

b. By July 1, 1995, a minimum of ten percent of the purchases of garbage can liners made by the commission shall be plastic garbage can liners with recycled content. The percentage purchased shall increase by ten percent annually until fifty percent of the purchases of garbage can liners are plastic garbage can liners with recycled content.

c. By July 1, 1993, one hundred percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the commission, shall be soybean-based to the extent formulations for such inks are available.

d. The commission shall report to the general assembly on February 1 of each year, the following:

(1) A listing of plastic products which are regularly purchased by the commission for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the commission, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

e. The department of natural resources shall review the procurement specifications currently used by the commission to eliminate, wherever possible, discrimination against the procurement of products manufactured with recycled content and soybean-based inks.

f. The department of natural resources shall assist the commission in locating suppliers of products with recycled content and soybean-based inks, and collecting data on recycled content and soybean-based ink purchases.

g. The commission, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

h. The department of natural resources shall cooperate with the commission in all phases of implementing this section.

13. The commission shall, whenever technically feasible, purchase and use degradable loose

foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, “*packing material*” means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

14. Purchase and use recycled printing and writing paper in accordance with the schedule established in section 8A.315; establish a wastepaper recycling program in accordance with the recommendations made by the department of natural resources and requirements of section 8A.329; and, in accordance with section 8A.311, require product content statements and compliance with requirements regarding contract bidding.

15. Develop a plan to provide telephone yellow pages information without charge to persons declared to be blind under the standards in section 422.12, subsection 1, paragraph “e”. The department may apply for federal funds to support the service. The program shall be limited in scope by the availability of funds.

16. a. A motor vehicle purchased by the commission shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

b. Of all new passenger vehicles and light pickup trucks purchased by the commission, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

(1) A flexible fuel which is either of the following:

(a) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(b) A fuel which is a mixture of diesel fuel and processed soybean oil. At least twenty percent of the mixed fuel by volume must be processed soybean oil.

(c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

(2) Compressed or liquefied natural gas.

(3) Propane gas.

(4) Solar energy.

(5) Electricity.

The provisions of this paragraph “b” do not apply to vehicles and trucks purchased and directly

used for law enforcement or off-road maintenance work.

17. Comply with the requirements for the purchase of lubricating oils, industrial oils, greases,

and hydraulic fluids as established pursuant to section 8A.316.

2003 Acts, ch 145, §207  
Subsections 14 and 17 amended

## CHAPTER 217

### DEPARTMENT OF HUMAN SERVICES

#### 217.12 Council duties.

The family development and self-sufficiency council shall:

1. Identify the factors and conditions that place Iowa families at risk of long-term dependency upon the family investment program. The council shall seek to use relevant research findings and national and Iowa specific data on the family investment program.

2. Identify the factors and conditions that place Iowa families at risk of family instability and foster care placement. The council shall seek to use relevant research findings and national and Iowa specific data on the foster care system.

3. Subject to the availability of funds for this purpose, award grants to public or private organizations for provision of family development services to families at risk of long-term welfare dependency. Grant proposals for the family development and self-sufficiency grant program shall include the following elements:

*a.* Designation of families to be served that meet some criteria of being at risk of long-term welfare dependency, and agreement to serve clients that are referred by the department of human services from the family investment program which meet the criteria. The criteria may include, but are not limited to, factors such as educational level, work history, family structure, age of the youngest child in the family, previous length of stay on the family investment program, and participation in the family investment program or the foster care program while the head of a household was a child. Grant proposals shall also establish the number of families to be served under the grant.

*b.* Designation of the services to be provided for the families served, including assistance regarding job-seeking skills, family budgeting, nutrition, self-esteem, methamphetamine education, health and hygiene, child rearing, child education preparation, and goal setting. Grant proposals shall indicate the support groups and support systems to be developed for the families served during the transition between the need for assistance and self-sufficiency.

*c.* Designation of the manner in which other needs of the families will be provided including,

but not limited to, child care assistance, transportation, substance abuse treatment, support group counseling, food, clothing, and housing.

*d.* Designation of the training and recruitment of the staff which provides services, and the appropriateness of the training for the purposes of meeting family development and self-sufficiency goals of the families being served.

*e.* Designation of the support available within the community for the program and for meeting subsequent needs of the clients, and the manner in which community resources will be made available to the families being served.

*f.* Designation of the manner in which the program will be subject to audit and to evaluation.

*g.* Designation of agreement provisions for tracking and reporting performance measures developed pursuant to subsection 4.

Not more than five percent of any funds appropriated by the general assembly for the purposes of this subsection may be used for staffing and administration of the grants.

4. In cooperation with the legislative services agency, develop measures to independently evaluate the effectiveness of any grant funded under the program, that include measurement of the grantee's effectiveness in meeting its goals in a quantitative sense through reduction in length of stay on welfare programs or a reduced need for other state child and family welfare services. Families referred to the program shall be selected from those meeting the criteria established in the program as being at risk.

5. Seek to enlist research support from the Iowa research community in meeting the duties outlined in subsections 1 through 4.

6. Seek additional support for the funding of grants under the program, including but not limited to funds available through the federal government in serving families at risk of long-term welfare dependency, and private foundation grants.

7. Make recommendations to the governor and the general assembly on the effectiveness of early intervention programs in Iowa and throughout the country that provide family development services that lead to self-sufficiency for families at risk of long-term welfare dependency.

8. Evaluate and make recommendations re-

garding the costs and benefits of the expansion of the services provided under the special needs program of the family investment program to include tuition for parenting skills programs, family support and counseling services, child development services, and transportation and child care expenses associated with the programs and services.

2003 Acts, ch 35, §45, 49  
Terminology change applied

**217.23 Personnel — merit system — reimbursement for damaged property.**

1. The director of human services or the director's designee, shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the department. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of chapter 8A, subchapter IV.

2. The department is hereby authorized to expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed one hundred fifty dollars for each item. The department shall establish rules in accordance with

chapter 17A to carry out the purpose of this section.

2003 Acts, ch 145, §208  
Subsection 1 amended

**217.34 Debt setoff.**

The investigations division of the department of inspections and appeals and the department of human services shall provide assistance to set off against a person's or provider's income tax refund or rebate any debt which has accrued through written contract, subrogation, departmental recruitment procedures, or court judgment and which is in the form of a liquidated sum due and owing the department of human services. The department of inspections and appeals, with approval of the department of human services, shall adopt rules under chapter 17A necessary to assist the department of administrative services in the implementation of the setoff under section 8A.504 in regard to money owed to the state for public assistance overpayments. The department of human services shall adopt rules under chapter 17A necessary to assist the department of administrative services in the implementation of the setoff under section 8A.504, in regard to collections by the child support recovery unit and the foster care recovery unit.

2003 Acts, ch 145, §209  
Section amended

**CHAPTER 217A**

**PARENTAL INVOLVEMENT**

**217A.1 Parental involvement program.**

The department of human services shall convene an advisory group that includes representatives of the Iowa department of public health, the department of education, the department of workforce development, the department of corrections, the Iowa empowerment board, other state agencies that provide services to families, and representatives of business and industry, parents, faith-based organizations, and state and local community leaders, to present a plan to the general assembly that provides a comprehensive approach to policy and service delivery at the state,

county, and local level and provides a network of services to assist both mothers and fathers in parenting their children. While the comprehensive approach shall address the needs of both parents, the focus shall be on creating a policy and service delivery system that provides a network of resources to assist fathers in becoming and remaining engaged in their children's lives. The plan shall be submitted on or before December 31, 2003.

2003 Acts, ch 175, §36  
Item veto applied  
NEW section

**CHAPTER 218**

**INSTITUTIONS GOVERNED BY HUMAN SERVICES DEPARTMENT**

**218.10 Subordinate officers and employees.**

The administrator in charge of a particular institution, with the consent and approval of the director of human services, shall determine the

number of subordinate officers and employees for the institution. Subject to this chapter, the officers and employees shall be appointed and discharged by the superintendent or business manager pursuant to chapter 8A, subchapter IV. The superin-

tendent shall keep, in the record of each subordinate officer and employee, the date of employment, the compensation, and the date of each discharge, and the reasons for discharge.

2003 Acts, ch 145, §210  
Section amended

**218.16 Annuity contracts for employees.**  
Repealed by 86 Acts, ch 1245, § 264. See § 8A.438.

Repeal entry revised

**218.50 Requisition for contingent fund.**

If necessary, the director of the department of human services shall make proper requisition upon the director of the department of administrative services for a warrant on the state treasurer to secure the said contingent fund for each institution.

2003 Acts, ch 145, §286  
Terminology change applied

**218.57 Combining appropriations.**

The director of the department of administrative services may combine the balances carried in all specific appropriations into a special account for each institution under the control of a particular administrator, except that the support fund for each institution shall be carried as a separate account.

2003 Acts, ch 145, §286  
Terminology change applied

**218.58 Construction, repair, and improvement projects — emergencies — rules.**

The department shall work with the department of administrative services to accomplish the following responsibilities:

1. The department shall prepare and submit to the director of the department of management, as provided in section 8.23, a multiyear construction program including estimates of the expenditure requirements for the construction, repair, or improvement of buildings, grounds, or equipment at the institutions listed in section 218.1.

2. The director shall have plans and specifications prepared by the department of administrative services for authorized construction, repair, or improvement projects costing over twenty-five thousand dollars. An appropriation for a project shall not be expended until the department of administrative services has adopted plans and specifications and has completed a detailed estimate of the cost of the project, prepared under the supervision of a registered architect or registered professional engineer. Plans and specifications shall not be adopted and a project shall not proceed if the project would require an expenditure of money in excess of the appropriation.

3. The department of administrative services shall let all contracts under chapter 8A, subchapter III, for authorized construction, repair, or im-

provement of departmental buildings, grounds, or equipment.

4. If the director of the department of human services and the director of the department of administrative services determine that emergency repairs or improvements estimated to cost more than twenty-five thousand dollars are necessary to assure the continued operation of a departmental institution, the requirements of subsections 2 and 3 for preparation of plans and specifications and competitive procurement procedures are waived. A determination of necessity for waiver by the director of the department of human services and the director of the department of administrative services shall be in writing and shall be entered in the project record for emergency repairs or improvements. Emergency repairs or improvements shall be accomplished using plans and specifications and competitive procurement procedures to the greatest extent possible, considering the necessity for rapid completion of the project. A waiver of the requirements of subsections 2 and 3 does not authorize an expenditure in excess of an amount otherwise authorized for the repair or improvement.

5. A claim for payment relating to a project shall be itemized on a voucher form pursuant to section 8A.514, certified by the claimant and the architect or engineer in charge, and audited and approved by the department of administrative services. Upon approval by the department of administrative services, the director of the department of administrative services shall draw a warrant to be paid by the treasurer of state from funds appropriated for the project. A partial payment made before completion of the project does not constitute final acceptance of the work or a waiver of any defect in the work.

6. Subject to the prior approval of the administrator in control of a departmental institution, minor projects costing five thousand dollars or less may be authorized and completed by the executive head of the institution through the use of day labor. A contract is not required if a minor project is to be completed with the use of resident labor.

2003 Acts, ch 145, §211, 286  
Terminology change applied  
Subsections 3 and 5 amended

**218.85 Uniform system of accounts.**

The director of human services through the administrators in control of the institutions shall install in all the institutions the most modern, complete, and uniform system of accounts, records, and reports possible. The system shall be prescribed by the director of the department of administrative services as authorized in section 8A.502, subsection 13, and, among other matters, shall clearly show the detailed facts relative to the handling and uses of all purchases.

2003 Acts, ch 145, §212  
Requirement of auditor of state, §11.5  
Section amended

**218.86 Abstract of claims.**

Vouchers for expenditures other than salaries shall be submitted to the director of the department of administrative services, who shall prepare in triplicate an abstract of claims submitted showing the name of the claimant and the institutions and institutional fund on account of which the payment is made. The claims and abstracts of claims shall be returned to the director of the department of human services where the correctness of the abstracts shall be certified by the director. The original abstract shall be delivered to the director of the department of administrative services, the duplicate to be retained in the office of the director of the department of human services and the triplicate forwarded to the proper institution to be retained as a record of claims paid.

2003 Acts, ch 145, §286  
Terminology change applied

**218.87 Warrants issued by director of the department of administrative services.**

Upon such certificate the director of the department of administrative services shall, if the institution named has sufficient funds, issue the director's warrants upon the state treasurer, for the amounts and to the claimants indicated thereon. The director of the department of administrative

services shall deliver the warrants thus issued to the director of human services, who will cause same to be transmitted to the payees thereof.

2003 Acts, ch 145, §286  
Terminology change applied

**218.89 Abstracts of payrolls.** Repealed by 2003 Acts, ch 145, § 291.

**218.100 Central warehouse and supply depot.**

The department of human services shall establish a fund for maintaining and operating a central warehouse as a supply depot and distribution facility for surplus government products, carload canned goods, paper products, other staples, and such other items as determined by the department. The fund shall be permanent and shall be composed of the receipts from the sales of merchandise, recovery of handling, operating and delivery charges of such merchandise, and from the funds contributed by the institutions now in a contingent fund being used for this purpose. All claims for purchases of merchandise, operating, and salary expenses shall be subject to the provisions of sections 218.86 to 218.88.

2003 Acts, ch 145, §213  
Section amended

## CHAPTER 225

### PSYCHIATRIC HOSPITAL

**225.22 Liability of private patients — payment.**

Every committed private patient, if the patient has an estate sufficient for that purpose, or if those legally responsible for the patient's support are financially able, shall be liable to the county and state for all expenses paid by them in behalf of such patient. All bills for the care, nursing, observation, treatment, medicine, and maintenance of such patients shall be paid by the director of the department of administrative services in the same manner as those of committed and voluntary public patients as provided in this chapter, unless the patient or those legally responsible for the patient make such settlement with the state psychiatric hospital.

2003 Acts, ch 145, §286  
Terminology change applied

**225.23 Collection for treatment.**

If the bills for such patient are paid by the state, it shall be the duty of the state psychiatric hospital to file a certified copy of the claim which has been so paid, with the auditor of the proper county, who shall proceed to collect the same by action, if necessary, in the name of the state psychiatric hospital,

and when collected pay the same to the director of the department of administrative services. The hospital shall also, at the same time, forward a duplicate of the account to the director of the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

**225.28 Appropriation.**

The state shall pay to the state psychiatric hospital, out of any money in the state treasury not otherwise appropriated, all expenses for the administration of the hospital, and for the care, treatment, and maintenance of committed and voluntary public patients therein, including their clothing and all other expenses of the hospital for the public patients. The bills for the expenses shall be rendered monthly in accordance with rules agreed upon by the director of the department of administrative services and the state board of regents.

2003 Acts, ch 145, §286  
Terminology change applied

**225.30 Blanks — audit.**

The medical faculty of the university of Iowa col-

lege of medicine shall prepare blanks containing such questions and requiring such information as may be necessary and proper to be obtained by the physician who examines a person or respondent whose referral to the state psychiatric hospital is contemplated. A judge may request that a physician who examines a respondent as required by section 229.10 complete such blanks in duplicate in the course of the examination. A physician who proposes to file information under section 225.10

shall obtain and complete such blanks in duplicate and file them with the information. The blanks shall be printed by the state and a supply thereof shall be sent to the clerk of each district court of the state. The director of the department of administrative services shall audit, allow, and pay the cost of the blanks as other bills for public printing are allowed and paid.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 225C

### MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, OR BRAIN INJURY

#### **225C.5 Mental health and developmental disabilities commission.**

1. A mental health and developmental disabilities commission is created as the state policy-making body for the provision of services to persons with mental illness, mental retardation or other developmental disabilities, or brain injury. The commission shall consist of sixteen voting members appointed to three-year staggered terms by the governor and subject to confirmation by the senate. Commission members shall be appointed on the basis of interest and experience in the fields of mental health, mental retardation or other developmental disabilities, and brain injury, in a manner so as to ensure adequate representation from persons with disabilities and individuals knowledgeable concerning disability services. The department shall provide staff support to the commission, and the commission may utilize staff support and other assistance provided to the commission by other persons. The commission shall meet at least four times per year. Members of the commission shall include the following persons who, at the time of appointment to the commission, are active members of the indicated groups:

*a.* Three members shall be members of a county board of supervisors selected from nominees submitted by the county supervisor affiliate of the Iowa state association of counties.

*b.* Two members shall be selected from nominees submitted by the director.

*c.* One member shall be an active board member of a community mental health center selected from nominees submitted by the Iowa association of community providers.

*d.* One member shall be an active board member of an agency serving persons with a developmental disability selected from nominees submitted by the Iowa association of community providers.

*e.* One member shall be a board member or employee of a provider of mental health or develop-

mental disabilities services to children.

*f.* Two members shall be administrators of the single entry point process established in accordance with section 331.440 selected from nominees submitted by the community services affiliate of the Iowa state association of counties.

*g.* One member shall be selected from nominees submitted by the state's council of the association of federal, state, county, and municipal employees.

*h.* Three members shall be service consumers or family members of service consumers. Of these members, one shall be a service consumer, one shall be a parent of a child service consumer, and one shall be a parent or other family member of a person admitted to and living at a state resource center.

*i.* Two members shall be selected from nominees submitted by service advocates. Of these members, one shall be an active member of a statewide organization for persons with brain injury.

*j.* In addition to the voting members, the membership shall include four members of the general assembly with one member designated by each of the following: the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives. A legislative member serves in an ex officio, nonvoting capacity and is eligible for per diem and expenses as provided in section 2.10.

2. The three-year terms shall begin and end as provided in section 69.19. Vacancies on the commission shall be filled as provided in section 2.32. A member shall not be appointed for more than two consecutive three-year terms.

3. Members of the commission shall qualify by taking the oath of office prescribed by law for state officers. At its first meeting of each year, the commission shall organize by electing a chairperson and a vice chairperson for terms of one year. Commission members are entitled to a per diem as

specified in section 7E.6 and reimbursement for actual and necessary expenses incurred while engaged in their official duties, to be paid from funds appropriated to the department.

2003 Acts, ch 101, §3, 4  
Confirmation; §2.32  
Subsection 1, paragraph c amended

**225C.12 Partial reimbursement to counties for local inpatient mental health care and treatment.**

1. A county which pays, from county funds budgeted under section 331.424A, the cost of care and treatment of a person with mental illness who is admitted pursuant to a preliminary diagnostic evaluation under sections 225C.14 to 225C.17 for treatment as an inpatient of a hospital facility, other than a state mental health institute, which has a designated mental health program and is a hospital accredited by the accreditation program for hospital facilities of the joint commission on accreditation of health care organizations, is entitled to reimbursement from the state for a portion of the daily cost so incurred by the county. However, a county is not entitled to reimbursement for a cost incurred in connection with the hospitalization of a person who is eligible for medical assistance under chapter 249A, or who is entitled to have care or treatment paid for by any other third-party payor, or who is admitted for preliminary diagnostic evaluation under sections 225C.14 to 225C.17. The amount of reimbursement for the cost of treatment of a local inpatient to which a county is entitled, on a per-patient-per-day basis, is an amount equal to twenty percent of the average of the state mental health institutes' individual average daily patient costs in the most recent calendar quarter for the program in which the local inpatient would have been served if the patient had been admitted to a state mental health institute.

2. A county may claim reimbursement by filing with the administrator a claim in a form prescribed by the administrator by rule. Claims may be filed on a quarterly basis, and when received shall be verified as soon as reasonably possible by the administrator. The administrator shall certify to the director of the department of administrative services the amount to which each county claiming reimbursement is entitled, and the director of the department of administrative services shall issue warrants to the respective counties drawn upon funds appropriated by the general assembly for the purpose of this section. A county shall place funds received under this section in the county mental health, mental retardation, and developmental disabilities services fund created under section 331.424A. If the appropriation for a fiscal year is insufficient to pay all claims arising under

this section, the director of the department of administrative services shall prorate the funds appropriated for that year among the claimant counties so that an equal proportion of each county's claim is paid in each quarter for which proration is necessary.

2003 Acts, ch 145, §286  
Terminology change applied

**225C.42 Annual evaluation of program.**

1. The department shall conduct an annual evaluation of the family support subsidy program and shall submit the evaluation report with recommendations to the governor and general assembly by September 30 following the end of the fiscal year.

2. The evaluation content shall include but is not limited to all of the following items:

a. A statement of the number of children and families served by the program during the fiscal year and the number remaining on the waiting list at the end of the fiscal year.

b. A description of the children and family needs to which payments were applied.

c. An analysis of the extent to which payments enabled children to remain in their homes. The analysis shall include but is not limited to all of the following items concerning children affected by the payments: the number and percentage of children who remained with their families; the number and percentage of children who returned to their home from an out-of-home placement and the type of placement from which the children returned; and the number of children who received an out-of-home placement during the fiscal year and the type of placement.

d. An analysis of parent satisfaction with the program.

e. An analysis of efforts to encourage program participation by eligible families.

f. The results of a survey of families participating in the program in order to assess the adequacy of subsidy payment amounts and the degree of unmet need for services and supports.

3. The evaluation content may include any of the following items:

a. An overview of the reasons families voluntarily terminated participation in the family support subsidy program and the involvement of the department in offering suitable alternatives.

b. The geographic distribution of families receiving subsidy payments.

c. An overview of problems encountered by families in applying for the program, including obtaining documentation of eligibility.

Requirements relating to an annual evaluation are suspended for the period beginning July 1, 2003, and ending June 30, 2004; 2003 Acts, ch 175, §46

Section not amended; footnote revised

## CHAPTER 227

### COUNTY AND PRIVATE HOSPITALS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

#### **227.7 Cost — collection from county.**

The cost of such removal, including all expenses of said attendant, shall be certified by the superintendent of the hospital receiving the patient, to the director of the department of administrative services, who shall draw a warrant upon the treasurer of state for said sum, which shall be credited to

the support fund of said hospital and charged against the general revenues of the state and collected by the director of the department of administrative services from the county which sent said patient to said institution.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 229

### HOSPITALIZATION OF PERSONS WITH MENTAL ILLNESS

#### **229.22 Hospitalization — emergency procedure.**

1. The procedure prescribed by this section shall not be used unless it appears that a person should be immediately detained due to serious mental impairment, but that person cannot be immediately detained by the procedure prescribed in sections 229.6 and 229.11 because there is no means of immediate access to the district court.

2. In the circumstances described in subsection 1, any peace officer who has reasonable grounds to believe that a person is mentally ill, and because of that illness is likely to physically injure the person's self or others if not immediately detained, may without a warrant take or cause that person to be taken to the nearest available facility as defined in section 229.11, subsections 2 and 3. A person believed mentally ill, and likely to injure the person's self or others if not immediately detained, may be delivered to a hospital by someone other than a peace officer. Upon delivery of the person believed mentally ill to the hospital, the examining physician may order treatment of that person, including chemotherapy, but only to the extent necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The peace officer who took the person into custody, or other party who brought the person to the hospital, shall describe the circumstances of the matter to the examining physician. If the person is a peace officer, the peace officer may do so either in person or by written report. If the examining physician finds that there is reason to believe that the person is seriously mentally impaired, and because of that impairment is likely to physically injure the person's self or others if not immediately detained, the examining physician shall at once communicate

with the nearest available magistrate as defined in section 801.4, subsection 10. The magistrate shall, based upon the circumstances described by the examining physician, give the examining physician oral instructions either directing that the person be released forthwith or authorizing the person's detention in an appropriate facility. The magistrate may also give oral instructions and order that the detained person be transported to an appropriate facility.

If the magistrate orders that the person be detained, the magistrate shall, by the close of business on the next working day, file a written order with the clerk in the county where it is anticipated that an application may be filed under section 229.6. The order may be filed by facsimile if necessary. The order shall state the circumstances under which the person was taken into custody or otherwise brought to a facility, and the grounds supporting the finding of probable cause to believe that the person is seriously mentally impaired and likely to injure the person's self or others if not immediately detained. The order shall confirm the oral order authorizing the person's detention including any order given to transport the person to an appropriate facility. The clerk shall provide a copy of that order to the chief medical officer of the facility to which the person was originally taken, to any subsequent facility to which the person was transported, and to any law enforcement department or ambulance service that transported the person pursuant to the magistrate's order.

3. The chief medical officer of the hospital shall examine and may detain and care for the person taken into custody under the magistrate's order for a period not to exceed forty-eight hours from the time such order is dated, excluding Saturdays, Sundays and holidays, unless the order is sooner dismissed by a magistrate. The hospital

may provide treatment which is necessary to preserve the person's life, or to appropriately control behavior by the person which is likely to result in physical injury to the person's self or others if allowed to continue, but may not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the hospital and released from custody not later than the expiration of that period, unless an application for the person's involuntary hospitalization is sooner filed with the clerk pursuant to section 229.6. The detention of any person by the procedure and not in excess of the period of time prescribed by this section shall not render the peace officer, physician or hospital so detaining that person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician or hospital had reasonable grounds to believe the person so detained was mentally ill and likely to physically injure the person's self or others if not immediately detained.

4. The cost of hospitalization at a public hospital of a person detained temporarily by the procedure prescribed in this section shall be paid in the same way as if the person had been admitted to the hospital by the procedure prescribed in sections 229.6 to 229.13.

2003 Acts, ch 68, §3, 4  
 Subsection 2 amended  
 Subsection 3 stricken and former subsections 4 and 5 renumbered as 3 and 4

### **229.26 Exclusive procedure for involuntary hospitalization.**

Sections 229.6 through 229.19 constitute the exclusive procedure for involuntary hospitalization of persons by reason of serious mental impairment in this state, except that this chapter does not negate the provisions of section 904.503 relating to transfer of prisoners with mental illness to state hospitals for persons with mental illness and does not apply to commitments of persons under chapter 812 or the rules of criminal procedure, Iowa court rules, or negate the provisions of section 232.51 relating to disposition of children with mental illness or mental retardation.

2003 Acts, ch 108, §125, 132  
 Section not amended; section history revised

### **229.35 Compensation — payment.**

Said commissioners shall be entitled to their necessary expenses and a reasonable compensation, to be allowed by the judge, who shall certify the same to the director of the department of administrative services who shall thereupon draw the proper warrants on any funds in the state treasury not otherwise appropriated. The applicant shall pay said costs and expenses if the judge shall so order on a finding that the complaint was filed without probable cause.

2003 Acts, ch 145, §286  
 Appropriation limited for fiscal years beginning on or after July 1, 1993, see §8.59  
 Terminology change applied

## CHAPTER 229A

### COMMITMENT OF SEXUALLY VIOLENT PREDATORS

#### **229A.8A Transitional release.**

1. The department of human services is authorized to establish a transitional release program and provide control, care, and treatment, and supervision of committed persons placed in such a program.

2. A committed person is suitable for placement in the transitional release program if the court finds that all of the following apply:

*a.* The committed person's mental abnormality is no longer such that the person is a high risk to reoffend.

*b.* The committed person has achieved and demonstrated significant insights into the person's sex offending cycle.

*c.* The committed person has accepted responsibility for past behavior and understands the impact sexually violent crimes have upon a victim.

*d.* A detailed relapse prevention plan has been developed and accepted by the treatment provider which is appropriate for the committed person's mental abnormality and sex offending history.

*e.* No major discipline reports have been issued for the committed person for a period of six

months.

*f.* The committed person is not likely to escape or attempt to escape custody pursuant to section 229A.5B.

*g.* The committed person is not likely to engage in predatory acts constituting sexually violent offenses while in the program.

*h.* The placement is in the best interest of the committed person.

*i.* The committed person has demonstrated a willingness to agree to and abide by all rules of the program.

3. If the committed person does not agree to the conditions of release, the person is not eligible for the transitional release program.

4. For purposes of registering as a sex offender under chapter 692A, a person placed in the transitional release program shall be classified a "high-risk" sex offender and public notification shall be as provided in section 692A.13A, subsection 2. A committed person who refuses to register as a sex offender is not eligible for placement in a transitional release program.

5. Committed persons in the transitional re-

lease program are not necessarily required to be segregated from other persons.

6. The department of human services shall be responsible for establishing and implementing the rules and directives regarding the location of the transitional release program, staffing needs, restrictions on confinement and the movement of committed persons, and for assessing the progress of committed persons in the program. The court may also impose conditions on a committed person placed in the program.

7. The department of human services may contract with other government or private agencies, including the department of corrections, to implement and administer the transitional release program.

2003 Acts, ch 44, §47

Subsection 2, paragraph g amended

#### **229A.10 Petition for discharge — procedure.**

1. If the director of human services determines that the person's mental abnormality has so changed that the person is not likely to engage in

predatory acts that constitute sexually violent offenses if discharged, the director shall authorize the person to petition the court for discharge. The petition shall be served upon the court and the attorney general. The court, upon receipt of the petition for discharge, shall order a hearing within thirty days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the attorney general's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. If the attorney general objects to the petition for discharge, the burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is likely to engage in predatory acts that constitute sexually violent offenses if discharged.

2. Upon a finding that the state has failed to meet its burden of proof under this section, the court shall authorize the committed person to be discharged.

2003 Acts, ch 44, §48

Subsection 1 amended

## CHAPTER 230A

### COMMUNITY MENTAL HEALTH CENTERS

#### **230A.12 Center organized as nonprofit corporation — agreement with county.**

Each community mental health center established or continued in operation pursuant to section 230A.3, shall be organized under the Iowa nonprofit corporation Act appearing as chapter 504A, except that a community mental health center organized under former chapter 504 prior to July 1, 1974, and existing under the provisions of chapter 504, Code 1989, shall not be required by this chapter to adopt the Iowa nonprofit corporation Act if it is not otherwise required to do so by law. The board of directors of each such community mental health center shall enter into an agreement with the county or affiliated counties which are to be served by the center, which agreement shall include but need not be limited to the period of time for which the agreement is to be in force, what services the center is to provide for residents of the county or counties to be served, standards the center is to follow in determining whether and to what extent persons seeking services from the center shall be considered able to pay the cost of the services received, and policies regarding availability of the center's services to persons who are not residents of the county or counties served by

the center. The board of directors, in addition to exercising the powers of the board of directors of a nonprofit corporation may:

1. Recruit, promote, accept and use local financial support for the community mental health center from private sources such as community service funds, business, industrial and private foundations, voluntary agencies, and other lawful sources.

2. Accept and expend state and federal funds available directly to the community mental health center for all or any part of the cost of any service the center is authorized to provide.

3. Enter into a contract with an affiliate, which may be an individual or a public or private group, agency or corporation, organized and operating on either a profit or a nonprofit basis, for any of the services described in section 230A.2, to be provided by the affiliate to residents of the county or counties served by the community mental health center who are patients or clients of the center and are referred by the center to the affiliate for service.

2003 Acts, ch 108, §44

Unnumbered paragraph 1 amended

## CHAPTER 231

### DEPARTMENT OF ELDER AFFAIRS — ELDER IOWANS

#### 231.3 State policy and objectives.

The general assembly declares that it is the policy of the state to work toward attainment of the following objectives for Iowa's elders:

1. An adequate income.
2. Access to physical and mental health care without regard to economic status.
3. Suitable housing that reflects the needs of older people.
4. Full restorative services for those who require institutional care, and a comprehensive array of community-based, long-term care services adequate to sustain older people in their communities and, whenever possible, in their homes, including support for caregivers.
5. Pursuit of meaningful activity within the widest range of civic, cultural, educational, recreational, and employment opportunities.
6. Suitable community transportation systems to assist in the attainment of independent movement.
7. Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives.

2003 Acts, ch 141, §1  
Subsections 1, 3, and 4 amended

#### 231.4 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "*Administrative action*" means an action or decision made by an owner, employee, or agent of a long-term care facility, or by a governmental agency, which affects the service provided to residents covered in this chapter.
2. "*Commission*" means the commission of elder affairs.
3. "*Department*" means the department of elder affairs.
4. "*Director*" means the director of the department of elder affairs.
5. "*Elder*" means an individual who is sixty years of age or older. "*Elderly*" means individuals sixty years of age or older.
6. "*Equivalent support*" means in-kind contributions of services, goods, volunteer support time, administrative support, or other support reasonably determined by the department as equivalent to a dollar amount.
7. "*Federal Act*" means the Older Americans Act of 1965, 42 U.S.C. § 3001 et seq., as amended.
8. "*Long-term care facility*" means a long-term care unit of a hospital or a facility licensed under section 135C.1 whether the facility is public or private.
9. "*Resident's advocate program*" means the state long-term care resident's advocate program

operated by the department of elder affairs and administered by the long-term care resident's advocate.

10. "*Unit of general purpose local government*" means a political subdivision of the state whose authority is general and not limited to one function or combination of related functions.

For the purposes of this chapter, "*focal point*", "*greatest economic need*", and "*greatest social need*" mean as those terms are defined in the federal Act.

2003 Acts, ch 141, §2  
Section amended

#### 231.13 Meetings — officers.

Members of the commission shall elect from the commission's membership a chairperson, and other officers as commission members deem necessary, who shall serve for a period of two years. The commission shall meet at regular intervals at least four times each year and may hold special meetings at the call of the chairperson or at the request of a majority of the commission membership. The commission shall meet at the seat of government or such other place as the commission may designate. Members shall be paid a per diem as specified in section 7E.6 and shall receive reimbursement for actual expenses for their official duties.

2003 Acts, ch 141, §3  
Section amended

#### 231.14 Commission duties and authority.

The commission is the policymaking body of the sole state agency responsible for administration of the federal Act. The commission shall:

1. Approve state and area plans on aging.
2. Adopt policies to coordinate state activities related to the purposes of this chapter.
3. Serve as an effective and visible advocate for elders by establishing policies for reviewing and commenting upon all state plans, budgets, and policies which affect elders and for providing technical assistance to any agency, organization, association, or individual representing the needs of elders.
4. Divide the state into distinct planning and service areas after considering the geographical distribution of elders in the state, the incidence of the need for supportive services, nutrition services, multipurpose senior centers, and legal services, the distribution of elders who have low incomes residing in such areas, the distribution of resources available to provide such services or centers, the boundaries of existing areas within the state which are drawn for the planning or administration of supportive services programs, the location of units of general purpose, local govern-

ment within the state, and any other relevant factors.

5. Designate for each planning and service area a public or private nonprofit agency or organization as the area agency on aging for that area.

6. Adopt policies to assure that the department will take into account the views of elders in the development of policy.

7. Adopt a formula for the distribution of federal Act, state elderly services, and senior living program funds taking into account, to the maximum extent feasible, the best available data on the geographic distribution of elders in the state, and publish the formula for review and comment.

8. Adopt policies and measures to assure that preference will be given to providing services to elders with the greatest economic or social needs, with particular attention to low-income minority elders.

9. Adopt policies to administer state programs authorized by this chapter.

The commission shall adopt administrative rules pursuant to chapter 17A to implement the duties specified in this chapter.

2003 Acts, ch 141, §4  
Unnumbered paragraph 1 amended  
Subsections 6 – 8 amended  
Subsection 10 stricken

### 231.22 Director.

The governor, subject to confirmation by the senate, shall appoint a director of the department of elder affairs who shall, subject to chapter 8A, subchapter IV, employ and direct staff as necessary to carry out the powers and duties created by this chapter. The director shall serve at the pleasure of the governor. However, the director is subject to reconfirmation by the senate as provided in section 2.32, subsection 8. The governor shall set the salary for the director within the range set by the general assembly.

The director shall have the following qualifications and training:

1. Training in the field of gerontology, social work, public health, public administration, or other related fields.

2. Direct experience or extensive knowledge of programs and services related to elders.

3. Demonstrated understanding and concern for the welfare of elders.

4. Demonstrated competency and recent working experience in an administrative, supervisory, or management position.

2003 Acts, ch 145, §214  
Confirmation, see §2.32  
Unnumbered paragraph 1 amended

### 231.23 Department of elder affairs — duties and authority.

The department of elder affairs director shall:

1. Develop and administer a state plan on aging.

2. Assist the commission in the review and ap-

proval of area plans.

3. Pursuant to commission policy, coordinate state activities related to the purposes of this chapter.

4. Advocate for elders by reviewing and commenting upon all state plans, budgets, laws, rules, regulations, and policies which affect elders and by providing technical assistance to any agency, organization, association, or individual representing the needs of the elders.

5. Assist the commission in dividing the state into distinct planning and service areas.

6. Assist the commission in designating for each area a public or private nonprofit agency or organization as the area agency on aging for that area.

7. Pursuant to commission policy, take into account the views of elder Iowans.

8. Assist the commission in adopting a formula for the distribution of funds available from the federal Act.

9. Assist the commission in assuring that preference will be given to providing services to elders with the greatest economic or social needs, with particular attention to low-income minority elders.

10. Assist the commission in developing, adopting, and enforcing administrative rules, by issuing necessary forms and procedures.

11. Apply for, receive, and administer grants and gifts to conduct projects consistent with the purposes of this chapter.

12. Administer state authorized programs.

2003 Acts, ch 141, §5  
Subsection 4 amended

### 231.23A Programs and services.

The department of elder affairs shall provide or administer, but is not limited to providing or administering, all of the following programs and services:

1. Elderly services including but not limited to home and community-based services such as adult day services, assessment and intervention, transportation, chore services, counseling, homemaker services, material aid, personal care, reassurance, respite services, visitation, caregiver support, emergency response system services, mental health outreach, and home repair.

2. The senior internship program.

3. The retired senior volunteer program.

4. The case management program for the frail elderly.

5. Administration relating to the long-term care resident's advocate program and training for resident advocate committees.

6. Administration relating to the area agencies on aging.

7. Other programs and services authorized by law.

2003 Acts, ch 141, §6  
NEW section

**231.24 Information on acceptance of Medicare assignments.** Repealed by 2003 Acts, ch 141, § 16.

**231.31 State plan on aging.**

The department of elder affairs shall develop, and submit to the commission of elder affairs for approval, a multiyear state plan on aging. The state plan on aging shall meet all applicable federal requirements.

2003 Acts, ch 141, §7  
Section stricken and rewritten

**231.32 Criteria for designation of area agencies on aging.**

1. The commission shall designate thirteen area agencies on aging, the same of which existed on July 1, 1985. The commission shall continue the designation until an area agency on aging's designation is removed for cause as determined by the commission or until the agency voluntarily withdraws as an area agency on aging. In that event, the commission shall proceed in accordance with subsections 2 and 3. Designated area agencies on aging shall comply with the requirements of the federal Act.

2. The commission shall designate an area agency to serve each planning and service area, after consideration of the views offered by units of general purpose local government. An area agency may be:

*a.* An established office of aging which is operating within a planning and service area designated by the commission.

*b.* Any office or agency of a unit of general purpose local government, which is designated for the purpose of serving as an area agency by the chief elected official of such unit.

*c.* Any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act on behalf of the combination for such purpose.

*d.* Any public or nonprofit private agency in a planning and service area or any separate organizational unit within such agency which is under the supervision or direction for this purpose of the department of elder affairs and which can engage in the planning or provision of a broad range of supportive services or nutrition services within the planning and service area.

Each area agency shall provide assurance, determined adequate by the commission, that the area agency has the ability to develop an area plan and to carry out, directly or through contractual or other arrangements, a program in accordance with the plan within the planning and service area. In designating an area agency on aging within the planning and service area, the commission shall give preference to an established office of aging, unless the commission finds that no such office within the planning and service area has the

capacity to carry out the area plan.

3. When the commission designates a new area agency on aging the commission shall give the right of first refusal to a unit of general purpose local government if:

*a.* Such unit can meet the requirements of subsection 1.

*b.* The boundaries of such a unit and the boundaries of the area are reasonably contiguous.

2003 Acts, ch 141, §8  
Section amended

**231.33 Area agencies on aging duties.**

Each area agency on aging shall:

1. Develop and administer an area plan on aging.

2. Assess the types and levels of services needed by older persons in the planning and service area, and the effectiveness of other public or private programs serving those needs.

3. Enter into subgrants or contracts to provide services under the plan.

4. Provide technical assistance as needed, prepare written monitoring reports at least quarterly, and provide a written report of an annual on-site assessment of all service providers funded by the area agency.

5. Coordinate the administration of its plan with federal programs and with other federal, state, and local resources in order to develop a comprehensive and coordinated service system.

6. Establish an advisory council.

7. Give preference in the delivery of services under the area plan to elders with the greatest economic or social need.

8. Assure that elders in the planning and service area have reasonably convenient access to information and referral services.

9. Provide adequate and effective opportunities for elders to express their views to the area agency on policy development and program implementation under the area plan.

10. Designate community focal points.

11. Contact outreach efforts, with special emphasis on the rural elderly, to identify elders with greatest economic or social needs and inform them of the availability of services under the area plan.

12. Develop and publish the methods that the agency uses to establish preferences and priorities for services.

13. Submit all fiscal and performance reports in accordance with the policies of the commission.

14. Monitor, evaluate, and comment on laws, rules, regulations, policies, programs, hearings, levies, and community actions which significantly affect the lives of elders.

15. Conduct public hearings on the needs of elders.

16. Represent the interests of elders to public officials, public and private agencies, or organizations.

17. Coordinate activities in support of the

statewide long-term care resident's advocate program.

18. Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for elders.

19. Coordinate planning with other agencies for assuring the safety of elders in a natural disaster or other safety threatening situation.

2003 Acts, ch 141, §9  
Section amended

#### **231.41 Purpose.**

The purpose of this subchapter is to establish the long-term care resident's advocate program operated by the Iowa commission of elder affairs in accordance with the requirements of the federal Act, and to adopt the supporting federal regulations and guidelines for its implementation. In accordance with chapter 17A, the commission of elder affairs shall adopt and enforce rules for the implementation of this subchapter.

2003 Acts, ch 141, §10  
Section amended

#### **231.42 Long-term care resident's advocate — duties.**

The Iowa commission of elder affairs, in accordance with section 3027(a)(12) of the federal Act, shall establish the office of long-term care resident's advocate within the department. The long-term care resident's advocate shall:

1. Investigate and resolve complaints about administrative actions that may adversely affect the health, safety, welfare, or rights of residents in long-term care facilities, excluding facilities licensed primarily to serve persons with mental retardation or mental illness.

2. Monitor the development and implementation of federal, state, and local laws, regulations, and policies that relate to long-term care facilities in Iowa.

3. Provide information to other agencies and to the public about the problems of residents in long-term care facilities, excluding facilities licensed primarily to serve persons with mental retardation or mental illness.

4. Train volunteers and assist in the development of citizens' organizations to participate in the long-term care resident's advocate program.

5. Carry out other activities consistent with the state long-term care ombudsman program provisions of the federal Act.

6. Administer the resident advocate committee program.

7. Report annually to the general assembly on the activities of the resident's advocate office.

The resident's advocate shall have access to long-term care facilities, private access to residents, access to residents' personal and medical records, and access to other records maintained by the facilities or governmental agencies pertaining only to the person on whose behalf a complaint is

being investigated.

2003 Acts, ch 141, §11  
Unnumbered paragraph 1 amended  
Subsections 1, 3, and 5 amended

#### **231.44 Resident advocate committee — duties — disclosure — liability.**

1. The resident advocate committee program is administered by the long-term care resident's advocate program.

2. The responsibilities of the resident advocate committee are in accordance with the rules adopted by the commission pursuant to chapter 17A. When adopting the rules, the commission shall consider the needs of residents of elder group homes as defined in section 231B.1 and each category of licensed health care facility as defined in section 135C.1, subsection 6, and the services each facility may render. The commission shall coordinate the development of rules with the mental health and developmental disabilities commission created in section 225C.5 to the extent the rules would apply to a facility primarily serving persons with mental illness, mental retardation, or a developmental disability. The commission shall coordinate the development of appropriate rules with other state agencies.

3. A long-term care facility shall disclose the names, addresses, and phone numbers of a resident's family members, if requested, to a resident advocate committee member, unless permission for this disclosure is refused in writing by a family member.

4. The state, any resident advocate committee member, any resident advocate coordinator, and any sponsoring area agency on aging are not liable for an action undertaken by a resident advocate committee member or a resident advocate committee coordinator in the performance of duty, if the action is undertaken and carried out reasonably and in good faith.

2003 Acts, ch 141, §12  
Subsections 2 - 4 amended

#### **231.54 Elderlaw education program.** Repealed by 2003 Acts, ch 141, § 16.

#### **231.56A Elder abuse initiative, emergency shelter, and support services projects.**

1. Through the state's service contract process adopted pursuant to section 8.47, the department shall identify area agencies on aging that have demonstrated the ability to provide a collaborative response to the immediate needs of elders in the area agency on aging service area for the purpose of implementing elder abuse initiative, emergency shelter, and support services projects. The projects shall be implemented only in the counties within an area agency on aging service area that have a multidisciplinary team established pursuant to section 235B.1.

2. The target population of the projects shall be any elder residing in the service area of an area

agency on aging who meets both of the following conditions:

*a.* Is the subject of a report of suspected dependent adult abuse pursuant to chapter 235B.

*b.* Is not receiving assistance under a county management plan approved pursuant to section 331.439.

3. The area agencies on aging implementing the projects shall identify allowable emergency shelter and support services, state funding, outcomes, reporting requirements, and approved community resources from which services may be obtained under the projects. The area agency on aging shall identify at least one provider of case management services for the project area.

4. The area agencies on aging shall implement the projects and shall coordinate the provider network through the use of referrals or other engagement of community resources to provide services to elders.

5. The department shall award funds to the area agencies on aging in accordance with the state's service contract process. Receipt and expenditures of moneys under the projects are subject to examination, including audit, by the department.

6. This section shall not be construed and is not intended as, and shall not imply, a grant of entitlement for services to individuals who are not otherwise eligible for the services or for utilization of services that do not currently exist or are not otherwise available.

2003 Acts, ch 98, §1; 2003 Acts, ch 179, §67  
NEW section

### **231.57 Coordination of advocacy.**

The department shall establish a program for the coordination of information and assistance provided within the state to assist elders in obtaining and protecting their rights and benefits. State and local agencies providing information and assistance to elders in seeking their rights and benefits shall cooperate with the department in developing and implementing this program.

2003 Acts, ch 141, §13  
Section amended

### **231.58 Senior living coordinating unit.**

1. A senior living coordinating unit is created within the department of elder affairs. The membership of the coordinating unit consists of:

*a.* The director of human services.  
*b.* The director of the department of elder affairs.

*c.* The director of public health.  
*d.* The director of the department of inspections and appeals.

*e.* Two members appointed by the governor.  
*f.* Four members of the general assembly, as ex officio, nonvoting members.

2. The legislative members of the unit shall be

appointed by the majority leader of the senate, after consultation with the president of the senate and the minority leader of the senate, and by the speaker of the house, after consultation with the majority leader and the minority leader of the house of representatives.

3. Nonlegislative members shall receive actual expenses incurred while serving in their official capacity and may also be eligible to receive compensation as provided in section 7E.6. Legislative members shall receive compensation pursuant to section 2.12.

4. The senior living coordinating unit shall:

*a.* Develop, for legislative review, the mechanisms and procedures necessary to implement a case-managed system of long-term care based on a uniform comprehensive assessment tool.

*b.* Develop common intake and release procedures for the purpose of determining eligibility at one point of intake and determining eligibility for programs administered by the departments of human services, public health, and elder affairs, such as the medical assistance program, federal food stamp program, and homemaker-home health aide programs.

*c.* Develop common definitions for long-term care services.

*d.* Develop procedures for coordination at the local and state level among the providers of long-term care, including when possible co-campusing of services. The director of the department of administrative services shall give particular attention to this section when arranging for office space pursuant to section 8A.321 for these three departments.

*e.* Prepare a long-range plan for the provision of long-term care services within the state.

*f.* Propose rules and procedures for the development of a comprehensive long-term care and community-based services program.

*g.* Submit a report of its activities to the governor and general assembly on January 15 of each year.

*h.* Provide direction and oversight for disbursement of moneys from the senior living trust fund created in section 249H.4.

*i.* Consult with the state universities and other institutions with expertise in the area of senior issues and long-term care.

2003 Acts, ch 141, §14; 2003 Acts, ch 145, §215  
Subsection 4, paragraphs a and d amended

**231.59 Insurance information.** Repealed by 2003 Acts, ch 141, § 16.

**231.60 Representative payee project.** Repealed by 2003 Acts, ch 141, § 16.

**231.61 Adult day services requirements — oversight.** Repealed by 2003 Acts, ch 165, § 20. See chapter 231D.

## CHAPTER 231A

### ELDER FAMILY HOMES

Repealed by 2003 Acts, ch 166, §28

## CHAPTER 231B

### ELDER GROUP HOMES

#### 231B.1 Definitions.

1. “*Ambulatory*” means the condition of a person who immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

2. “*Department*” means the department of elder affairs or the department’s designee.

3. “*Elder*” means a person sixty years of age or older.

4. “*Elder group home*” means a single-family residence that is operated by a person who is providing room, board, and personal care to three through five elders who are not related to the person providing the service within the third degree of consanguinity or affinity.

5. “*Personal care*” means assistance with the essential activities of daily living which the recipient can perform personally only with difficulty. “*Personal care*” may include bathing, personal hygiene, dressing, grooming, and the supervision of self-administered medications, but does not include the administration of medications.

2003 Acts, ch 166, §3  
Subsection 4 amended

#### 231B.2 Certification of elder group homes.

1. The department shall establish by rule in accordance with chapter 17A a special classification for elder group homes. An elder group home established pursuant to this subsection is exempt from the requirements of section 135.63.

2. The department shall adopt rules to establish requirements for certification of elder group homes. The requirements shall include but are not limited to all of the following:

a. Certification shall be for three years, unless revoked for good cause by the department.

b. An elder group home shall be inspected at the time of certification and subsequently upon receipt of a complaint.

c. An elder group home shall be staffed by an on-site manager twenty-four hours per day, seven days per week.

d. An elder group home shall be located in an area zoned for single-family or multiple-family housing or in an unincorporated area and shall be constructed in compliance with applicable local housing codes and the rules adopted for the special

classification by the state fire marshal. In the absence of local building codes, the facility shall comply with the state plumbing code established pursuant to section 135.11 and the state building code established pursuant to chapter 103A.

e. A minimum private space shall be required for each resident sufficient for sleeping and dressing.

f. A minimum level of training shall be required for persons providing personal care.

g. The commission of elder affairs shall adopt by rule procedures for appointing members of resident advocate committees for elder group homes.

h. Notwithstanding any other requirements relating to performance of visitations or meetings of a resident advocate committee, a resident advocate committee appointed for an elder group home shall perform no more than four visitations, annually, to fulfill the duties of the resident advocate committee in relation to the elder group home.

i. Elder group home tenants shall have reasonable access to community resources and shall have opportunities for integrated interaction with the community.

3. An elder group home established pursuant to this chapter shall be certified by the department of inspections and appeals.

4. A provider under the special classification shall comply with the rules adopted by the department for an elder group home.

5. Inspections and certification services shall be provided by the department of inspections and appeals.

2003 Acts, ch 166, §4, 5  
Subsection 2, paragraph c amended  
Subsections 3 and 5 amended

#### 231B.3 Referral to uncertified elder group home prohibited.

1. A person shall not place, refer, or recommend the placement of another person in an elder group home that is not certified pursuant to this chapter.

2. A person who has knowledge that an elder group home is operating without certification shall report the name and address of the home to the department of inspections and appeals. The department of inspections and appeals shall investigate a report made pursuant to this section.

2003 Acts, ch 166, §6  
Subsection 2 amended

## CHAPTER 231C

### ASSISTED LIVING PROGRAMS

#### 231C.1 Findings, purpose, and intent.

1. The general assembly finds that assisted living is an important part of the long-term care system in this state. Assisted living emphasizes the independence and dignity of the individual while providing services in a cost-effective manner.

2. The purposes of establishing an assisted living program include all of the following:

*a.* To encourage the establishment and maintenance of a safe and homelike environment for individuals of all income levels who require assistance to live independently but who do not require health-related care on a continuous twenty-four-hour per day basis.

*b.* To establish standards for assisted living programs that allow flexibility in design which promotes a social model of service delivery by focusing on individual independence, individual needs and desires, and consumer-driven quality of service.

*c.* To encourage general public participation in the development of assisted living programs for individuals of all income levels.

3. It is the intent of the general assembly that the department of elder affairs establish policy for assisted living programs and that the department of inspections and appeals enforce this chapter.

2003 Acts, ch 166, §7  
Section amended

#### 231C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Adult day services*” means adult day services as defined in section 231D.1.

2. “*Assisted living*” means provision of housing with services which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living to three or more tenants in a physical structure which provides a homelike environment. “*Assisted living*” also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. “*Assisted living*” includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included.

3. “*Department*” means the department of elder affairs created in chapter 231 or the department’s designee.

4. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board, or other

agency of any of these entities.

5. “*Health-related care*” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis, as defined by rule.

6. “*Instrumental activities of daily living*” means those activities that reflect the tenant’s ability to perform household and other tasks necessary to meet the tenant’s needs within the community, which may include but are not limited to shopping, cooking, housekeeping, chores, and traveling within the community.

7. “*Legal representative*” means a person appointed by the court to act on behalf of the tenant, or a person acting pursuant to a power of attorney.

8. “*Occupancy agreement*” means a written agreement entered into between an assisted living program and a tenant that clearly describes the rights and responsibilities of the assisted living program and a tenant, and other information required by rule. “*Occupancy agreement*” may include a separate signed lease and signed service agreement.

9. “*Personal care*” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, housekeeping essential to the health and welfare of the tenant, and supervising of self-administered medications, but does not include the administration of medications.

10. “*Recognized accrediting entity*” means a nationally recognized accrediting entity that the department recognizes as having specific assisted living program standards equivalent to the standards established by the department for assisted living programs.

11. “*Tenant*” means an individual who receives assisted living services through a certified assisted living program.

12. “*Tenant advocate*” means the office of long-term care resident’s advocate established in section 231.42.

13. “*Tenant’s representative*” means a tenant’s legal representative or any representative authorized by the tenant to act on behalf of the tenant.

2003 Acts, ch 165, §19; 2003 Acts, ch 166, §§, 9  
NEW subsection 1 and former subsection 1 amended and renumbered as 2

Former subsection 2 renumbered as 3  
NEW subsection 4 and former subsections 3 and 4 renumbered as 5 and 6

NEW subsections 7 and 8 and former subsection 5 renumbered as 9  
NEW subsection 10 and former subsection 6 amended and renumbered as 11

NEW subsections 12 and 13

### **231C.3 Certification of assisted living programs.**

1. The department shall establish by rule in accordance with chapter 17A, a program for certification and monitoring of assisted living programs. The department may adopt by reference with or without amendment, nationally recognized standards and rules for assisted living programs. The rules shall include specification of recognized accrediting entities and provisions related to dementia-specific programs. The standards and rules shall be formulated in consultation with the department of inspections and appeals, and affected industry, professional, and consumer groups and shall be designed to accomplish the purposes of this chapter and shall include but are not limited to rules relating to all of the following:

- a.* Provisions to ensure, to the greatest extent possible, the health, safety, and well-being and appropriate treatment of tenants.
- b.* Requirements that assisted living programs furnish the department of elder affairs and the department of inspections and appeals with specified information necessary to administer this chapter.
- c.* Standards for tenant evaluation or assessment, which may vary in accordance with the nature of the services provided or the status of the tenant.
- d.* Provisions for granting short-term waivers for tenants who exceed occupancy criteria.

2. In addition to the adoption of standards and rules for assisted living programs, the department in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups, shall issue interpretive guidelines, including the expectations of program certification monitors, to provide direction to assisted living programs in complying with certification requirements.

3. Each assisted living program operating in this state shall be certified by the department of inspections and appeals. If an assisted living program is voluntarily accredited by a recognized accrediting entity, the department of inspections and appeals shall certify the assisted living program on the basis of the voluntary accreditation. An assisted living program that is certified by the department of inspections and appeals on the basis of voluntary accreditation shall not be subject to payment of the certification fee prescribed in section 231C.18, but shall be subject to an administrative fee as prescribed by rule. An assisted living program certified under this section is exempt from the requirements of section 135.63 relating to certificate of need requirements.

4. The owner or manager of a certified assisted living program shall comply with the rules adopted by the department for an assisted living program. A person including a governmental unit

shall not represent an assisted living program to the public as an assisted living program or as a certified assisted living program unless and until the program is certified pursuant to this chapter.

5. *a.* Services provided by a certified assisted living program may be provided directly by staff of the assisted living program, by individuals contracting with the assisted living program to provide services, or by individuals employed by the tenant or with whom the tenant contracts if the tenant agrees to assume the responsibility and risk of the employment or the contractual relationship.

*b.* If a tenant is terminally ill and has elected to receive hospice services under the federal Medicare program from a Medicare-certified hospice program, the assisted living program and the Medicare-certified hospice program shall enter into a written agreement under which the hospice program retains professional management responsibility for those services.

6. The department of inspections and appeals may enter into contracts to provide certification and monitoring of assisted living programs. The department of inspections and appeals shall:

*a.* Have full access at reasonable times to all records, materials, and common areas pertaining to the provision of services and care to the tenants of a program during certification, monitoring, and complaint investigations of programs seeking certification, currently certified, or alleged to be uncertified.

*b.* With the consent of the tenant, visit the tenant's unit.

*c.* Require that the recognized accrediting entity providing accreditation for a program provide copies to the department of all materials related to the accreditation, monitoring, and complaint process.

7. The department may also establish by rule in accordance with chapter 17A a special classification for affordable assisted living programs. The rules shall be formulated in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups.

8. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an assisted living program for an actual or prospective tenant, unless the program holds a current certificate issued by the department of inspections and appeals and meets all current requirements for certification.

9. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the assisted living program is provided, if the business or activity serves nontenants. The rules shall be developed in consultation with the department of inspections and appeals

and affected industry, professional, and consumer groups.

10. An assisted living program shall comply with section 135C.33.

2003 Acts, ch 166, §10

Employees of the department of elder affairs performing functions related to certification and monitoring of or complaint investigations related to assisted living programs as of June 30, 2003, shall become employees of the department of inspections and appeals without loss of classification, pay, or benefits, effective July 1, 2003; employees of the department of elder affairs performing functions related to affordable assisted living as of June 30, 2003, shall become employees of the Iowa finance authority without loss of classification, pay, or benefits, effective July 1, 2003; 2003 Acts, ch 166, §29

Section stricken and rewritten

#### **231C.4 Fire and safety standards.**

The state fire marshal shall adopt rules, in coordination with the department of elder affairs and the department of inspections and appeals, relating to the certification and monitoring of the fire and safety standards of certified assisted living programs.

2003 Acts, ch 166, §11

Section amended

#### **231C.5 Written occupancy agreement required.**

1. An assisted living program shall not operate in this state unless a written occupancy agreement, as prescribed in subsection 2, is executed between the assisted living program and each tenant or tenant's representative, prior to the tenant's occupancy, and unless the assisted living program operates in accordance with the terms of the occupancy agreement. The assisted living program shall deliver to the tenant or tenant's representative a complete copy of the occupancy agreement and all supporting documents and attachments and shall deliver, at least thirty days prior to any changes, a written copy of changes to the occupancy agreement if any changes to the copy originally delivered are subsequently made.

2. An assisted living program occupancy agreement shall clearly describe the rights and responsibilities of the tenant and the program. The occupancy agreement shall also include but is not limited to inclusion of all of the following information in the body of the agreement or in the supporting documents and attachments:

*a.* A description of all fees, charges, and rates describing tenancy and basic services covered, and any additional and optional services and their related costs.

*b.* A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the assisted living program.

*c.* The procedure followed for nonpayment of fees.

*d.* Identification of the party responsible for payment of fees and identification of the tenant's representative, if any.

*e.* The term of the occupancy agreement.

*f.* A statement that the assisted living pro-

gram shall notify the tenant or the tenant's representative, as applicable, in writing at least thirty days prior to any change being made in the occupancy agreement with the following exceptions:

(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the assisted living program.

*g.* A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

*h.* Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer. The internal appeals process provided relative to an involuntary transfer.

*i.* The program's policies and procedures for addressing grievances between the assisted living program and the tenants, including grievances relating to transfer and occupancy.

*j.* A statement of the prohibition against retaliation as prescribed in section 231C.13.

*k.* The emergency response policy.

*l.* The staffing policy which specifies if the staff is available twenty-four hours per day, if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

*m.* In dementia-specific assisted living programs, a description of the services and programming provided to meet the life skills and social activities of tenants.

*n.* The refund policy.

*o.* A statement regarding billing and payment procedures.

3. Occupancy agreements and related documents executed by each tenant or tenant's representative shall be maintained by the assisted living program in program files from the date of execution until three years from the date the occupancy agreement is terminated. A copy of the most current occupancy agreement shall be provided to members of the general public, upon request. Occupancy agreements and related documents shall be made available for on-site inspection to the department of inspections and appeals upon request and at reasonable times.

2003 Acts, ch 166, §12

Section stricken and rewritten

#### **231C.6 Involuntary transfer.**

1. If an assisted living program initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by the department of inspections and appeals, and if the tenant or tenant's representative contests the transfer, the following

procedure shall apply:

*a.* The assisted living program shall notify the tenant or tenant's representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information of the tenant advocate.

*b.* The assisted living program shall provide the tenant advocate with a copy of the notification to the tenant.

*c.* The tenant advocate shall offer the notified tenant or tenant's representative assistance with the program's internal appeals process. The tenant is not required to accept the assistance of the tenant advocate.

*d.* If, following the internal appeals process, the assisted living program upholds the transfer decision, the tenant may utilize other remedies authorized by law to contest the transfer.

2. The department, in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups, shall establish, by rule in accordance with chapter 17A, procedures to be followed, including the opportunity for hearing, when the transfer of a tenant results from a monitoring evaluation or complaint investigation conducted by the department of inspections and appeals.

2003 Acts, ch 166, §13

Section stricken and rewritten

### 231C.7 Complaints.

1. Any person with concerns regarding the operations or service delivery of an assisted living program may file a complaint with the department of inspections and appeals. The name of the person who files a complaint with the department of inspections and appeals and any personal identifying information of the person or any tenant identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department of inspections and appeals' employees involved with the complaint.

2. The department, in cooperation with the department of inspections and appeals, shall establish procedures for the disposition of complaints received in accordance with this section.

2003 Acts, ch 166, §14

NEW section

### 231C.8 Informal review.

If an assisted living program contests the regulatory insufficiencies of a monitoring evaluation or complaint investigation, the program shall submit written information, demonstrating that the program was in compliance with the applicable requirement at the time of the monitoring evaluation or complaint investigation, in support of the contesting of the regulatory insufficiencies, to the department of inspections and appeals for review. The department of inspections and appeals shall

review the written information submitted within ten working days of the receipt of the information. At the conclusion of the review, the department of inspections and appeals may affirm, modify, or dismiss the regulatory insufficiencies. The department of inspections and appeals shall notify the program in writing of the decision to affirm, modify, or dismiss the regulatory insufficiencies, and the reasons for the decision. In the case of a complaint investigation, the department of inspections and appeals shall also notify the complainant, if known, of the decision and the reasons for the decision.

2003 Acts, ch 166, §15

NEW section

### 231C.9 Public disclosure of findings.

Following a monitoring evaluation or complaint investigation of an assisted living program by the department of inspections and appeals pursuant to this chapter, the department of inspections and appeals' final findings with respect to compliance by the assisted living program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an assisted living program that is obtained by the department of inspections and appeals which does not constitute the department of inspections and appeals' final findings from a monitoring evaluation or complaint investigation of the assisted living program shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

2003 Acts, ch 166, §16

NEW section

### 231C.10 Denial, suspension, or revocation — conditional operation.

1. The department of inspections and appeals may deny, suspend, or revoke a certificate in any case where the department of inspections and appeals finds that there has been a substantial or repeated failure on the part of the assisted living program to comply with this chapter or the rules, or minimum standards adopted under this chapter, or for any of the following reasons:

*a.* Cruelty or indifference to assisted living program tenants.

*b.* Appropriation or conversion of the property of an assisted living program tenant without the tenant's written consent or the written consent of the tenant's legal guardian.

*c.* Permitting, aiding, or abetting the commission of any illegal act in the assisted living program.

*d.* Obtaining or attempting to obtain or retain a certificate by fraudulent means, misrepresentation, or by submitting false information.

*e.* Habitual intoxication or addiction to the use of drugs by the applicant, administrator, executive director, manager, or supervisor of the assisted living program.

*f.* Securing the devise or bequest of the property of a tenant of an assisted living program by undue influence.

*g.* Founded dependent adult abuse as defined in section 235B.2.

*h.* In the case of any officer, member of the board of directors, trustee, or designated manager of the program or any stockholder, partner, or individual who has greater than a ten percent equity interest in the program, who has or has had an ownership interest in an assisted living program, home health agency, residential care facility, or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the medical assistance or Medicare programs, or who has been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

*i.* In the case of a certificate applicant or an existing certified owner or operator who is an entity other than an individual, the person is in a position of control or is an officer of the entity and engages in any act or omission proscribed by this chapter.

*j.* For any other reason as provided by law or administrative rule.

2. The department of inspections and appeals may as an alternative to denial, suspension, or revocation conditionally issue or continue a certificate dependent upon the performance by the assisted living program of reasonable conditions within a reasonable period of time as set by the department of inspections and appeals so as to permit the program to commence or continue the operation of the program pending full compliance with this chapter or the rules adopted pursuant to this chapter. If the assisted living program does not make diligent efforts to comply with the conditions prescribed, the department of inspections and appeals may, under the proceedings prescribed by this chapter, suspend, or revoke the certificate. An assisted living program shall not be operated on a conditional certificate for more than one year.

2003 Acts, ch 166, §17  
NEW section

### **231C.11 Notice — appeal — emergency provisions.**

1. The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or certificate holder, within such thirty-day period, requests a hearing, in writing, of the department of inspections and appeals, in which case the notice shall be deemed

to be suspended.

2. The denial, suspension, or revocation of a certificate may be appealed in accordance with rules adopted by the department of inspections and appeals in accordance with chapter 17A.

3. When the department of inspections and appeals finds that an imminent danger to the health or safety of tenants of an assisted living program exists which requires action on an emergency basis, the department of inspections and appeals may direct removal of all tenants of an assisted living program and suspend the certificate prior to a hearing.

2003 Acts, ch 166, §18  
NEW section

### **231C.12 Department notified of casualties.**

The department of inspections and appeals shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing substantial injury or death, and any substantial fire or natural or other disaster occurring at or near an assisted living program.

2003 Acts, ch 166, §19  
NEW section

### **231C.13 Retaliation by assisted living program prohibited.**

An assisted living program shall not discriminate or retaliate in any way against a tenant, tenant's family, or an employee of the program who has initiated or participated in any proceeding authorized by this chapter. An assisted living program that violates this section is subject to a penalty as established by administrative rule in accordance with chapter 17A and to be assessed and collected by the department of inspections and appeals and paid into the state treasury to be credited to the general fund of the state.

2003 Acts, ch 166, §20  
NEW section

### **231C.14 Civil penalties.**

The department may establish by rule, in accordance with chapter 17A, civil penalties for the following violations by an assisted living program:

1. Noncompliance with any regulatory requirements which presents an imminent danger or a substantial probability of resultant death or physical harm to a tenant.

2. Following receipt of notice from the department of inspections and appeals, continued failure or refusal to comply within a prescribed time frame with regulatory requirements that have a direct relationship to the health, safety, or security of program tenants.

2003 Acts, ch 166, §21  
NEW section

### **231C.15 Criminal penalties and injunctive relief.**

1. A person establishing, conducting, manag-

ing, or operating any assisted living program without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department of inspections and appeals by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing, or operating an assisted living program without a certificate may be temporarily or permanently restrained by a court of competent jurisdiction from such activity in an action brought by the state.

2. A person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department of inspections and appeals in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter is guilty of a simple misdemeanor. As used in this subsection, lawful enforcement includes but is not limited to:

*a.* Contacting or interviewing any tenant of an assisted living program in private at any reasonable hour and without advance notice.

*b.* Examining any relevant records of an assisted living program.

*c.* Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

2003 Acts, ch 166, §22  
NEW section

#### **231C.16 Nursing assistant and medication aide — certification.**

The department of inspections and appeals, in cooperation with other appropriate agencies, shall establish a procedure to allow nursing assistants or medication aides to claim work within an assisted living program as credit toward sustaining the nursing assistant's or medication aide's certification.

2003 Acts, ch 166, §23  
NEW section

#### **231C.17 Coordination of the long-term care system — transitional provisions.**

1. A hospital licensed pursuant to chapter 135B or a health care facility licensed pursuant to chapter 135C may operate an assisted living program, located in a distinct part of or separate structure under the control of the hospital or health care facility, if certified pursuant to this chapter.

2. This chapter shall not be construed to require that a facility licensed as a different type of facility also comply with the requirements of this chapter, unless the facility is represented to the public as a certified assisted living program.

3. A certified assisted living program that complies with the requirements of this chapter shall not be required to be licensed as a health care facility pursuant to chapter 135C, unless the facility is represented to the public as a licensed health care facility.

4. A continuing care retirement community, as defined in section 523D.1, may provide limited personal care services and emergency response services to its independent living tenants if all of the following conditions are met:

*a.* The provision of such personal care services or emergency response services does not result in inadequate staff coverage to meet the service needs of all tenants of the continuing care retirement community.

*b.* The staff providing the personal care or emergency response services is trained or qualified to the extent necessary to provide such services.

*c.* The continuing care retirement community documents the date, time, and nature of the personal care or emergency response services provided.

*d.* Emergency response services are only provided in situations which constitute an urgent need for immediate action or assistance due to unforeseen circumstances.

This subsection shall not be construed to prohibit an independent living tenant of a continuing care retirement community from contracting with a third party for personal care or emergency response services.

2003 Acts, ch 166, §24; 2003 Acts, 1st Ex, ch 2, §17, 33  
NEW section

#### **231C.18 Iowa assisted living fees.**

1. The department of inspections and appeals shall collect assisted living program certification and related fees. An assisted living program that is certified by the department of inspections and appeals on the basis of voluntary accreditation by a recognized accrediting entity shall not be subject to payment of the certification fee, but shall be subject to an administrative fee as prescribed by rule. Fees collected and retained pursuant to this section shall be deposited in the general fund of the state.

2. The following certification and related fees shall apply to assisted living programs:

*a.* For a two-year initial certification, seven hundred fifty dollars.

*b.* For a two-year recertification, one thousand dollars.

*c.* For a blueprint plan review, nine hundred dollars.

*d.* For an optional preliminary plan review, five hundred dollars.

2003 Acts, ch 166, §25  
For former provisions relating to Iowa assisted living fees, see §231C.6, Code 2003  
NEW section

#### **231C.19 Application of landlord and tenant Act.**

Chapter 562A, the uniform residential landlord and tenant Act, shall apply to assisted living programs under this chapter.

2003 Acts, ch 166, §26  
NEW section

## CHAPTER 231D

### ADULT DAY SERVICES

#### 231D.1 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. “*Adult day services*”, “*adult day services program*”, or “*program*” means an organized program providing a variety of health, social, and related support services for sixteen hours or less in a twenty-four-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.

2. “*Department*” means the department of elder affairs created in chapter 231.

3. “*Functional impairment*” means a psychological, cognitive, or physical impairment creating the inability to perform personal and instrumental activities of daily living and associated tasks necessitating some form of supervision or assistance or both.

4. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of these entities.

5. “*Recognized accrediting entity*” means a nationally recognized accrediting entity that the department recognizes as having specific adult day services program standards equivalent to the standards established by the department for adult day services.

6. “*Social services*” means services relating to the psychological and social needs of the individual in adjusting to participating in an adult day services program, and minimizing the stress arising from that circumstance.

7. “*Supervision*” means direct oversight and inspection of the act of accomplishing a function or activity.

2003 Acts, ch 165, §1  
NEW section

#### 231D.2 Purpose — intent — rules — special classifications.

1. The purpose of this chapter is to promote and encourage adequate and safe care for adults with functional impairments.

2. It is the intent of the general assembly that the department of elder affairs establish policy for adult day services programs and that the department of inspections and appeals enforce this chapter.

3. The department shall establish, by rule in accordance with chapter 17A, a program for certification and monitoring of and complaint investigations related to adult day services programs. The department, in establishing standards for adult day services programs, may adopt by rule in accordance with chapter 17A, nationally recog-

nized standards for adult day services programs. The rules shall include specification of recognized accrediting entities. The rules and standards adopted shall be formulated in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups and shall be designed to accomplish the purpose of this chapter.

4. In addition to the adoption of standards and rules for adult day services programs, the department in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups, shall issue interpretive guidelines, including the expectations of program certification monitors, to provide direction to adult day services programs in complying with certification requirements.

5. The department may establish by administrative rule special classifications for adult day services providers. The department of inspections and appeals shall issue separate certificates for each special classification for which a provider is certified.

2003 Acts, ch 165, §2  
NEW section

#### 231D.3 Certification required.

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate an adult day services program and shall not represent an adult day services program to the public as certified unless and until the program is certified pursuant to this chapter. If an adult day services program is voluntarily accredited by a recognized accrediting entity with specific adult day services standards, the department of inspections and appeals shall accept voluntary accreditation as the basis for certification by the department. The owner or manager of a certified adult day services program shall comply with the rules adopted by the department for an adult day services program.

2. An adult day services program may provide any type of adult day services for which the program is certified, including any special classification of adult day services. An adult day services program shall provide services and supervision commensurate with the needs of the recipients. An adult day services program shall not provide services to individuals requiring a level or type of services for which the program is not certified and services provided shall not exceed the level or type of services for which the program is certified.

3. An adult day services program that has been certified by the department of inspections

and appeals shall not alter the program, operation, or adult day services for which the program is certified in a manner that affects continuing certification without prior approval of the department of inspections and appeals. The department of inspections and appeals shall specify, by rule, alterations that are subject to prior approval.

4. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an adult day services program for an actual or prospective recipient, unless the program holds a current certificate issued by the department of inspections and appeals and meets all current requirements for certification.

5. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the adult day services program is provided, if the business or activity serves nonrecipients of adult day services. The rules shall be developed in consultation with the department of inspections and appeals and affected industry, professional, and consumer groups.

2003 Acts, ch 165, §3  
NEW section

#### **231D.4 Application and fees.**

1. Certificates for adult day services programs shall be obtained from the department of inspections and appeals. Applications shall be upon such forms and shall include such information as the department of inspections and appeals may reasonably require, which may include affirmative evidence of compliance with applicable statutes and local ordinances. Each application for certification shall be accompanied by the appropriate fee.

2. *a.* The department of inspections and appeals shall collect adult day services certification fees. The fees shall be deposited in the general fund of the state.

*b.* The following certification and related fees shall apply to adult day services programs:

(1) For a two-year initial certification, seven hundred fifty dollars.

(2) For a two-year recertification, one thousand dollars.

(3) For a blueprint review, nine hundred dollars.

(4) For an optional preliminary plan review, five hundred dollars.

2003 Acts, ch 165, §4  
NEW section

#### **231D.5 Denial, suspension, or revocation.**

1. The department of inspections and appeals may deny, suspend, or revoke certification if the department of inspections and appeals finds that there has been a substantial or repeated failure on the part of the adult day services program to comply with this chapter or the rules or minimum

standards adopted pursuant to this chapter, or for any of the following reasons:

*a.* Cruelty or indifference to adult day services program service recipients.

*b.* Appropriation or conversion of the property of an adult day services programs service recipient without the recipient's written consent or the written consent of the service recipient's legal guardian.

*c.* Permitting, aiding, or abetting the commission of any illegal act in the adult day services program.

*d.* Obtaining or attempting to obtain or retain certification by fraudulent means, misrepresentation, or by submitting false information.

*e.* Habitual intoxication or addiction to the use of drugs by the applicant, owner, manager, or supervisor of the adult day services program.

*f.* Securing the devise or bequest of the property of a recipient of services of an adult day services program by undue influence.

*g.* Failure or neglect to maintain a continuing education and training program for all personnel employed in the adult day services program.

*h.* Founded dependent adult abuse as defined in section 235B.2.

*i.* For any other reason as provided by law or administrative rule.

2. In the case of an application by an existing certificate holder for a new or newly acquired adult day services program, continuing or repeated failure of the certificate holder to operate any previously certified adult day services program in compliance with this chapter or of the rules adopted pursuant to this chapter.

3. In the case of a certificate applicant or existing certificate holder which is an entity other than an individual, the department of inspections and appeals may deny, suspend, or revoke a certificate if any individual who is in a position of control or is an officer of the entity engages in any act or omission proscribed by this section.

2003 Acts, ch 165, §5  
NEW section

#### **231D.6 Notice — appeal — emergency provisions.**

1. The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for the action. The denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or certificate holder, within the thirty-day period, requests a hearing, in writing, of the department of inspections and appeals, in which case the notice shall be deemed to be suspended.

2. The denial, suspension, or revocation of a certificate may be appealed in accordance with rules adopted by the department of inspections

and appeals in accordance with chapter 17A.

3. When the department of inspections and appeals finds that an immediate danger to the health or safety of recipients of services from an adult day services program exists which requires action on an emergency basis, the department of inspections and appeals may direct the removal of all recipients of services from an adult day services program and suspend the certificate prior to a hearing.

2003 Acts, ch 165, §6  
NEW section

#### **231D.7 Conditional operation.**

The department of inspections and appeals may, as an alternative to denial, suspension, or revocation of certification under section 231D.5, conditionally issue or continue certification dependent upon the performance by the adult day services program of reasonable conditions within a reasonable period of time as prescribed by the department of inspections and appeals so as to permit the program to commence or continue the operation of the program pending full compliance with this chapter or the rules adopted pursuant to this chapter. If the adult day services program does not make diligent efforts to comply with the conditions prescribed, the department of inspections and appeals may, under the proceedings prescribed by this chapter, suspend or revoke the certificate. An adult day services program shall not be operated under conditional certification for more than one year.

2003 Acts, ch 165, §7  
NEW section

#### **231D.8 Department notified of casualties.**

The department of inspections and appeals shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing substantial injury or death, and any substantial fire or natural or other disaster occurring at or near an adult day services program.

2003 Acts, ch 165, §8  
NEW section

#### **231D.9 Complaints and confidentiality.**

1. A person with concerns regarding the operations or service delivery of an adult day services program may file a complaint with the department of inspections and appeals. The name of the person who files a complaint with the department of inspections and appeals and any personal identifying information of the person or any recipient of program services identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than employees of the department of inspections and appeals involved in the investigation of the complaint.

2. The department, in cooperation with the department of inspections and appeals, shall establish procedures for the disposition of complaints received in accordance with this section.

2003 Acts, ch 165, §9  
NEW section

#### **231D.10 Public disclosure of findings.**

Following a monitoring evaluation or complaint investigation of an adult day services program by the department of inspections and appeals pursuant to this chapter, the department's final findings with respect to compliance by the adult day services program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an adult day services program that is obtained by the department of inspections and appeals which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the adult day services program shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

2003 Acts, ch 165, §10  
NEW section

#### **231D.11 Penalties.**

1. A person establishing, conducting, managing, or operating an adult day services program without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department of inspections and appeals by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing, or operating an adult day services program without a certificate may be temporarily or permanently restrained by a court of competent jurisdiction from such activity in an action brought by the state.

2. A person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department of inspections and appeals in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter is guilty of a simple misdemeanor. As used in this subsection, lawful enforcement includes but is not limited to:

a. Contacting or interviewing any participant of an adult day services program in private at any reasonable hour and without advance notice.

b. Examining any relevant records of an adult day services program.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

3. A civil penalty, as established by rule, may apply in any of the following situations:

a. Program noncompliance with one or more regulatory requirements has caused or is likely to cause harm, serious injury, threat, or death to a re-

recipient of program services.

b. Program failure or refusal to comply with regulatory requirements within prescribed time frames.

2003 Acts, ch 165, §11  
NEW section

**231D.12 Retaliation by an adult day services program prohibited.**

1. An adult day services program shall not discriminate or retaliate in any way against a recipient, recipient's family, or an employee of the program who has initiated or participated in any proceeding authorized by this chapter. An adult day services program that violates this section is subject to a penalty as established by administrative rule, to be assessed and collected by the department of inspections and appeals and paid into the state treasury to be credited to the general fund of the state.

2. Any attempt to discharge a recipient from an adult day services program by whom or upon whose behalf a complaint has been submitted to the department of inspections and appeals under section 231D.9, within ninety days after the filing of the complaint or the conclusion of any proceeding resulting from the complaint, shall raise a rebuttable presumption that the action was taken by the program in retaliation for the filing of the complaint, except in situations in which the recipient is discharged due to changes in health status which exceed the level of care offered by the adult day services program or in other situations as specified by rule.

2003 Acts, ch 165, §12  
NEW section

**231D.13 Nursing assistant and medication aide — certification.**

The department of inspections and appeals, in cooperation with other appropriate agencies, shall

establish a procedure to allow nursing assistants or medication aides to claim work within adult day services programs as credit toward sustaining the nursing assistant's or medication aide's certification.

2003 Acts, ch 165, §13  
NEW section

**231D.14 Criminal records investigation check.**

An adult day services program shall comply with section 135C.33.

2003 Acts, ch 165, §14  
NEW section

**231D.15 Fire and safety standards.**

The state fire marshal shall adopt rules, in coordination with the department of elder affairs and the department of inspections and appeals, relating to the certification and monitoring of the fire and safety standards of adult day services programs.

2003 Acts, ch 165, §15  
NEW section

**231D.16 Transition provisions.**

1. Adult day services programs voluntarily accredited by a recognized accrediting entity prior to July 1, 2003, shall comply with this chapter by June 30, 2004.

2. Adult day services programs that are serving at least two but not more than five persons that are not voluntarily accredited by a recognized accrediting entity prior to July 1, 2003, shall comply with this chapter by June 30, 2005.

2003 Acts, ch 165, §16  
Acceptance for period beginning July 1, 2003, and ending June 30, 2004, by department of inspections and appeals of voluntary accreditation of adult day services programs serving persons with mental retardation by commission on accreditation of rehabilitation facilities or by the council on quality and leadership in support for persons with disabilities; 2003 Acts, ch 165, §22  
NEW section

## CHAPTER 232

### JUVENILE JUSTICE

**232.2 Definitions.**

As used in this chapter unless the context otherwise requires:

1. "*Abandonment of a child*" means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

2. "*Adjudicatory hearing*" means a hearing to determine if the allegations of a petition are true.

3. "*Adult*" means a person other than a child.

4. "*Case permanency plan*" means the plan, mandated by Pub. L. No. 96-272 and Pub. L. No. 105-89, as codified in 42 U.S.C. § 622(b)(10), 671(a)(16), and 675(1),(5), which is designed to achieve placement in the most appropriate, least restrictive, and most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall be developed by the department or agency involved and the child's parent, guardian, or custodian.

The plan shall specifically include all of the following:

*a.* Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.

*b.* The type and appropriateness of the placement and services to be provided to the child.

*c.* The care and services that will be provided to the child, biological parents, and foster parents.

*d.* How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.

*e.* To the extent the records are available and accessible, a summary of the child's health and education records, including the date the records were supplied to the agency or individual who is the child's foster care provider.

*f.* (1) When a child is sixteen years of age or older, a written transition plan of services which, based upon an assessment of the child's needs, would assist the child in preparing for the transition from foster care to adulthood. The written plan of services and needs assessment shall be developed with any person who may reasonably be expected to be a service provider for the child when the child becomes an adult or to become responsible for the costs of services at that time, including but not limited to the administrator of county general relief under chapter 251 or 252 or of the single entry point process implemented under section 331.440. If the child is interested in pursuing higher education, the plan shall provide for the child's participation in the college student aid commission's program of assistance in applying for federal and state aid under section 261.2.

(2) If the needs assessment indicates the child is reasonably likely to need or be eligible for services or other support from the adult service system upon reaching age eighteen, the transition plan shall be reviewed and approved by the transition committee for the area in which the child resides, in accordance with section 235.7, before the child reaches age seventeen and one-half. The transition committee's review and approval shall be indicated in the case permanency plan.

*g.* The actions expected of the parent, guardian, or custodian in order for the department or agency to recommend that the court terminate a dispositional order for the child's out-of-home placement and for the department or agency to end its involvement with the child and the child's family.

*h.* If reasonable efforts to place a child for adoption or with a guardian are made concurrently with reasonable efforts as defined in section 232.102, the concurrent goals and timelines may be identified. Concurrent case permanency plan goals for reunification, and for adoption or for other permanent out-of-home placement of a child shall not be considered inconsistent in that the goals reflect divergent possible outcomes for a

child in an out-of-home placement.

*i.* A provision that a designee of the department or other person responsible for placement of a child out of state shall visit the child at least once every twelve months.

*j.* If it has been determined that the child cannot return to the child's home, documentation of the steps taken to make and finalize an adoption or other permanent placement.

5. "*Child*" means a person under eighteen years of age.

6. "*Child in need of assistance*" means an unmarried child:

*a.* Whose parent, guardian or other custodian has abandoned or deserted the child.

*b.* Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

*c.* Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

(1) Mental injury caused by the acts of the child's parent, guardian, or custodian.

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

*d.* Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian or other member of the household in which the child resides.

*e.* Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian or custodian is unwilling or unable to provide such treatment.

*f.* Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

*g.* Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

*h.* Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, custodian, or other member of the household in which the child resides.

*i.* Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political or artistic value.

*j.* Who is without a parent, guardian or other custodian.

k. Whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody.

l. Who for good cause desires to have the child's parents relieved of the child's care and custody.

m. Who is in need of treatment to cure or alleviate chemical dependency and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

o. In whose body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.

p. Whose parent, guardian, or custodian does any of the following: unlawfully manufactures a dangerous substance in the presence of a child, knowingly allows such manufacture by another person in the presence of a child, or in the presence of a child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

(1) For the purposes of this paragraph, "*in the presence of a child*" means the physical presence of a child during the manufacture or possession, the manufacture or possession occurred in a child's home, on the premises, or in a motor vehicle located on the premises, or the manufacture or possession occurred under other circumstances in which a reasonably prudent person would know that the manufacture or possession may be seen, smelled, or heard by a child.

(2) For the purposes of this paragraph, "*dangerous substance*" means any of the following:

(a) Amphetamine, its salts, isomers, or salts of its isomers.

(b) Methamphetamine, its salts, isomers, or salts of its isomers.

(c) A chemical or combination of chemicals that poses a reasonable risk of causing an explosion, fire, or other danger to the life or health of persons who are in the vicinity while the chemical or combination of chemicals is used or is intended to be used in any of the following:

(i) The process of manufacturing an illegal or controlled substance.

(ii) As a precursor in the manufacturing of an illegal or controlled substance.

(iii) As an intermediary in the manufacturing of an illegal or controlled substance.

q. Who is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

6A. "*Chronic runaway*" means a child who is reported to law enforcement as a runaway more than once in any thirty-day period or three or more times in any year.

7. "*Complaint*" means an oral or written report which is made to the juvenile court by any person and alleges that a child is within the jurisdiction of the court.

8. "*Court*" means the juvenile court established under section 602.7101.

9. "*Court appointed special advocate*" means a person duly certified by the child advocacy board created in section 237.16 for participation in the court appointed special advocate program and appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from such proceeding.

10. "*Criminal or juvenile justice agency*" means any agency which has as its primary responsibility the enforcement of the state's criminal laws or of local ordinances made pursuant to state law.

11. "*Custodian*" means a stepparent or a relative within the fourth degree of consanguinity to a child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division IV, or a person appointed by a court or juvenile court having jurisdiction over a child. The rights and duties of a custodian with respect to a child are as follows:

a. To maintain or transfer to another the physical possession of that child.

b. To protect, train, and discipline that child.

c. To provide food, clothing, housing, and medical care for that child.

d. To consent to emergency medical care, including surgery.

e. To sign a release of medical information to a health professional.

All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

12. "*Delinquent act*" means:

a. The violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.

b. The violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.

c. The violation of section 123.47 which is committed by a child.

13. "*Department*" means the department of human services and includes the local, county and regional officers of the department.

14. "*Desertion*" means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent

in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.

15. “*Detention*” means the temporary care of a child in a physically restricting facility designed to ensure the continued custody of the child at any point between the child’s initial contact with the juvenile authorities and the final disposition of the child’s case.

16. “*Detention hearing*” means a hearing at which the court determines whether it is necessary to place or retain a child in detention.

17. “*Director*” means the director of the department of human services or that person’s designee.

18. “*Dismissal of complaint*” means the termination of all proceedings against a child.

19. “*Dispositional hearing*” means a hearing held after an adjudication to determine what dispositional order should be made.

20. “*Family in need of assistance*” means a family in which there has been a breakdown in the relationship between a child and the child’s parent, guardian or custodian.

21. “*Guardian*” means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to have a permanent self-sustaining relationship with the child and to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the rights and duties of a guardian with respect to a child shall be as follows:

a. To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric, or surgical treatment.

b. To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the child or unless another person has been appointed guardian ad litem.

c. To serve as custodian, unless another person has been appointed custodian.

d. To make periodic visitations if the guardian does not have physical possession or custody of the child.

e. To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

f. To make other decisions involving protection, education, and care and control of the child.

22. a. “*Guardian ad litem*” means a person appointed by the court to represent the interests

of a child in any judicial proceeding to which the child is a party, and includes a court appointed special advocate, except that a court appointed special advocate shall not file motions or petitions pursuant to section 232.54, subsections 1 and 4, section 232.103, subsection 2, paragraph “c”, and section 232.111.

b. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a guardian ad litem with respect to a child shall include the following:

(1) Conducting in-person interviews with the child, if the child’s age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, if authorized by counsel.

(2) Conducting interviews with the child, if the child’s age is appropriate for the interview, prior to any court-ordered hearing.

(3) Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including each time placement is changed.

(4) Interviewing any person providing medical, mental health, social, educational, or other services to the child, before any hearing referred to in subparagraph (2).

(5) Obtaining firsthand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.

(6) Attending any hearings in the matter in which the person is appointed as the guardian ad litem.

(7) If the child is required to have a transition plan developed in accordance with the child’s case permanency plan and subject to review and approval of a transition committee under section 235.7, assisting the transition committee in development of the transition plan.

c. The order appointing the guardian ad litem shall grant authorization to the guardian ad litem to interview any relevant person and inspect and copy any records relevant to the proceedings, if not prohibited by federal law. The order shall specify that the guardian ad litem may interview any person providing medical, mental health, social, educational, or other services to the child, may attend any departmental staff meeting, case conference, or meeting with medical or mental health providers, service providers, organizations, or educational institutions regarding the child, if deemed necessary by the guardian ad litem, and may inspect and copy any records relevant to the proceedings.

d. If authorized by the court, a guardian ad litem may continue a relationship with and provide advice to a child for a period of time beyond the child’s eighteenth birthday.

23. “*Health practitioner*” means a licensed physician or surgeon, osteopath, osteopathic phy-

sician or surgeon, dentist, optometrist, podiatric physician, or chiropractor, a resident or intern of any such profession, and any registered nurse or licensed practical nurse.

24. “*Informal adjustment*” means the disposition of a complaint without the filing of a petition and may include but is not limited to the following:

a. Placement of the child on nonjudicial probation.

b. Provision of intake services.

c. Referral of the child to a public or private agency other than the court for services.

25. “*Informal adjustment agreement*” means an agreement between an intake officer, a child who is the subject of a complaint, and the child’s parent, guardian or custodian providing for the informal adjustment of the complaint.

26. “*Intake*” means the preliminary screening of complaints by an intake officer to determine whether the court should take some action and if so, what action.

27. “*Intake officer*” means a juvenile court officer or other officer appointed by the court to perform the intake function.

28. “*Judge*” means the judge of a juvenile court.

29. “*Juvenile*” means the same as “*child*”. However, in the interstate compact on juveniles, sections 232.171 and 232.172, “*juvenile*” means a person defined as a juvenile in the law of a state which is a party to the compact.

30. “*Juvenile court officer*” means a person appointed as a juvenile court officer under section 602.7202 and a chief juvenile court officer appointed under section 602.1217.

31. “*Juvenile court social records*” or “*social records*” means all records made with respect to a child in connection with proceedings over which the court has jurisdiction under this chapter other than official records and includes but is not limited to the records made and compiled by intake officers, predisposition reports, and reports of physical and mental examinations.

32. “*Juvenile detention home*” means a physically restricting facility used only for the detention of children.

33. “*Juvenile parole officer*” means a person representing an agency which retains jurisdiction over the case of a child adjudicated to have committed a delinquent act, placed in a secure facility and subsequently released, who supervises the activities of the child until the case is dismissed.

34. “*Juvenile shelter care home*” means a physically unrestricting facility used only for the shelter care of children.

35. “*Mental injury*” means a nonorganic injury to a child’s intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child’s ability to function within the child’s normal range of performance and behavior, considering the child’s cultural origin.

36. “*Nonjudicial probation*” means the infor-

mal adjustment of a complaint which involves the supervision of the child who is the subject of the complaint by an intake officer or juvenile court officer for a period during which the child may be required to comply with specified conditions concerning the child’s conduct and activities.

37. “*Nonsecure facility*” means a physically unrestricting facility in which children may be placed pursuant to a dispositional order of the court made in accordance with the provisions of this chapter.

38. “*Official juvenile court records*” or “*official records*” means official records of the court of proceedings over which the court has jurisdiction under this chapter which includes but is not limited to the following:

a. The docket of the court and entries therein.

b. Complaints, petitions, other pleadings, motions, and applications filed with a court.

c. Any summons, notice, subpoena, or other process and proofs of publication.

d. Transcripts of proceedings before the court.

e. Findings, judgments, decrees and orders of the court.

39. “*Parent*” means a biological or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

40. “*Peace officer*” means a law enforcement officer or a person designated as a peace officer by a provision of the Code.

41. “*Petition*” means a pleading the filing of which initiates formal judicial proceedings in the juvenile court.

42. “*Physical abuse or neglect*” or “*abuse or neglect*” means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child’s parent, guardian or custodian or other person legally responsible for the child.

42A. “*Preadoptive care*” means the provision of parental nurturing on a full-time basis to a child in foster care by a person who has signed a pre-adoptive placement agreement with the department for the purposes of proceeding with a legal adoption of the child. Parental nurturing includes but is not limited to furnishing of food, lodging, training, education, treatment, and other care.

43. “*Predisposition investigation*” means an investigation conducted for the purpose of collecting information relevant to the court’s fashioning of an appropriate disposition of a delinquency case over which the court has jurisdiction.

44. “*Predisposition report*” is a report furnished to the court which contains the information collected during a predisposition investigation.

45. “*Probation*” means a legal status which is created by a dispositional order of the court in a case where a child has been adjudicated to have committed a delinquent act, which exists for a specified period of time, and which places the child under the supervision of a juvenile court officer or other person or agency designated by the court.

The probation order may require a child to comply with specified conditions imposed by the court concerning conduct and activities, subject to being returned to the court for violation of those conditions.

46. “*Registry*” means the central registry for child abuse information as established under chapter 235A.

47. “*Residual parental rights and responsibilities*” means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person of the child. These include but are not limited to the right of visitation, the right to consent to adoption, and the responsibility for support.

48. “*Secure facility*” means a physically restricting facility in which children adjudicated to have committed a delinquent act may be placed pursuant to a dispositional order of the court.

49. “*Sexual abuse*” means the commission of a sex offense as defined by the penal law.

50. “*Shelter care*” means the temporary care of a child in a physically unrestricting facility at any time between a child’s initial contact with juvenile authorities and the final judicial disposition of the child’s case.

51. “*Shelter care hearing*” means a hearing at which the court determines whether it is necessary to place or retain a child in shelter care.

52. “*Social investigation*” means an investigation conducted for the purpose of collecting information relevant to the court’s fashioning of an appropriate disposition of a child in need of assistance case over which the court has jurisdiction.

53. “*Social report*” means a report furnished to the court which contains the information collected during a social investigation.

54. “*Taking into custody*” means an act which would be governed by the laws of arrest under the criminal code if the subject of the act were an adult. The taking into custody of a child is subject to all constitutional and statutory protections which are afforded an adult upon arrest.

55. “*Termination hearing*” means a hearing held to determine whether the court should terminate a parent-child relationship.

56. “*Termination of the parent-child relationship*” means the divestment by the court of the parent’s and child’s privileges, duties and powers with respect to each other.

57. “*Voluntary placement*” means a foster care placement in which the department provides foster care services to a child according to a signed placement agreement between the department and the child’s parent or guardian.

58. “*Waiver hearing*” means a hearing at which the court determines whether it shall waive its jurisdiction over a child alleged to have committed a delinquent act so that the state may prosecute the child as if the child were an adult.

2003 Acts, ch 117, §1 - 3

For the fiscal year beginning July 1, 2003, the department shall utilize

service areas and service area administrators in lieu of regions and regional administrators; see 2003 Acts, ch 175, §28, and governor’s item veto message

For temporary provisions relating to case permanency plans for the period beginning July 1, 2003, and ending June 30, 2004, see 2003 Acts, ch 175, §46

Subsection 4, paragraph f amended

Subsection 22, paragraph b, NEW subparagraph (7)

Subsection 22, NEW paragraph d

### 232.7 Iowa Indian child welfare Act.

1. If a proceeding held under this chapter involves an Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa Indian child welfare Act under chapter 232B, the proceeding and other actions taken in connection with the proceeding or this chapter shall comply with chapter 232B.

2. In any proceeding held or action taken under this chapter involving an Indian child, the applicable requirements of the federal Adoption and Safe Families Act of 1999, Pub. L. No. 105-89, shall be applied to the proceeding or action in a manner that complies with chapter 232B and the federal Indian Child Welfare Act, Pub. L. No. 95-608.

2003 Acts, ch 153, §1

NEW section

### 232.35 Filing of petition.

1. A formal judicial proceeding to determine whether a child has committed a delinquent act shall be initiated by the filing by the county attorney of a petition alleging that a child has committed a delinquent act. After a petition has been filed, service of a summons requiring the child to appear before the court or service of a notice shall be made as provided in section 232.37.

2. If the intake officer determines that a complaint is legally sufficient for the filing of a petition alleging that a child has committed a delinquent act and that the filing of a petition would be in the best interests of the child and the community, the officer shall submit a written request for the filing of a petition to the county attorney. The county attorney may grant or deny the request of the intake officer for the filing of a petition. A determination by the county attorney that a petition should not be filed shall be final.

3. If the intake officer determines that a complaint is not legally sufficient for the filing of a petition or that the filing of a petition would not be in the best interests of the child and the community, the officer shall notify the complainant of the officer’s determination and the reasons for such determination, and shall advise the complainant that the complainant may submit the complaint to the county attorney for review. Upon receiving a request for review, the county attorney shall consider the facts presented by the complainant, consult with the intake officer and make the final determination as to whether a petition should be filed. In the absence of a request by the complainant for a review of the intake officer’s determination that a petition should not be filed, the officer’s

determination shall be final, and the intake officer shall inform the county attorney of this decision concerning complaints involving allegations of acts which, if committed by an adult, would constitute an aggravated misdemeanor or a felony.

2003 Acts, ch 151, §4  
Subsection 1 amended

**232.37 Summons, notice, subpoenas, and service — order for removal.**

1. After a petition has been filed the court shall set a time for an adjudicatory hearing and unless the parties named in subsection 2 voluntarily appear, shall issue a summons requiring the child to appear before the court at a time and place stated and requiring the person who has custody or control of the child to appear before the court and to bring the child with the person at that time. The summons shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11.

2. Notice of the pendency of the case shall be served upon the known parents, guardians or legal custodians of a child if these persons are not summoned to appear as provided in subsection 1. Notice shall also be served upon the child and upon the child's guardian ad litem, if any. The notice shall attach a copy of the petition and shall give notification of the right to counsel provided for in section 232.11.

3. Upon request of the child who is identified in the petition as a party to the proceeding, the child's parent, guardian or custodian, a county attorney or on the court's own motion, the court or the clerk of the court shall issue subpoenas requiring the attendance and testimony of witnesses and production of papers at any hearing under this division.

4. Service of summons or notice shall be made personally by the sheriff by delivering a copy of the summons or notice to the person being served. If the court determines that personal service of a summons or notice is impracticable, the court may order service by certified mail addressed to the last known address. Service of summons or notice shall be made not less than five days before the time fixed for hearing. Service of summons, notice, subpoenas or other process, after an initial valid summons or notice, shall be made in accordance with the rules of the court governing such service in civil actions.

5. If a person personally served with a summons or subpoena fails without reasonable cause to appear or to bring the child, the person may be proceeded against for contempt of court or the court may issue an order for the arrest of such person or both the arrest of the person and the taking into custody of the child.

6. The court may issue an order for the removal of the child from the custody of the child's parent, guardian or custodian when there exists an immediate threat that the parent, guardian or

custodian will flee the state with the child, or when it appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health.

2003 Acts, ch 151, §5  
Subsection 4 amended

**232.52 Disposition of child found to have committed a delinquent act.**

1. Pursuant to a hearing as provided in section 232.50, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child's culpability as indicated by the circumstances of the particular case, the age of the child, the child's prior record, or the fact that the child has received a youthful offender deferred sentence under section 907.3A. The order shall specify the duration and the nature of the disposition, including the type of residence or confinement ordered and the individual, agency, department or facility in whom custody is vested. In the case of a child who has received a youthful offender deferred sentence, the initial duration of the dispositional order shall be until the child reaches the age of eighteen.

2. The dispositional orders which the court may enter subject to its continuing jurisdiction are as follows:

a. An order prescribing one or more of the following:

(1) A work assignment of value to the state or to the public.

(2) Restitution consisting of monetary payment or a work assignment of value to the victim.

(3) If the child is fourteen years of age or older, restitution consisting of monetary payment or a work assignment of value to the county or to the public for fees of attorneys appointed to represent the child at public expense pursuant to section 232.11.

(4) The suspension or revocation of the driver's license or operating privilege of the child, for a period of one year, for the commission of delinquent acts which are a violation of any of the following:

(a) Section 123.46.

(b) Section 123.47 regarding the purchase or attempt to purchase of alcoholic beverages.

(c) Chapter 124.

(d) Section 126.3.

(e) Chapter 453B.

(f) Two or more violations of section 123.47 regarding the possession of alcoholic beverages.

(g) Section 708.1, if the assault is committed upon an employee of the school at which the child is enrolled, and the child intended to inflict serious injury upon the school employee or caused bodily injury or mental illness.

(h) Section 724.4, if the child carried the dangerous weapon on school grounds.

(i) Section 724.4B.

The child may be issued a temporary restricted

license or school license if the child is otherwise eligible.

(5) The suspension of the driver's license or operating privilege of the child for a period not to exceed one year. The order shall state whether a work permit may or shall not be issued to the child.

An order under paragraph "a" may be the sole disposition or may be included as an element in other dispositional orders.

b. An order placing the child on probation and releasing the child to the child's parent, guardian or custodian.

c. An order providing special care and treatment required for the physical, emotional or mental health of the child, and

(1) Placing the child on probation or other supervision; and

(2) If the court deems appropriate, ordering the parent, guardian, or custodian to reimburse the county for any costs incurred as provided in section 232.141, subsection 1, or to otherwise pay or provide for such care and treatment.

A parent or guardian may be required by the juvenile court to participate in educational or treatment programs as part of a probation plan if the court determines it to be in the best interest of the child. A parent or guardian who does not participate in the probation plan when required to do so by the court may be held in contempt.

d. An order transferring the legal custody of the child, subject to the continuing jurisdiction of the court for purposes of section 232.54, to one of the following:

(1) An adult relative or other suitable adult and placing the child on probation.

(2) A child-placing agency or other suitable private agency or facility which is licensed or otherwise authorized by law to receive and provide care for children and placing the child on probation or other supervision.

(3) The department of human services for purposes of foster care and prescribing the type of placement which will serve the best interests of the child and the means by which the placement shall be monitored by the court. The court shall consider ordering placement in family foster care as an alternative to group foster care.

(4) The chief juvenile court officer or the officer's designee for placement in a program under section 232.191, subsection 4. The chief juvenile court officer or the officer's designee may place a child in group foster care for failure to comply with the terms and conditions of the supervised community treatment program for up to seventy-two hours without notice to the court or for more than seventy-two hours if the court is notified of the placement within seventy-two hours of placement, subject to a hearing before the court on the placement within ten days.

e. An order transferring the guardianship of the child, subject to the continuing jurisdiction and custody of the court for the purposes of section

232.54, to the director of the department of human services for purposes of placement in the state training school or other facility, provided that the child is at least twelve years of age and the court finds the placement to be in the best interests of the child or necessary for the protection of the public, and that the child has been found to have committed an act which is a forcible felony, as defined in section 702.11, or a felony violation of section 124.401 or chapter 707, or the court finds any three of the following conditions exist:

(1) The child is at least fifteen years of age and the court finds the placement to be in the best interests of the child or necessary to the protection of the public.

(2) The child has committed an act which is a crime against a person and which would be an aggravated misdemeanor or a felony if the act were committed by an adult.

(3) The child has previously been found to have committed a delinquent act.

(4) The child has previously been placed in a treatment facility outside the child's home or in a supervised community treatment program established pursuant to section 232.191, subsection 4, as a result of a prior delinquency adjudication.

f. An order committing the child to a mental health institute or other appropriate facility for the purpose of treatment of a mental or emotional condition after making findings pursuant to the standards set out for involuntary commitment in chapter 229.

g. An order placing a child, other than a child who has committed a violation of section 123.47, in secure custody for not more than two days in a facility under section 232.22, subsection 3, paragraph "a" or "b".

h. In the case of a child adjudicated delinquent for an act which would be a violation of chapter 236 or section 708.2A if committed by an adult, an order requiring the child to attend a batterers' treatment program under section 708.2B.

2A. Notwithstanding subsection 2, the court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the regional plan for group foster care established pursuant to section 232.143 for the departmental region in which the court is located.

3. When the court enters an order placing a child on probation pursuant to this section, the court may in cases of change of residency transfer jurisdiction of the child to the juvenile court of the county where the child's residence is established. The court to which the jurisdiction of the child is transferred shall have the same powers with respect to the child as if the petition had originally been filed in that court.

4. When the court enters an order transferring the legal and physical custody of a child to an agency, facility, department or institution, the court shall transmit its order, its finding, and a

summary of its information concerning the child to such agency, facility, department or institution.

5. If the court orders the transfer of custody of the child to the department of human services or other agency for placement, the department or agency responsible for the placement of the child shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible.

6. When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d", "e", or "f", the order shall state that reasonable efforts as defined in section 232.57 have been made. If deemed appropriate by the court, the order may include a determination that continuation of the child in the child's home is contrary to the child's welfare. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may be used to assist the department in obtaining federal funding for the child's placement.

When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d", and the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the child has a case permanency plan, the court shall consider the written transition plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the transition plan and needs assessment at the time the transfer order is entered, the written transition plan and needs assessment shall be developed and submitted for the court's consideration no later than six months from the date of the transfer order. The court shall modify the initial transfer order as necessary to specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the transition plan identifies services or other support needed to assist the child when the child becomes an adult and the court deems it to be beneficial to the child, the court may authorize the individual who is the child's guardian ad litem or court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

7. If the court orders the transfer of the custody of the child to the department of human services or to another agency for placement in group foster care, the department or agency shall make every reasonable effort to place the child within the state, in the least restrictive, most family-like, and most appropriate setting available and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time

of placement.

8. If a child has previously been adjudicated as a child in need of assistance, and a social worker or other caseworker from the department of human services has been assigned to work on the child's case, the court may order the department of human services to assign the same social worker or caseworker to work on any matters related to the child arising under this division.

9. *a.* Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the state training school pursuant to subsection 2, paragraph "e", to a facility which has been designated to be an alternative placement site for the state training school, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a substitute dispositional order under section 232.54.

(2) Immediate removal of the child from the state training school is necessary to safeguard the child's physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

*b.* If the court finds the conditions in paragraph "a" exist and there is insufficient time to provide notice as required under rule of juvenile procedure 8.12, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

*c.* Within three days of the child's transfer, the director shall file a motion for a substitute dispositional order under section 232.54 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

2003 Acts, ch 117, §4

Juvenile victim restitution; see chapter 232A

For the fiscal year beginning July 1, 2003, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2003 Acts, ch 175, §28, and governor's item veto message

Subsection 6, unnumbered paragraph 2 amended

### 232.68 Definitions.

The definitions in section 235A.13 are applicable to this part 2 of division III. As used in sections 232.67 through 232.77 and 235A.12 through 235A.24, unless the context otherwise requires:

1. "*Child*" means any person under the age of eighteen years.

2. "*Child abuse*" or "*abuse*" means:

*a.* Any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of the acts or omissions of a person responsible for the care of the child.

*b.* Any mental injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range

of performance and behavior as the result of the acts or omissions of a person responsible for the care of the child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional as defined in section 622.10.

c. The commission of a sexual offense with or to a child pursuant to chapter 709, section 726.2, or section 728.12, subsection 1, as a result of the acts or omissions of the person responsible for the care of the child. Notwithstanding section 702.5, the commission of a sexual offense under this paragraph includes any sexual offense referred to in this paragraph with or to a person under the age of eighteen years.

d. The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing or other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child, however this provision shall not preclude a court from ordering that medical service be provided to the child where the child's health requires it.

e. The acts or omissions of a person responsible for the care of a child which allow, permit, or encourage the child to engage in acts prohibited pursuant to section 725.1. Notwithstanding section 702.5, acts or omissions under this paragraph include an act or omission referred to in this paragraph with or to a person under the age of eighteen years.

f. An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child.

g. The person responsible for the care of a child has, in the presence of the child, as defined in section 232.2, subsection 6, paragraph "p", manufactured a dangerous substance, as defined in section 232.2, subsection 6, paragraph "p", or in the presence of the child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

h. The commission of bestiality in the presence of a minor under section 717C.1 by a person who resides in a home with a child, as a result of the acts or omissions of a person responsible for the care of the child.

2A. "Child protection worker" means an individual designated by the department to perform an assessment in response to a report of child abuse.

3. "Confidential access to a child" means access to a child, during an assessment of an alleged

act of child abuse, who is alleged to be the victim of the child abuse. The access may be accomplished by interview, observation, or examination of the child. As used in this subsection and this part:

a. "Interview" means the verbal exchange between the child protection worker and the child for the purpose of developing information necessary to protect the child. A child protection worker is not precluded from recording visible evidence of abuse.

b. "Observation" means direct physical viewing of a child under the age of four by the child protection worker where the viewing is limited to the child's body other than the genitalia and pubes. "Observation" also means direct physical viewing of a child aged four or older by the child protection worker without touching the child or removing an article of the child's clothing, and doing so without the consent of the child's parent, custodian, or guardian. A child protection worker is not precluded from recording evidence of abuse obtained as a result of a child's voluntary removal of an article of clothing without inducement by the child protection worker. However, if prior consent of the child's parent or guardian, or an ex parte court order, is obtained, "observation" may include viewing the child's unclothed body other than the genitalia and pubes.

c. "Physical examination" means direct physical viewing, touching, and medically necessary manipulation of any area of the child's body by a physician licensed under chapter 148 or 150A.

4. "Department" means the state department of human services and includes the local, county and regional offices of the department.

5. "Health practitioner" includes a licensed physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, optometrist, podiatric physician, or chiropractor; a resident or intern in any of such professions; a licensed dental hygienist, a registered nurse or licensed practical nurse; a physician assistant; and an emergency medical care provider certified under section 147A.6.

6. "Mental health professional" means a person who meets the following requirements:

a. Holds at least a master's degree in a mental health field, including, but not limited to, psychology, counseling, nursing, or social work; or is licensed to practice medicine pursuant to chapter 148, 150, or 150A.

b. Holds a license to practice in the appropriate profession.

c. Has at least two years of postdegree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals used in providing appropriate mental health services for those individuals.

7. "Person responsible for the care of a child" means:

a. A parent, guardian, or foster parent.

b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.

c. An employee or agent of any public or private facility providing care for a child, including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility.

d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

8. “Registry” means the central registry for child abuse information established in section 235A.14.

2003 Acts, ch 44, §49

For the fiscal year beginning July 1, 2003, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2003 Acts, ch 175, §28, and governor’s item veto message

Unnumbered paragraph 1 amended

### **232.69 Mandatory and permissive reporters — training required.**

1. The classes of persons enumerated in this subsection shall make a report within twenty-four hours and as provided in section 232.70, of cases of child abuse. In addition, the classes of persons enumerated in this subsection shall make a report of abuse of a child who is under twelve years of age and may make a report of abuse of a child who is twelve years of age or older, which would be defined as child abuse under section 232.68, subsection 2, paragraph “c” or “e”, except that the abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child.

a. Every health practitioner who in the scope of professional practice, examines, attends, or treats a child and who reasonably believes the child has been abused. Notwithstanding section 139A.30, this provision applies to a health practitioner who receives information confirming that a child is infected with a sexually transmitted disease.

b. Any of the following persons who, in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse:

- (1) A social worker.
- (2) An employee or operator of a public or private health care facility as defined in section 135C.1.
- (3) A certified psychologist.
- (4) A licensed school employee, certified para-educator, holder of a coaching authorization issued under section 272.31, or an instructor employed by a community college.
- (5) An employee or operator of a licensed child care center, registered child development home, head start program, family development and self-

sufficiency grant program under section 217.12, or healthy opportunities for parents to experience success – healthy families Iowa program under section 135.106.

(6) An employee or operator of a substance abuse program or facility licensed under chapter 125.

(7) An employee of a department of human services institution listed in section 218.1.

(8) An employee or operator of a juvenile detention or juvenile shelter care facility approved under section 232.142.

(9) An employee or operator of a foster care facility licensed or approved under chapter 237.

(10) An employee or operator of a mental health center.

(11) A peace officer.

(12) A counselor or mental health professional.

2. Any other person who believes that a child has been abused may make a report as provided in section 232.70.

3. a. For the purposes of this subsection, “licensing board” means an examining board designated in section 147.13, the board of educational examiners created in section 272.2, or a licensing board as defined in section 272C.1.

b. A person required to make a report under subsection 1, other than a physician whose professional practice does not regularly involve providing primary health care to children, shall complete two hours of training relating to the identification and reporting of child abuse within six months of initial employment or self-employment involving the examination, attending, counseling, or treatment of children on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person’s employer or, if self-employed, from the department. The person shall complete at least two hours of additional child abuse identification and reporting training every five years.

c. If the person is an employee of a hospital or similar institution, or of a public or private institution, agency, or facility, the employer shall be responsible for providing the child abuse identification and reporting training. If the person is self-employed, employed in a licensed or certified profession, or employed by a facility or program that is subject to licensure, regulation, or approval by a state agency, the person shall obtain the child abuse identification and reporting training as provided in paragraph “d”.

d. The person may complete the initial or additional training requirements as part of any of the following that are applicable to the person:

(1) A continuing education program required under chapter 272C and approved by the appropriate licensing or examining board.

(2) A training program using a curriculum ap-

proved by the abuse education review panel established by the director of public health pursuant to section 135.11.

(3) A training program using such an approved curriculum offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, or a similar public agency.

*e.* A licensing board with authority over the license of a person required to make a report under subsection 1 shall require as a condition of licensure that the person is in compliance with the requirements for abuse training under this subsection. The licensing board shall require the person upon licensure renewal to accurately document for the licensing board the person's completion of the training requirements. However, the licensing board may adopt rules providing for waiver or suspension of the compliance requirements, if the waiver or suspension is in the public interest, applicable to a person who is engaged in active duty in the military service of this state or of the United States, to a person for whom compliance with the training requirements would impose a significant hardship, or to a person who is practicing a licensed profession outside this state or is otherwise subject to circumstances that would preclude the person from encountering child abuse in this state.

*f.* For persons required to make a report under subsection 1 who are not engaged in a licensed profession that is subject to the authority of a licensing board but are employed by a facility or program subject to licensure, registration, or approval by a state agency, the agency shall require as a condition of renewal of the facility's or program's licensure, registration, or approval, that such persons employed by the facility or program are in compliance with the training requirements of this subsection.

*g.* For peace officers, the elected or appointed official designated as the head of the agency employing the peace officer shall ensure compliance with the training requirements of this subsection.

*h.* For persons required to make a report under subsection 1 who are employees of state departments and political subdivisions of the state, the department director or the chief administrator of the political subdivision shall ensure the persons' compliance with the training requirements of this subsection.

2002 Acts, ch 1047, §2, 20

2002 amendment to subsection 1, paragraph b, subparagraph (5), is effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31

2002 amendment to subsection 1, paragraph b, subparagraph (4) is effective July 1, 2003; 2002 Acts, ch 1047, §20

Subsection 1, paragraph b, subparagraph (4) amended

### **232.71B Duties of the department upon receipt of report.**

1. *Commencement of assessment — purpose.*

*a.* If the department determines a report

constitutes a child abuse allegation, the department shall promptly commence an appropriate assessment within twenty-four hours of receiving the report.

*b.* The primary purpose of the assessment shall be the protection of the child named in the report. The secondary purpose of the assessment shall be to engage the child's family in services to enhance family strengths and to address needs.

2. *Notification of parents.* The department, within five working days of commencing the assessment, shall provide written notification of the assessment to the child's parents. However, if the department shows the court to the court's satisfaction that notification is likely to endanger the child or other persons, the court shall orally direct the department to withhold notification. Within one working day of issuing an oral directive, the court shall issue a written order restraining the notification. The department shall not reveal in the written notification to the parents or otherwise the identity of the reporter of child abuse to a subject of a child abuse report listed in section 235A.15, subsection 2, paragraph "a".

3. *Involvement of law enforcement.* The department shall apply protocols, developed with the local child protection assistance team established pursuant to section 915.35, to prioritize the actions taken in response to child abuse reports and to work jointly with child protection assistance teams and law enforcement agencies in performing assessment and investigative processes for child abuse reports in which a criminal act harming a child is alleged. The county attorney and appropriate law enforcement agencies shall also take any other lawful action which may be necessary or advisable for the protection of the child. If a report is determined not to constitute a child abuse allegation, but a criminal act harming a child is alleged, the department shall immediately refer the matter to the appropriate law enforcement agency.

4. *Assessment process.* The assessment is subject to all of the following:

*a.* Identification of the nature, extent, and cause of the injuries, if any, to the child named in the report.

*b.* Identification of the person or persons responsible for the alleged child abuse.

*c.* A description of the name, age, and condition of other children in the same home as the child named in the report.

*d.* An evaluation of the home environment. If concerns regarding protection of children are identified by the child protection worker, the child protection worker shall evaluate the child named in the report and any other children in the same home as the parents or other persons responsible for their care.

*e.* An interview of the person alleged to have committed the child abuse, if the person's identity

and location are known. The offer of an interview shall be made to the person prior to any consideration or determination being made that the person committed the alleged abuse. The purpose of the interview shall be to provide the person with the opportunity to explain or rebut the allegations of the child abuse report or other allegations made during the assessment. The court may waive the requirement to offer the interview only for good cause. The person offered an interview, or the person's attorney on the person's behalf, may decline the offer of an interview of the person.

*f.* Unless otherwise prohibited under section 234.40 or 280.21, the use of corporal punishment by the person responsible for the care of a child which does not result in a physical injury to the child shall not be considered child abuse.

5. *Home visit.* The assessment may, with the consent of the parent or guardian, include a visit to the home of the child named in the report and an interview or observation of the child may be conducted. If permission to enter the home to interview or observe the child is refused, the juvenile court or district court upon a showing of probable cause may authorize the person making the assessment to enter the home and interview or observe the child.

6. *Facility or school visit.* The assessment may include a visit to a facility providing care to the child named in the report or to any public or private school subject to the authority of the department of education where the child named in the report is located. The administrator of a facility, or a public or private school shall cooperate with the child protection worker by providing confidential access to the child named in the report for the purpose of interviewing the child, and shall allow the child protection worker confidential access to other children for the purpose of conducting interviews in order to obtain relevant information. The child protection worker may observe a child named in a report in accordance with the provisions of section 232.68, subsection 3, paragraph "b". A witness shall be present during an observation of a child. Any child aged ten years of age or older can terminate contact with the child protection worker by stating or indicating the child's wish to discontinue the contact. The immunity granted by section 232.73 applies to acts or omissions in good faith of administrators and their facilities or school districts for cooperating in an assessment and allowing confidential access to a child.

7. *Information requests.*

*a.* The department may request information from any person believed to have knowledge of a child abuse case. The county attorney, any law enforcement or social services agency in the state, and any mandatory reporter, whether or not the reporter made the specific child abuse report, shall cooperate and assist in the assessment upon the request of the department.

*b.* In performing an assessment, the department may request criminal history data from the department of public safety on any person believed to be responsible for an injury to a child which, if confirmed, would constitute child abuse. The department shall establish procedures for determining when a criminal history records check is necessary.

8. *Protective disclosure.* If the department determines that disclosure is necessary for the protection of a child, the department may disclose to a subject of a child abuse report referred to in section 235A.15, subsection 2, paragraph "a", that an individual is listed in the child or dependent adult abuse registry or is required to register with the sex offender registry in accordance with chapter 692A.

9. *Physical examination.* If the department refers a child to a physician for a physical examination, the department shall contact the physician regarding the examination within twenty-four hours of making the referral. If the physician who performs the examination upon referral by the department reasonably believes the child has been abused, the physician shall report to the department within twenty-four hours of performing the examination.

10. *Multidisciplinary team.* In each county or multicounty area in which more than fifty child abuse reports are made per year, the department shall establish a multidisciplinary team, as defined in section 235A.13, subsection 8. Upon the department's request, a multidisciplinary team shall assist the department in the assessment, diagnosis, and disposition of a child abuse report.

11. *Facility protocol.* The department shall apply a protocol, developed in consultation with facilities providing care to children, for conducting an assessment of reports of abuse of children allegedly caused by employees of facilities providing care to children. As part of such an assessment, the department shall notify the licensing authority for the facility, the governing body of the facility, and the administrator in charge of the facility of any of the following:

*a.* A violation of facility policy noted in the assessment.

*b.* An instance in which facility policy or lack of facility policy may have contributed to the reported incident of alleged child abuse.

*c.* An instance in which general practice in the facility appears to differ from the facility's written policy.

The licensing authority, the governing body, and the administrator in charge of the facility shall take any lawful action which may be necessary or advisable to protect children receiving care.

12. *Assessment report.* The department, upon completion of the assessment, shall make a written report of the assessment, in accordance with all of the following:

*a.* The written assessment shall incorporate

the information required by subsection 4.

b. The written assessment shall be completed within twenty business days of the receipt of the report.

c. The written assessment shall include a description of the child's condition, identification of the injury or risk to which the child was exposed, the circumstances which led to the injury or risk to the child, and the identity of any person alleged to be responsible for the injury or risk to the child.

d. The written assessment shall identify the strengths and needs of the child, and of the child's parent, home, and family.

e. The written assessment shall identify services available from the department and informal and formal services and other support available in the community to address the strengths and needs identified in the assessment.

f. Upon completion of the assessment, the department shall consult with the child's family in offering services to the child and the child's family to address strengths and needs identified in the assessment.

g. The department shall notify each subject of the child abuse report, as identified in section 235A.15, subsection 2, paragraph "a", of the results of the assessment, of the subject's right, pursuant to section 235A.19, to correct the report data or disposition data which refers to the subject, and of the procedures to correct the data.

h. If after completing the assessment process the child protection worker determines, with the concurrence of the worker's supervisor and the department's area administrator, that a report is a spurious report or that protective concerns are not present, the portions of the assessment report described under paragraphs "d" and "e" shall not be required.

13. *Court-ordered and voluntary services.* The department shall provide or arrange for and monitor services for abused children and their families on a voluntary basis or under a final or intermediate order of the juvenile court.

14. *County attorney — juvenile court.* The department shall provide the juvenile court and the county attorney with a copy of the portion of the written assessment pertaining to the child abuse report. The juvenile court and the county attorney shall notify the department of any action taken concerning an assessment provided by the department.

15. *False reports.* If a fourth report is received from the same person who made three earlier reports which identified the same child as a victim of child abuse and the same person responsible for the care of the child as the alleged abuser and which were determined by the department to be entirely false or without merit, the department may determine that the report is again false or without merit due to the report's spurious or frivolous nature and may in its discretion terminate its

assessment of the report. If the department receives more than three reports which identify the same child as a victim of child abuse or the same person as the alleged abuser of a child, or which were made by the same person, and the department determined the reports to be entirely false or without merit, the department shall provide information concerning the reports to the county attorney for consideration of criminal charges under section 232.75, subsection 3.

2003 Acts, ch 44, §50; 2003 Acts, ch 47, §1; 2003 Acts, ch 107, §1; 2003 Acts, ch 123, §1; 2003 Acts, ch 179, §68

Subsection 3 amended

Subsection 4, paragraph e amended

NEW subsection 8 and former subsections 8 – 14 renumbered as 9 – 15

Subsection 12, NEW paragraph h

**232.72 Jurisdiction — transfer.**

1. For the purposes of this division, the terms "department of human services", "department", or "county attorney" ordinarily refer to the regional or local office of the department of human services or of the county attorney's office serving the county in which the child's home is located.

2. However, if the person making a report of child abuse pursuant to this chapter does not know where the child's home is located, or if the child's home is not located in the service area where the health practitioner examines, attends, or treats the child, the report may be made to the department or to the local office serving the county where the person making the report resides or the county where the health practitioner examines, attends, or treats the child. These agencies shall promptly proceed as provided in section 232.71B, unless the matter is transferred as provided in this section.

3. If the child's home is located in a county not served by the office receiving the report, the department shall promptly transfer the matter by transmitting a copy of the report of injury and any other pertinent information to the office and the county attorney serving the other county. They shall promptly proceed as provided in section 232.71B.

For the fiscal year beginning July 1, 2003, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2003 Acts, ch 175, §28, and governor's item veto message

Section not amended; footnote revised

**232.102 Transfer of legal custody of child and placement.**

1. After a dispositional hearing the court may enter an order transferring the legal custody of the child to one of the following for purposes of placement:

a. A parent who does not have physical care of the child, other relative, or other suitable person.

b. A child placing agency or other suitable private agency, facility, or institution which is licensed or otherwise authorized by law to receive and provide care for the child.

c. The department of human services.

If the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the child has a case permanency plan, the court shall consider the written transition plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the transition plan and needs assessment at the time the order is entered, the written transition plan and needs assessment shall be developed and submitted for the court's consideration no later than six months from the date of the transfer order. The court shall modify the initial transfer order as necessary to specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the transition plan identifies services or other support needed to assist the child when the child becomes an adult and the court deems it to be beneficial to the child, the court may authorize the individual who is the child's guardian ad litem or court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

1A. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the regional plan for group foster care established pursuant to section 232.143 for the departmental region in which the court is located.

2. After a dispositional hearing and upon the request of the department, the court may enter an order appointing the department as the guardian of an unaccompanied refugee child or of a child without parent or guardian.

3. After a dispositional hearing and upon written findings of fact based upon evidence in the record that an alternative placement set forth in subsection 1, paragraph "b", has previously been made and is not appropriate the court may enter an order transferring the guardianship of the child for the purposes of subsection 8, to the director of human services for the purposes of placement in the Iowa juvenile home at Toledo.

4. *a.* Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the Iowa juvenile home at Toledo pursuant to subsection 3, to a facility which has been designated to be an alternative placement site for the juvenile home, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a new dispositional order under section 232.103.

(2) Immediate removal of the child from the juvenile home is necessary to safeguard the child's physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child

have been made.

*b.* If the court finds the conditions in paragraph "a" exist and there is insufficient time to provide notice as required under rule of juvenile procedure 8.12, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

*c.* Within three days of the child's transfer, the director shall file a motion for a new dispositional order under section 232.103 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

5. *a.* Whenever possible the court should permit the child to remain at home with the child's parent, guardian, or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

(1) The child cannot be protected from physical abuse without transfer of custody; or

(2) The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

*b.* In order to transfer custody of the child under this subsection, the court must make a determination that continuation of the child in the child's home would be contrary to the welfare of the child, and shall identify the reasonable efforts that have been made. The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the court order. However, preserving the safety of the child is the paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for removal of the child.

6. The child shall not be placed in the state training school.

7. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the de-

partment or agency shall consider placing the child in the same licensed foster care facility. If the court orders the transfer of custody to a parent who does not have physical care of the child, other relative, or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian, or custodian in order to enable them to resume custody of the child. If the court orders the transfer of custody to the department of human services or to another agency for placement in group foster care, the department or agency shall make every reasonable effort to place the child within Iowa, in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

8. Any order transferring custody to the department or an agency shall include a statement informing the child's parent that the consequences of a permanent removal may include the termination of the parent's rights with respect to the child.

9. An agency, facility, institution, or person to whom custody of the child has been transferred pursuant to this section shall file a written report with the court at least every six months concerning the status and progress of the child. The court shall hold a periodic dispositional review hearing for each child in placement pursuant to this section in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted. The placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6. If the placement is extended, the court shall determine whether additional services are necessary to facilitate the return of the child to the child's home, and if the court determines such services are needed, the court shall order the provision of such services. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency responsible for the placement of the child shall consider placing the child in the same licensed foster care facility.

a. The initial dispositional review hearing shall not be waived or continued beyond six months after the date of the dispositional hearing.

b. Subsequent dispositional review hearings shall not be waived or continued beyond twelve months after the date of the most recent dispositional review hearing.

c. For purposes of this subsection, a hearing held pursuant to section 232.103 satisfies the requirements for initial dispositional review or subsequent permanency hearing.

10. a. As used in this division, "reasonable efforts" means the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home. If returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include the efforts made in a timely manner to finalize a permanency plan for the child. A child's health and safety shall be the paramount concern in making reasonable efforts. Reasonable efforts may include intensive family preservation services or family-centered services, if the child's safety in the home can be maintained during the time the services are provided. In determining whether reasonable efforts have been made, the court shall consider both of the following:

(1) The type, duration, and intensity of services or support offered or provided to the child and the child's family. If intensive family preservation services were not provided, the court record shall enumerate the reasons the services were not provided, including but not limited to whether the services were not available, not accepted by the child's family, judged to be unable to protect the child and the child's family during the time the services would have been provided, judged to be unlikely to be successful in resolving the problems which would lead to removal of the child, or other services were found to be more appropriate.

(2) The relative risk to the child of remaining in the child's home versus removal of the child.

b. As used in this section:

(1) "Family-centered services" means services which utilize a comprehensive approach to addressing the problems of individual family members, whether or not the problems are integrally related to the family, within the context of the family. Family-centered services are adapted to the individual needs of a family in the intensity and duration of service delivery and are intended to improve overall family functioning.

(2) "Intensive family preservation services" means services provided to a family with a child who is at imminent risk of out-of-home placement. The services are designed to address any problem creating the need for out-of-home placement and have the following characteristics: are persistently offered but provided at the family's option; are provided in the family's home; are available twenty-four hours per day; provide a response within twenty-four hours of the initial contact for assistance; have worker caseloads of not more than two through four families per worker at any one time; are provided for a period of four to six weeks; and provide funding in order to meet the special needs of a family.

11. The performance of reasonable efforts to place a child for adoption or with a guardian may be made concurrently with making reasonable efforts as defined in this section.

12. If the court determines by clear and convincing evidence that aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

- a. The parent has abandoned the child.
- b. The court finds the circumstances described in section 232.116, subsection 1, paragraph “i”, are applicable to the child.
- c. The parent’s parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child’s removal.
- d. The parent has been convicted of the murder of another child of the parent.
- e. The parent has been convicted of the voluntary manslaughter of another child of the parent.
- f. The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.
- g. The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

2003 Acts, ch 117, §5  
Copy of dispositional order under subsection 9 to be submitted to foster care review boards; 84 Acts, ch 1279, §42  
Limitation on placing child in mental health institute; 86 Acts, ch 1246, §305

For the fiscal year beginning July 1, 2003, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2003 Acts, ch 175, §28, and governor’s item veto message

Subsection 1, unnumbered paragraph 2 amended

### **232.103 Termination, modification, vacation and substitution of dispositional order.**

1. At any time prior to expiration of a dispositional order and upon the motion of an authorized party or upon its own motion as provided in this section, the court may terminate the order and discharge the child, modify the order, or vacate the order and make a new order.

2. The following persons shall be authorized to file a motion to terminate, modify or vacate and substitute a dispositional order:

- a. The child.
  - b. The child’s parent, guardian or custodian, except that such motion may be filed by that person not more often than once every six months except with leave of court for good cause shown.
  - c. The child’s guardian ad litem.
  - d. A person supervising the child pursuant to a dispositional order.
  - e. An agency, facility, institution or person to whom legal custody has been transferred pursuant to a dispositional order.
  - f. The county attorney.
3. A change in the level of care for a child who

is subject to a dispositional order for out-of-home placement requires modification of the dispositional order. A hearing shall be held on a motion to terminate or modify a dispositional order except that a hearing on a motion to terminate an order may be waived upon agreement by all parties. Reasonable notice of the hearing shall be given to the parties. The hearing shall be conducted in accordance with the provisions of section 232.50.

4. The court may terminate an order and release the child if the court finds that the purposes of the order have been accomplished and the child is no longer in need of supervision, care or treatment.

5. The court may modify or vacate an order for good cause shown provided that where the request to modify or vacate is based on the child’s alleged failure to comply with the conditions or terms of the order, the court may modify or vacate the order only if it finds that there is clear and convincing evidence that the child violated a material and reasonable condition or term of the order.

6. If the court vacates the order it may make any other order in accordance with and subject to the provisions of sections 232.100 to 232.102.

7. With respect to a temporary transfer order made pursuant to section 232.102, subsection 4, if the court finds that removal of a child from the Iowa juvenile home is necessary to safeguard the child’s physical or emotional health and is in the best interests of the child, the court shall grant the director’s motion for a new dispositional order to place the child in a facility which has been designated to be an alternative placement site for the juvenile home.

2003 Acts, ch 117, §6  
Subsection 3 amended

### **232.117 Termination — findings — disposition.**

1. After the hearing is concluded the court shall make and file written findings.

2. If the court concludes that facts sufficient to terminate parental rights have not been established by clear and convincing evidence, the court shall dismiss the petition.

3. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence, the court may order parental rights terminated. If the court terminates the parental rights of the child’s parents, the court shall transfer the guardianship and custody of the child to one of the following:

- a. The department of human services.
  - b. A child-placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.
  - c. A parent who does not have physical care of the child, other relative, or other suitable person.
4. The court shall not order group foster care placement of the child which is a charge upon the

state if that placement is not in accordance with the regional plan for group foster care established pursuant to section 232.143 for the departmental region in which the court is located.

5. If after a hearing the court does not order the termination of parental rights but finds that there is clear and convincing evidence that the child is a child in need of assistance, under section 232.2, subsection 6, due to the acts or omissions of one or both of the child's parents the court may adjudicate the child to be a child in need of assistance and may enter an order in accordance with the provisions of section 232.100, 232.101, 232.102, or 232.104.

6. If the court orders the termination of parental rights and transfers guardianship and custody under subsection 3, the guardian shall submit a case permanency plan to the court and shall make every effort to establish a stable placement for the child by adoption or other permanent placement. Within forty-five days of receipt of the termination order, and every forty-five days thereafter until the court determines such reports are no longer necessary, the guardian shall report to the court regarding efforts made to place the child for adoption or providing the rationale as to why adoption would not be in the child's best interest.

7. The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has not been placed for adoption shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed six months after the date of the termination of parental rights or the last placement review hearing.

8. The guardian of each child whose guardianship and custody has been transferred under subsection 3 and who has been placed for adoption and whose adoption has not been finalized shall file a written report with the court every six months concerning the child's placement. The court shall hold a hearing to review the placement at intervals not to exceed twelve months after the date of the adoptive placement or the last placement review hearing.

9. Hearings held under this division are open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having a public hearing. Upon closing the hearing, the court may admit persons who have a direct interest in the case or in the work of the court.

10. If a termination of parental rights order is issued on the grounds that the child is a newborn infant whose parent has voluntarily released custody of the child under section 232.116, subsection 1, paragraph "c", the court shall retain jurisdiction to change a guardian or custodian and to allow a

parent whose rights have been terminated to request vacation or appeal of the termination order which request must be made within thirty days of issuance of the granting of the termination order. The period for request for vacation or appeal by a parent whose rights have been terminated shall not be waived or extended and a vacation or appeal shall not be granted for a request made after the expiration of this period. The court shall grant the vacation request only if it is in the best interest of the child. The supreme court shall prescribe rules to establish the period of thirty days, which shall not be waived or extended, in which a parent whose parental rights have been terminated may request a vacation or appeal of such a termination order.

For the fiscal year beginning July 1, 2003, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2003 Acts, ch 175, §28, and governor's item veto message

Section not amended; footnote revised

### **232.127 Hearing — adjudication — disposition.**

1. Upon the filing of a petition, the court shall fix a time for a hearing and give notice thereof to the child and the child's parent, guardian or custodian.

2. A parent without custody may petition the court to be made a party to proceedings under this division.

3. The court shall exclude the general public from such hearing except the court in its discretion may admit persons having a legitimate interest in the case or the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. The court may adjudicate the family to be a family in need of assistance and enter an appropriate dispositional order if the court finds:

a. There has been a breakdown in the relationship between the child and the child's parent, guardian or custodian; and

b. The child or the child's parent, guardian or custodian has sought services from public or private agencies to maintain and improve the familial relationship; and

c. The court has at its disposal services for this purpose which can be made available to the family.

6. If the court makes such a finding the court may order any or all of the parties to accept counseling and to comply with any other reasonable orders designed to maintain and improve the familial relationship. At the conclusion of any counseling ordered by the court, or at any other time deemed necessary, the parties shall be required to meet together and be apprised of the findings and recommendations of such counseling. Such an order shall remain in force for a period not to exceed one year unless the court otherwise specifies or sooner terminates the order.

7. The court may not order the child placed on probation, in a foster home or in a nonsecure facili-

ty unless the child requests and agrees to such supervision or placement. In no event shall the court order the child placed in the state training school or other secure facility.

8. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the regional plan for group foster care established pursuant to section 232.143 for the departmental region in which the court is located.

9. A child found in contempt of court because of violation of conditions imposed under this section shall not be considered delinquent. Such a contempt may be punished by imposition of a work assignment or assignments to benefit the state or a governmental subdivision of the state. In addition to or in lieu of such an assignment or assignments, the court may impose one of the dispositions set out in sections 232.100 to 232.102.

10. If the child is sixteen years of age or older and an order for an out-of-home placement is entered, the order shall specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the child has a case permanency plan, the court shall consider the written transition plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the transition plan and needs assessment at the time the order is entered, the written transition plan and needs assessment shall be developed and submitted for the court's consideration no later than six months from the date of the transfer order. The court shall modify the initial transfer order as necessary to specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the transition plan identifies services or other support needed to assist the child when the child becomes an adult and the court deems it to be beneficial to the child, the court may authorize the individual who is the child's guardian ad litem or court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

2003 Acts, ch 117, §7

For the fiscal year beginning July 1, 2003, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2003 Acts, ch 175, §28, and governor's item veto message

NEW subsection 10

### **232.133 Appeal.**

1. An interested party aggrieved by an order or decree of the juvenile court may appeal from the court for review of questions of law or fact. However, an order adjudicating a child to have committed a delinquent act, entered pursuant to section 232.47, shall not be appealed until the court enters a corresponding dispositional order pursuant to section 232.52. An appeal that affects the custody of a child shall be heard at the earliest practicable time.

2. Except for appeals from final orders entered in child in need of assistance proceedings or final orders entered pursuant to section 232.117, appellate procedures shall be governed by the same provisions applicable to appeals from the district court. The supreme court may prescribe rules to expedite the resolution of appeals from final orders entered in child in need of assistance proceedings or final orders entered pursuant to section 232.117.

3. The pendency of an appeal or application therefor shall not suspend the order of the juvenile court regarding a child and shall not discharge the child from the custody of the court or the agency, association, facility, institution or person to whom the court has transferred legal custody unless the appellate court otherwise orders on application of an appellant.

4. If the appellate court does not dismiss the proceedings and discharge the child, the appellate court shall affirm or modify the order of the juvenile court and remand the child to the jurisdiction of the juvenile court for disposition not inconsistent with the appellate court's finding on the appeal.

2003 Acts, ch 25, §1  
Subsection 2 amended

### **232.143 Regional group foster care budget targets.**

1. A statewide expenditure target for children in group foster care placements in a fiscal year, which placements are a charge upon or are paid for by the state, shall be established annually in an appropriation bill by the general assembly. The department and the judicial branch shall jointly develop a formula for allocating a portion of the statewide expenditure target established by the general assembly to each of the department's regions. The formula shall be based upon the region's proportion of the state population of children and of the statewide usage of group foster care in the previous five completed fiscal years and other indicators of need. The expenditure amount determined in accordance with the formula shall be the group foster care budget target for that region. A region may exceed its budget target for group foster care by not more than five percent in a fiscal year, provided the overall funding allocated by the department for all child welfare services in the region is not exceeded.

2. For each of the department's regions, representatives appointed by the department and the juvenile court shall establish a plan for containing the expenditures for children placed in group foster care ordered by the court within the budget target allocated to that region pursuant to subsection 1. The plan shall include monthly targets and strategies for developing alternatives to group foster care placements in order to contain expenditures for child welfare services within the amount appropriated by the general assembly for that pur-

pose. Each regional plan shall be established within sixty days of the date by which the group foster care budget target for the region is determined. To the extent possible, the department and the juvenile court shall coordinate the planning required under this subsection with planning for services paid under section 232.141, subsection 4. The department's regional administrator shall communicate regularly, as specified in the regional plan, with the juvenile courts within that region concerning the current status of the regional plan's implementation.

3. State payment for group foster care placements shall be limited to those placements which are in accordance with the regional plans developed pursuant to subsection 2.

Provisions of this section applicable to juvenile court and juvenile court representatives shall instead apply to juvenile court services and juvenile court services representatives for fiscal year beginning July 1, 2003; 2003 Acts, ch 175, §18, 47

For the fiscal year beginning July 1, 2003, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2003 Acts, ch 175, §28, and governor's item veto message

Section not amended; footnotes revised

**232.183 Dispositional hearing.**

1. Following an entry of an initial determination order pursuant to section 232.182, the court shall hold a dispositional hearing in order to determine the future status of the child based on the child's best interests. Notice of the hearing shall be given to the child and the child's parent, guardian, or custodian, and the department.

2. The dispositional hearing shall be held within twelve months of the date the child was placed in foster care.

3. A dispositional hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. Following the hearing, the court shall issue a dispositional order. The dispositional orders which the court may enter, subject to its continuing jurisdiction, are as follows:

a. An order that the child's voluntary placement shall be terminated and the child returned to the child's home and provided with available services and support needed for the child to remain in the home.

b. An order that the child's voluntary placement may continue if the department and the child's parent or guardian continue to agree to the voluntary placement.

c. If the court finds that the child's parent, guardian, or custodian has failed to fulfill respon-

sibilities outlined in the case permanency plan, an order that the child remain in foster care and that the county attorney or department file, within three days, a petition alleging the child to be a child in need of assistance.

d. If the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the child has a case permanency plan, the court shall consider the written transition plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the transition plan and needs assessment at the time the order is entered, the transition plan and needs assessment shall be developed and submitted for the court's consideration no later than six months from the date of the transfer order. The court shall modify the initial transfer order as necessary to specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the transition plan identifies services or other support needed to assist the child when the child becomes an adult and the court deems it to be beneficial to the child, the court may authorize the individual who is the child's guardian ad litem or court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

6. With respect to each child whose placement was approved pursuant to subsection 5, the court shall continue to hold periodic dispositional hearings. The hearings shall not be waived or continued beyond twelve months following the last dispositional hearing. After a dispositional hearing, the court shall enter one of the dispositional orders authorized under subsection 5.

2003 Acts, ch 117, §8; 2003 Acts, ch 151, §6  
 Subsection 5, NEW paragraph d  
 Subsection 7 stricken

**232.188 Decategorization of child welfare funding.**

1. Decategorization of child welfare funding is intended to establish a system of delivering human services based upon client needs to replace a system based upon a multitude of categorical programs and funding sources, each with different service definitions and eligibility requirements. The purposes of decategorization include but are not limited to redirecting child welfare funding to services which are more preventive, family-centered, and community-based in order to reduce use of restrictive approaches which rely upon institutional, out-of-home, and out-of-community services.

2. In partnership with an interested county or group of counties which has demonstrated the commitment and involvement of the affected county department of human services, juvenile court system, and board of supervisors, the de-

partment shall develop agreements providing for the decategorization of specific state and state-federal funding categories into a child welfare funding pool for that county or group of counties. A decategorization agreement shall require the decategorization program to be implemented by a decategorization governance board. The decategorization governance board shall develop specific, quantifiable short-term and long-term plans for enhancing the county's or group of counties' family-centered and community-based services and reducing reliance upon out-of-community care. The affected service systems shall include child welfare and juvenile justice systems. A decategorization agreement may vary depending upon the approaches selected by the county or group of counties which shall be detailed in an annual child welfare services plan developed by the decategorization governance board. A decategorization governance board shall involve community representatives and county organizations in the development of the plan.

3. The child welfare funding pool shall be used by the county or group of counties to provide more flexible, individualized, family-centered, preventive, community-based, comprehensive, and coordinated service systems for children and families served in that area. The decategorization of the funding shall not limit the legal rights of those children and families to services, but shall provide more flexibility to the partnership county or counties in responding to individual and family needs.

4. In a decategorization agreement, the department and the county's or group of counties' decategorization governance board shall agree on all of the following items: the governance relationship between the department and the decategorization governance board; the respective areas of autonomy of the department and the board; the budgeting structure for the decategorization; and a method for resolving disputes between the department and the board. The decategorization agreement shall require the department and the decategorization governance board to agree upon a budget within sixty days of the date by which the regional group foster care budget targets are determined under section 232.143 for the fiscal year

to which the budget applies. The budget may later be modified to reflect new or changed circumstances.

5. The state shall provide incentives for a county or counties to participate in a decategorization agreement while maintaining an expectation that the service outcomes for children and families can be improved by the funding flexibility, and the redeployment of funding currently available for services within the system. Moneys in the child welfare funding pool established for a county or group of counties participating in a decategorization agreement which remain unobligated or unexpended at the end of a fiscal year shall remain available to the county or group of counties during the succeeding fiscal year to finance other child welfare service enhancements.

6. Initially the department shall work with the five counties previously authorized under law to enter into decategorization agreements with the state. At a minimum, any of those counties may elect to use funding for foster care, family-centered services, subsidized adoption, child care, local purchase of service, state juvenile institution care, juvenile detention, department direct services, and court-ordered services for juveniles in the child welfare fund established for that county.

7. The annual child welfare services plan developed by a decategorization governance board pursuant to subsection 2 shall be submitted to the department and the Iowa empowerment board. In addition, the decategorization governance board shall submit an annual progress report to the department and the Iowa empowerment board which summarizes the progress made toward attaining the objectives contained in the plan. The progress report shall serve as an opportunity for information sharing and feedback.

8. A decategorization governance board shall coordinate the board's planning and budgeting activities with the community empowerment area board for the community empowerment area within which the decategorization county is located.

For the fiscal year beginning July 1, 2003, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2003 Acts, ch 175, §28, and governor's item veto message

Section not amended; footnote revised

## CHAPTER 232B

### INDIAN CHILD WELFARE ACT

#### **232B.1 Short title.**

This chapter shall be known and may be cited as the "*Iowa Indian Child Welfare Act*".

2003 Acts, ch 153, §2  
NEW section

#### **232B.2 Purpose — policy of state.**

The purpose of the Iowa Indian child welfare Act

is to clarify state policies and procedures regarding implementation of the federal Indian Child Welfare Act, Pub. L. No. 95-608, as codified in 25 U.S.C. ch. 21. It is the policy of the state to cooperate fully with Indian tribes and tribal citizens in Iowa in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are

enforced. This cooperation includes recognition by the state that Indian tribes have a continuing and compelling governmental interest in an Indian child whether or not the child is in the physical or legal custody of an Indian parent, Indian custodian, or an Indian extended family member at the commencement of a child custody proceeding or the child has resided or domiciled on an Indian reservation. The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the federal Indian Child Welfare Act and other applicable law, designed to prevent the child's voluntary or involuntary out-of-home placement and, whenever such placement is necessary or ordered, by placing the child, whenever possible, in a foster home, adoptive home, or other type of custodial placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.

2003 Acts, ch 153, §3  
NEW section

### 232B.3 Definitions.

For the purposes of this chapter unless the context otherwise requires:

1. *“Adoptive placement”* means the permanent placement of an Indian child for adoption including, but not limited to, any action under chapter 232, 600, or 600A resulting in a final decree of adoption. *“Adoptive placement”* does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child's parents.

2. *“Best interest of the child”* means the use of practices in accordance with the federal Indian Child Welfare Act, this chapter, and other applicable law, that are designed to prevent the Indian child's voluntary or involuntary out-of-home placement, and whenever such placement is necessary or ordered, placing the child, to the greatest extent possible, in a foster home, adoptive placement, or other type of custodial placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community.

3. *“Child custody proceeding”* means a voluntary or involuntary proceeding that may result in an Indian child's adoptive placement, foster care placement, preadoptive placement, or termination of parental rights.

4. *“Foster care placement”* means the temporary placement of an Indian child in an individual or agency foster care placement or in the personal custody of a guardian or conservator prior to the termination of parental rights, from which the

child cannot be returned upon demand to the custody of the parent or Indian custodian but there has not been a termination of parental rights. *“Foster care placement”* does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child's parents.

5. *“Indian”* means a person who is a member of an Indian tribe, or is eligible for membership in an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. § 1606.

6. *“Indian child”* or *“child”* means an unmarried Indian person who is under eighteen years of age or a child who is under eighteen years of age that an Indian tribe identifies as a child of the tribe's community.

7. *“Indian child's family”* or *“extended family member”* means an adult person who is an Indian child's family member or extended family member under the law or custom of the Indian child's tribe or, in absence of such law or custom, an adult person who has any of the following relationships with the Indian child:

- a. Parent.
- b. Sibling.
- c. Grandparent.
- d. Aunt or uncle.
- e. Cousin.
- f. Clan member.
- g. Band member.
- h. Brother-in-law.
- i. Sister-in-law.
- j. Niece.
- k. Nephew.
- l. Stepparent.

8. *“Indian child's tribe”* means a tribe in which an Indian child is a member or eligible for membership.

9. *“Indian custodian”* means an Indian person who under tribal law, tribal custom, or state law, has legal or temporary physical custody of an Indian child.

10. *“Indian organization”* means any of the following entities that is owned or controlled by Indians, or a majority of the members are Indians:

- a. A group.
- b. An association.
- c. A partnership.
- d. A corporation.
- e. Other legal entity.

11. *“Indian tribe”* or *“tribe”* means an Indian tribe, band, nation, or other organized Indian group, or a community of Indians, including any Alaska native village as defined in 43 U.S.C. § 1602(c) recognized as eligible for services provided to Indians by the United States secretary of the interior because of the community members' status as Indians.

12. *“Parent”* means a biological parent of an Indian child or a person who has lawfully adopted

an Indian child, including adoptions made under tribal law or custom. “*Parent*” does not include an unwed father whose paternity has not been acknowledged or established. Except for purposes of the federal Indian Child Welfare Act as codified in 25 U.S.C. § 1913(b), (c), and (d), 1916, 1917, and 1951, “*parent*” does not include a person whose parental rights to that child have been terminated.

13. “*Preadoptive placement*” means the temporary placement of an Indian child in an individual or agency foster care placement after the termination of parental rights, but prior to or in lieu of an adoptive placement. “*Preadoptive placement*” does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child’s parents.

14. “*Reservation*” means Indian country as defined in 18 U.S.C. § 1151 or land that is not covered under that definition but the title to which is either held by the United States in trust for the benefit of an Indian tribe or Indian person or held by an Indian tribe or Indian person subject to a restriction by the United States against alienation.

15. “*Secretary of the interior*” means the secretary of the United States department of the interior.

16. “*Termination of parental rights*” means any action resulting in the termination of the parent-child relationship. “*Termination of parental rights*” does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child’s parents.

17. “*Tribal court*” means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings.

2003 Acts, ch 153, §4  
NEW section

#### **232B.4 Application of chapter — determination of Indian status.**

1. This chapter applies to child custody proceedings involving an Indian child whether the child is in the physical or legal custody of an Indian parent, Indian custodian, or an Indian extended family member or another person at the commencement of the proceedings or whether the child has resided or domiciled on or off an Indian reservation.

2. The court shall require a party seeking the foster care placement of, termination of parental rights over, or the adoption of, an Indian child to seek to determine whether the child is an Indian child through contact with any Indian tribe in

which the child may be a member or eligible for membership, the child’s parent, any person who has custody of the child or with whom the child resides, and any other person that reasonably can be expected to have information regarding the child’s possible membership or eligibility for membership in an Indian tribe, including but not limited to the United States department of the interior.

3. A written determination by an Indian tribe that a child is a member of or eligible for membership in that tribe, or testimony attesting to such status by a person authorized by the tribe to provide that determination, shall be conclusive. A written determination by an Indian tribe, or testimony by a person authorized by the tribe to provide that determination or testimony, that a child is not a member of or eligible for membership in that tribe shall be conclusive as to that tribe. If an Indian tribe does not provide evidence of the child’s status as an Indian child, the court shall determine the child’s status.

4. The determination of the Indian status of a child shall be made as soon as practicable in order to serve the best interest of the child and to ensure compliance with the notice requirements of this chapter.

2003 Acts, ch 153, §5  
NEW section

#### **232B.5 Indian child custody proceedings — jurisdiction — notice — transfer of proceedings.**

1. An Indian tribe has jurisdiction exclusive as to this state over any child custody proceeding held in this state involving an Indian child who resides or is domiciled within the reservation of that tribe, except when the jurisdiction is otherwise vested in this state by existing federal law. If an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

2. The federal Indian Child Welfare Act and this chapter are applicable without exception in any child custody proceeding involving an Indian child. A state court does not have discretion to determine the applicability of the federal Indian Child Welfare Act or this chapter to a child custody proceeding based upon whether an Indian child is part of an existing Indian family.

3. In a child custody proceeding, the court or any party to the proceeding shall be deemed to know or have reason to know that an Indian child is involved whenever any of the following circumstances exist:

*a.* A party to the proceeding or the court has been informed by any interested person, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child’s extended family that the child is or may be an Indian child.

*b.* The child who is the subject of the proceeding gives the court reason to believe the child is an

Indian child.

c. The court or a party to the proceeding has reason to believe the residence or domicile of the child is in a predominantly Indian community.

4. In any involuntary child custody proceeding, including review hearings following an adjudication, the court shall establish in the record that the party seeking the foster care placement of, or termination of parental rights over, or the adoption of an Indian child has sent notice by registered mail, return receipt requested, to all of the following:

- a. The child's parents.
- b. The child's Indian custodians.
- c. Any tribe in which the child may be a member or eligible for membership.

5. If the identity or location of the child's parent, Indian custodian, or tribe cannot be determined, the notice under subsection 4 shall be provided to the secretary of the interior, who shall have fifteen days after receipt of the notice to provide the notice to the child's parent, Indian custodian, and tribe. A foster care placement or termination of parental rights proceeding involving the child shall not be held until at least ten days after receipt of notice by the child's parent, Indian custodian, and tribe, or the secretary of the interior. Upon request, the child's parent or Indian custodian or tribe shall be granted up to twenty additional days after receipt of the notice to prepare for the proceeding.

6. The court shall also establish in the record that a notice of any involuntary custody proceeding has been sent to the Indian child's tribe. The tribe may provide notice of the proceeding to any of the child's extended family members.

7. The notice in any involuntary child custody proceeding involving an Indian child shall be written in clear and understandable language and shall include all of the following information:

a. The name and tribal affiliation of the Indian child.

b. A copy of the petition by which the proceeding was initiated.

c. A statement listing the rights of the child's parents, Indian custodians, and tribes and, if applicable, the rights of the Indian child's family. The rights shall include all of the following:

- (1) The right to intervene in the proceeding.
- (2) The right to petition the court to transfer the proceeding to the tribal court of the Indian child's tribe.
- (3) The right to be granted up to an additional twenty days from the receipt of the notice to prepare for the proceeding.
- (4) The right to request that the court grant further extensions of time.
- (5) In the case of an extended family member, the right to intervene and be considered as a preferred placement for the child.

d. A statement of the potential legal consequences of an adjudication on the future custodial

rights of the child's parents or Indian custodians.

e. A statement that if the parents or Indian custodians are unable to afford counsel in an involuntary proceeding, counsel will be appointed to represent the parents or custodians.

f. A statement that the court may appoint counsel for the child upon a finding that the appointment is in the best interest of the child.

g. A statement that the information contained in the notice, petition, pleading, and other court documents is confidential.

h. A statement that the child's tribe may provide notice of the proceeding to any of the child's extended family members along with copies of other related documents.

8. In a voluntary child custody proceeding involving an Indian child, including but not limited to a review hearing, the court shall establish in the record that the party seeking the foster care placement of, termination of parental rights to, or the permanent placement of, an Indian child has sent notice at least ten days prior to the hearing by registered mail, return receipt requested, to all of the following:

a. The child's parents, except for a parent whose parental rights have been terminated.

b. The child's Indian custodians, except for a custodian whose parental or Indian custodian rights have been terminated.

c. Any tribe in which the child may be a member or eligible for membership.

9. The notice in a voluntary child custody proceeding involving an Indian child shall be written in clear and understandable language and shall include all of the following information:

a. The name and tribal affiliation of the child.

b. A copy of the petition by which the proceeding was initiated.

c. A statement listing the rights of the child's parents, Indian custodians, Indian tribe or tribes, and, if applicable, extended family members. The rights shall include all of the following:

- (1) The right to intervene in the proceeding.
- (2) The right to petition the court to transfer a foster care placement or termination of parental rights proceeding to the tribal court of the Indian child's tribe.
- (3) In the case of extended family members, the right to intervene and be considered as a preferred placement for the child.

d. A statement that the information contained in the notice, petition, pleading, and any other court document shall be kept confidential.

e. A statement that the child's tribe may provide notice of the proceeding to any of the child's extended family members along with copies of other related documents.

10. Unless either of an Indian child's parents objects, in any child custody proceeding involving an Indian child who is not domiciled or residing within the jurisdiction of the Indian child's tribe, the court shall transfer the proceeding to the juris-

diction of the Indian child's tribe, upon the petition of any of the following persons:

- a. Either of the child's parents.
- b. The child's Indian custodian.
- c. The child's tribe.

11. Notwithstanding entry of an objection to a transfer of proceedings as described in subsection 10, the court shall reject any objection that is inconsistent with the purposes of this chapter, including but not limited to any objection that would prevent maintaining the vital relationship between Indian tribes and the tribes' children and would interfere with the policy that the best interest of an Indian child require that the child be placed in a foster or adoptive home that reflects the unique values of Indian culture.

12. A transfer of proceedings under subsection 10 may be declined by the tribal court of the Indian child's tribe. If the tribal court declines to assume jurisdiction, the state court shall reassume jurisdiction and shall apply all of the following in any proceeding:

- a. The requirements of the federal Indian Child Welfare Act.
- b. This chapter.
- c. The applicable provisions of any agreement between the Indian child's tribe and the state concerning the welfare, care, and custody of Indian children.

13. If a petition to transfer proceedings as described in subsection 10 is filed, the court shall find good cause to deny the petition only if one or more of the following circumstances are shown to exist:

- a. The tribal court of the child's tribe declines the transfer of jurisdiction.
- b. The tribal court does not have subject matter jurisdiction under the laws of the tribe or federal law.
- c. Circumstances exist in which the evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses, and the tribal court is unable to mitigate the hardship by making arrangements to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.

d. An objection to the transfer is entered in accordance with subsection 10.

14. The Indian child's tribe or tribes and Indian custodian have the right to intervene at any point in any foster care placement or termination of parental rights proceeding involving the child. The Indian child's tribe shall also have the right to intervene at any point in any adoption proceeding involving the child. Any member of the Indian child's family may intervene in an adoption proceeding involving the child for the purpose of petitioning the court for the adoptive placement of the

child in accordance with the order of preference provided for in this chapter.

15. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to the Indian child custody proceedings.

16. In any proceeding in which the court determines indigency of the Indian child's parent or Indian custodian, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination of parental rights. The child shall also have the right to court-appointed counsel in any removal, placement, termination of parental rights, or other permanency proceedings.

17. Each party to a foster care placement or termination of parental rights proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceeding may be based.

18. Any person or court involved in the foster care, preadoptive placement, or adoptive placement of an Indian child shall use the services of the Indian child's tribe or tribes, whenever available through the tribe or tribes, in seeking to secure placement within the order of placement preference established in section 232B.9 and in the supervision of the placement.

19. A party seeking an involuntary foster care placement or termination of parental rights over an Indian child shall provide evidence to the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. The court shall not order the placement or termination, unless the evidence of active efforts shows there has been a vigorous and concerted level of casework beyond the level that typically constitutes reasonable efforts as defined in sections 232.57 and 232.102. Reasonable efforts shall not be construed to be active efforts. The active efforts must be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregivers. Active efforts shall include but are not limited to all of the following:

- a. A request to the Indian child's tribe to convene traditional and customary support and resolution actions or services.
- b. Identification and participation of tribally designated representatives at the earliest point.
- c. Consultation with extended family members to identify family structure and family support services that may be provided by extended family members.
- d. Frequent visitation in the Indian child's

home and the homes of the child's extended family members.

e. Exhaustion of all tribally appropriate family preservation alternatives.

f. Identification and provision of information to the child's family concerning community resources that may be able to offer housing, financial, and transportation assistance and actively assisting the family in accessing the community resources.

20. The state of Iowa recognizes that an Indian tribe may contract with another Indian tribe for supervision regarding placement, case management, and the provision of services to an Indian child.

2003 Acts, ch 153, §6  
NEW section

### **232B.6 Emergency removal of Indian child — foster care placement — termination of parental rights.**

1. This chapter shall not be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation, or is away from the child's parent or Indian custodian, or the emergency placement of such child in a foster home or institution, under applicable state law, in order to prevent imminent physical damage or harm to the child. In a case of emergency removal of an Indian child, regardless of residence or domicile of the child, the state shall ensure that the emergency removal or placement terminates immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this chapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the child's parent or Indian custodian, as may be appropriate.

2. Within three business days following the issuance of an order of emergency removal or placement of an Indian child, the court issuing the order shall notify the Indian child's tribe of the emergency removal or placement by registered mail, return receipt requested. The notice shall include the court order, the petition, if applicable, any information required by this chapter, and a statement informing the child's tribe of the tribe's right to intervene in the proceeding.

3. A motion, application, or petition commencing an emergency or temporary removal under section 232.79 or 232.95 or foster care placement proceeding under chapter 232 involving an Indian child shall be accompanied by all of the following:

a. An affidavit containing the names, tribal affiliations, and addresses of the Indian child, and of the child's parents and Indian custodians.

b. A specific and detailed account of the circumstances supporting the removal of the child.

c. All reports or other documents from each public or private agency involved with the emergency or temporary removal that are filed with the court and upon which any decision may be based. The reports shall include all of the following information, when available:

(1) The name of each agency.

(2) The names of agency administrators and professionals involved in the removal.

(3) A description of the emergency justifying the removal of the child.

(4) All observations made and actions taken by the agency.

(5) The date, time, and place of each such action.

(6) The signatures of all agency personnel involved.

(7) A statement of the specific actions taken and to be taken by each involved agency to effectuate the safe return of the child to the custody of the child's parent or Indian custodian.

4. An emergency removal or placement of an Indian child shall immediately terminate, and any court order approving the removal or placement shall be vacated, when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. In no case shall an emergency removal or placement order remain in effect for more than fifteen days unless, upon a showing that continuation of the order is necessary to prevent imminent physical damage or harm to the child, the court extends the order for a period not to exceed an additional thirty days. If the Indian child's tribe has been identified, the court shall notify the tribe of the date and time of any hearing scheduled to determine whether to extend an emergency removal or placement order.

5. Upon termination of the emergency removal or placement order, the child shall immediately be returned to the custody of the child's parent or Indian custodian unless any of the following circumstances exist:

a. The child is transferred to the jurisdiction of the child's tribe.

b. In an involuntary foster care placement proceeding pursuant to the federal Indian Child Welfare Act, the court orders that the child shall be placed in foster care upon a determination, supported by clear and convincing evidence, including testimony by qualified expert witnesses, that custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

c. The child's parent or Indian custodian voluntarily consents to the foster care placement of the child pursuant to the provisions of the federal Indian Child Welfare Act.

6. a. Termination of parental rights over an Indian child shall not be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including the testimony of qualified expert witnesses, that the continued custody

of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

*b.* Foster care placement of an Indian child shall not be ordered in the absence of a determination, supported by clear and convincing evidence, including the testimony of qualified expert witnesses, that the continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

2003 Acts, ch 153, §7  
NEW section

**232B.7 Parental rights — voluntary termination or foster care placement.**

1. If an Indian child's parent or Indian custodian voluntarily consents to a foster care placement of the child or to termination of parental rights, the consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Notwithstanding section 600A.4 or any other provision of law, any consent for release of custody given prior to, or within ten days after, the birth of the Indian child shall not be valid.

2. An Indian child's parent or Indian custodian may withdraw consent to a foster care placement at any time and, upon the withdrawal of consent, the child shall be returned to the parent or Indian custodian.

3. In a voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

4. After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate the decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate the decree and return the child to the parent. However, an adoption which has been effective for at least two years shall not be invalidated under the provisions of this subsection unless otherwise permitted under state law.

2003 Acts, ch 153, §8  
NEW section

**232B.8 Return of custody — improper removal of child from custody — protection of rights of parent or Indian custodian.**

1. If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant the petition unless there is a showing, in a proceeding subject to the provisions of this chapter, that the return of custody is not in the best interest of the child.

2. If an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, the placement shall be in accordance with the provisions of this chapter, except when an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

3. If a petitioner in an Indian child custody proceeding before a state court has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to a substantial and immediate danger or threat of such danger.

4. If another state or federal law applicable to a child custody proceeding held under state or federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this chapter, the court shall apply the higher standard.

2003 Acts, ch 153, §9  
NEW section

**232B.9 Placement preferences.**

1. In any adoptive or other permanent placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

- a.* A member of the Indian child's family.
- b.* Other members of the Indian child's tribe.
- c.* Another Indian family.
- d.* A non-Indian family approved by the Indian child's tribe.
- e.* A non-Indian family that is committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe.

2. An emergency removal, foster care, or preadoptive placement of an Indian child shall be in the least restrictive setting which most approximates a family situation and in which the child's

special needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given to the child's placement with one of the following, in descending priority order:

- a. A member of the child's extended family.
- b. A foster home licensed, approved, or specified by the child's tribe.
- c. An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
- d. A child foster care agency approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
- e. A non-Indian child foster care agency approved by the child's tribe.
- f. A non-Indian family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe.

3. To the greatest possible extent, a placement made in accordance with subsection 1 or 2 shall be made in the best interest of the child.

4. An adoptive placement of an Indian child shall not be ordered in the absence of a determination, supported by clear and convincing evidence including the testimony of qualified expert witnesses, that the placement of the child is in the best interest of the child.

5. Notwithstanding the placement preferences listed in subsections 1 and 2, if a different order of placement preference is established by the child's tribe or in a binding agreement between the child's tribe and the state entered into pursuant to section 232B.11, the court or agency effecting the placement shall follow the order of preference established by the tribe or in the agreement.

6. As appropriate, the placement preference of the Indian child or parent shall be considered. In applying the preferences, a consenting parent's request for anonymity shall also be given weight by the court or agency effecting the placement. Unless there is clear and convincing evidence that placement within the order of preference applicable under subsection 1, 2, or 5 would be harmful to the Indian child, consideration of the preference of the Indian child or parent or a parent's request for anonymity shall not be a basis for placing an Indian child outside of the applicable order of preference.

7. The prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which such parent or extended family members maintain social and cultural ties, or the prevailing social and cultural standards of the Indian child's tribe shall be applied in qualifying any placement having a preference under this section. A determination of the applicable prevailing social and cultural standards shall be confirmed

by the testimony or other documented support of qualified expert witnesses.

8. A record of each foster care placement, emergency removal, preadoptive placement, or adoptive placement of an Indian child, under the laws of this state, shall be maintained in perpetuity by the department of human services in accordance with section 232B.13. The record shall document the active efforts to comply with the applicable order of preference specified in this section.

9. The state of Iowa recognizes the authority of Indian tribes to license foster homes and to license agencies to receive children for control, care, and maintenance outside of the children's own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care or adoption. The department of human services and child-placing agencies licensed under chapter 238 may place children in foster homes and facilities licensed by an Indian tribe.

2003 Acts, ch 153, §10  
NEW section

#### **232B.10 Qualified expert witnesses — standard of proof — change of placement.**

1. For the purposes of this section, unless the context otherwise requires, a "qualified expert witness" may include, but is not limited to, a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, spiritual leader, historian, or elder.

2. In considering whether to involuntarily place an Indian child in foster care or to terminate the parental rights of the parent of an Indian child, the court shall require that qualified expert witnesses with specific knowledge of the child's Indian tribe testify regarding that tribe's family organization and child-rearing practices, and regarding whether the tribe's culture, customs, and laws would support the placement of the child in foster care or the termination of parental rights on the grounds that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

3. In the following descending order of preference, a qualified expert witness is a person who is one of the following:

a. A member of the child's Indian tribe who is recognized by the child's tribal community as knowledgeable regarding tribal customs as the customs pertain to family organization or child-rearing practices.

b. A member of another tribe who is formally recognized by the Indian child's tribe as having the knowledge to be a qualified expert witness.

c. A layperson having substantial experience in the delivery of child and family services to Indians, and substantial knowledge of the prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.

d. A professional person having substantial education and experience in the person's profes-

sional specialty and having substantial knowledge of the prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.

*e.* A professional person having substantial education and experience in the person's professional specialty and having extensive knowledge of the customs, traditions, and values of the Indian child's tribe as the customs, traditions, and values pertain to family organization and child-rearing practices. Prior to accepting the testimony of a qualified expert witness described in this lettered paragraph, the court shall document the efforts made to secure a qualified expert witness described in paragraphs "a", "b", "c", and "d". The efforts shall include but are not limited to contacting the Indian child's tribe's governing body, that tribe's Indian Child Welfare Act office, and the tribe's social service office.

2003 Acts, ch 153, §11  
NEW section

#### **232B.11 Agreements with tribes for care and custody of Indian children.**

1. The director of human services or the director's designee shall make a good faith effort to enter into agreements with Indian tribes regarding jurisdiction over child custody proceedings and the care and custody of Indian children whose tribes have land within Iowa, including but not limited to the Sac and Fox tribe, the Omaha tribe, the Ponca tribe, and the Winnebago tribe, and whose tribes have an Indian child who resides in the state of Iowa. An agreement shall seek to promote the continued existence and integrity of the Indian tribe as a political entity and the vital interest of Indian children in securing and maintaining a political, cultural, and social relationship with their tribes. An agreement shall assure that tribal services and Indian organizations or agencies are used to the greatest extent practicable in planning and implementing any action pursuant to the agreement concerning the care and custody of Indian children. If tribal services are not available, an agreement shall assure that community services and resources developed specifically for Indian families will be used.

2. If an agreement entered into between the tribe and the department of human services pertaining to the funding of foster care placements for Indian children conflicts with any federal or state law, the state in a timely, good faith manner shall agree to amend the agreement in a way that prevents any interruption of services to eligible Indian children.

3. An agreement entered into under this section may be revoked by either party by giving one hundred eighty days' advance written notice to the other party. The revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement pro-

vides otherwise.

2003 Acts, ch 153, §12  
NEW section

#### **232B.12 Payment of foster care expenses.**

1. If the department of human services has legal custody of an Indian child and that child is placed in foster care according to the placement preferences under section 232B.9 the state shall pay, subject to any applicable federal funding limitations and requirements, the cost of the foster care in the manner and to the same extent the state pays for foster care of non-Indian children, including the administrative and training costs associated with the placement. In addition, the state shall pay the other costs related to the foster care placement of an Indian child as may be provided for in an agreement entered into between a tribe and the state.

2. The department of human services may, subject to any applicable federal funding limitations and requirements and within funds appropriated for foster care services, purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state court order; and the purchase of the care is subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

2003 Acts, ch 153, §13  
NEW section

#### **232B.13 Records.**

1. The department of human services shall establish an automated database where a permanent record shall be maintained of every involuntary or voluntary foster care, preadoptive placement, or adoptive placement of an Indian child that is ordered by a court of this state and in which the department was involved. The automated record shall document the active efforts made to comply with the order of placement preference specified in section 232B.9. An Indian child's placement record shall be maintained in perpetuity by the department of human services and shall include but is not limited to the name, birthdate, and gender of the Indian child, and the location of the local department office that maintains the original file and documents containing the information listed in subsection 2.

2. Each county department of human services, state-licensed child-placing agency, private attorney, and medical facility involved in the involuntary or voluntary foster care placement, preadoptive placement, or adoptive placement of an Indian child shall maintain in perpetuity a record of the placement. The record shall include, but is not limited to, all of the following information:

- a.* The name and tribal affiliation of the child.
- b.* The location of the child's Indian tribe or tribes.

c. The names and addresses of the child's biological parents.

d. The child's certificate of degree of Indian blood.

e. The child's tribal enrollment or other membership documentation, if any.

f. The child's medical records.

g. The social and medical history of the child's biological family.

h. The names, ages, and gender of the child's siblings.

i. The names, ages, and gender of the child's kinship or extended family members.

j. The names and addresses of the child's adoptive parents.

k. The identity of any agency having files or information relating to the placement.

l. All reports concerning the child or the child's family, including detailed information regarding case plans and other efforts to rehabilitate the parents of the child.

m. A record of efforts made to place the child within and outside of the placement preferences under section 232B.9.

n. A statement of the reason for the final placement decision.

3. If a court orders the foster care, preadoptive placement, or adoptive placement of an Indian child, the court and any state-licensed child-placing agency involved in the placement shall provide the department of human services with the records described in subsections 1 and 2.

4. A record maintained pursuant to this section by the department of human services, a county department of human services, state-licensed child-placing agency, private attorney, or medical facility shall be made available within seven days of a request for the record by the Indian child's tribe or the secretary of the interior.

5. Upon the request of an Indian individual who is eighteen years of age or older, or upon the request of an Indian child's parent, Indian custodian, attorney, guardian ad litem, guardian, legal custodian, or caseworker of the Indian child, the department of human services, a county department of human services, state-licensed child-placing agency, private attorney, or medical facility shall provide access to the records pertaining to the Indian individual or child maintained pursuant to this section. The records shall also be made available upon the request of the descendants of the Indian individual or child. A record shall be made available within seven days of a request for the record by any person authorized by this subsection to make the request.

6. Upon application of an Indian individual who is eighteen years of age or older and was the subject of an adoptive placement, the court that entered the final decree shall inform the individual regarding the individual's tribal affiliation and any of the individual's biological parents, and shall provide such other information as may be neces-

sary to protect any rights arising from the individual's tribal affiliation. In addition, the court shall provide the individual, through an appropriate order, if necessary, with information described in subsection 2 as may be secured from the records maintained pursuant to subsection 2.

7. If a parent of an Indian child wishes to remain anonymous, identifying records concerning any such parent shall not be released unless necessary to secure, maintain, or enforce the Indian child's right to enrollment or membership in the child's Indian tribe, for determining a right or benefit associated with the enrollment or membership, or for determining a right to an inheritance.

2003 Acts, ch 153, §14  
NEW section

### 232B.14 Compliance.

1. The department of human services, in consultation with Indian tribes, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the federal Indian Child Welfare Act and this chapter. These standards and procedures and the monitoring methods shall be integrated into the department's structure and plan for the federal government's child and family service review process and any program improvement plan resulting from that process.

2. A court of competent jurisdiction shall vacate a court order and remand the case for appropriate disposition for any of the following violations of this chapter:

a. Failure to notify an Indian parent, Indian custodian, or tribe.

b. Failure to recognize the jurisdiction of an Indian tribe.

c. Failure, without cause as specified under this chapter, to transfer jurisdiction to an Indian tribe appropriately seeking transfer.

d. Failure to give full faith and credit to the public acts, records, or judicial proceedings of an Indian tribe.

e. Failure to allow intervention by an Indian custodian or Indian tribe, or if applicable, an extended family member.

f. Failure to return the child to the child's parent or Indian custodian when removal or placement is no longer necessary to prevent imminent physical damage or harm.

g. Failure to provide the testimony of qualified expert witnesses as required by this chapter.

h. Any other violation that is not harmless error, including but not limited to a failure to comply with 25 U.S.C. § 1911, 1912, 1913, 1915, 1916, or 1917.

3. If a petitioner in an Indian child custody proceeding before a state court has improperly removed the child from the custody of the child's parent or Indian custodian or has improperly re-

tained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to a sub-

stantial and immediate danger or threat of such danger.

2003 Acts, ch 153, §15  
The initial review of compliance with the requirements of this chapter made pursuant to this section must be completed by June 30, 2004; 2003 Acts, ch 153, §18  
NEW section

## CHAPTER 233B

### JUVENILE HOME

#### 233B.14 Counties liable.

Each county is liable for sums paid by the home in support of all its children to the extent of a sum equal to one-half of the net cost of the support and maintenance of its children. The superintendent shall certify to the director of the department of administrative services on the first day of each fiscal quarter the amount chargeable to each county for support. The sums for which each county is liable shall be charged to the county and collected as a part of the taxes due the state, and paid by the

county at the same time state taxes are paid.

Should any county fail to pay these bills within sixty days from the date of certificate from superintendent, the director of the department of administrative services shall charge the delinquent county the penalty of one percent per month on and after sixty days from date of certificate until paid. Such penalties shall be credited to the general fund of the state.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 234

### CHILD AND FAMILY SERVICES

#### 234.6 Powers and duties of the administrator.

The administrator shall be vested with the authority to administer the family investment program, state supplementary assistance, food programs, child welfare, and emergency relief, family and adult service programs, and any other form of public welfare assistance and institutions that are placed under the administrator's administration. The administrator shall perform duties, formulate and adopt rules as may be necessary; shall outline policies, dictate procedure, and delegate such powers as may be necessary for competent and efficient administration. Subject to restrictions that may be imposed by the director of human services and the council on human services, the administrator may abolish, alter, consolidate, or establish subdivisions and may abolish or change offices previously created. The administrator may employ necessary personnel and fix their compensation; may allocate or reallocate functions and duties among any subdivisions now existing or later established; and may adopt rules relating to the employment of personnel and the allocation of their functions and duties among the various subdivisions as competent and efficient administration may require.

The administrator shall:

1. Cooperate with the federal social security board created by Title VII of the Social Security Act [42 U.S.C. 901], enacted by the 74th Congress

of the United States and approved August 14, 1935, or other agency of the federal government for public welfare assistance, in such reasonable manner as may be necessary to qualify for federal aid, including the making of such reports in such form and containing such information as the federal social security board, from time to time, may require, and to comply with such regulations as such federal social security board, from time to time, may find necessary to assure the correctness and verification of such reports.

2. Furnish information to acquaint the public generally with the operation of the acts under the jurisdiction of the administrator.

3. With the approval of the director of human services, the governor, the director of management, and the director of the department of administrative services, set up from the funds under the administrator's control and management an administrative fund and from the administrative fund pay the expenses of operating the division.

4. Notwithstanding any provisions to the contrary in chapter 239B relating to the consideration of income and resources of claimants for assistance, the administrator, with the consent and approval of the director of human services and the council on human services, shall make such rules as may be necessary to qualify for federal aid in the assistance programs administered by the administrator.

5. The department of human services shall

have the power and authority to use the funds available to it, to purchase services of all kinds from public or private agencies to provide for the needs of children, including but not limited to psychiatric services, supervision, specialized group, foster homes and institutional care.

6. Have authority to use funds available to the department, subject to any limitations placed on the use thereof by the legislation appropriating the funds, to provide to or purchase, for families and individuals eligible therefor, services including but not limited to the following:

*a.* Child care for children or adult day services, in facilities which are licensed or are approved as meeting standards for licensure.

*b.* Foster care, including foster family care, group homes and institutions.

*c.* Intensive family preservation services and family-centered services, as defined in section 232.102, subsection 10, paragraph “b”.

*d.* Family planning.

*e.* Protective services.

*f.* Services or support provided to a child with mental retardation or other developmental disability or to the child’s family.

*g.* Transportation services.

*h.* Any services, not otherwise enumerated in this subsection, authorized by or pursuant to the United States Social Security Act of 1934, as amended.

7. Administer the food programs authorized by federal law, and recommend rules necessary in the administration of those programs to the director for promulgation pursuant to chapter 17A.

8. Provide consulting and technical services to the director of the department of education, or the director’s designee, upon request, relating to pre-kindergarten, kindergarten, and before and after school programming and facilities.

9. Recommend rules for their adoption by the council on human services for before and after school child care programs, conducted within and by or contracted for by school districts, that are appropriate for the ages of the children who receive services under the programs.

10. In determining the reimbursement rate for services purchased by the department of human services from a person or agency, the department shall not include private moneys contributed to the person or agency unless the moneys are contributed for services provided to a specific individual.

2003 Acts, ch 145, §286

See §13.6

Terminology change applied

### 234.8 Fees for child welfare services.

The department of human services may charge a fee for child welfare services to a person liable for the cost of the services. The fee shall not exceed the reasonable cost of the services. The fee shall be based upon the person’s ability to pay and con-

sideration of the fee’s impact upon the liable person’s family and the goals identified in the case permanency plan. The department may assess the liable person for the fee and the means of recovery shall include a setoff against an amount owed by a state agency to the person assessed pursuant to section 8A.504. In addition the department may establish an administrative process to recover the assessment through automatic income withholding. The department shall adopt rules pursuant to chapter 17A to implement the provisions of this section. This section does not apply to court-ordered services provided to juveniles which are a charge upon the state pursuant to section 232.141 and services for which the department has established a support obligation pursuant to section 234.39.

2003 Acts, ch 145, §216

Section amended

### 234.12A Electronic benefits transfer program.

1. The department of human services may establish an electronic benefits transfer program utilizing electronic funds transfer systems. The program, if established, shall at a minimum provide for all of the following:

*a.* A retailer shall not be required to make cash disbursements or to provide, purchase, or upgrade electronic funds transfer system equipment as a condition of participation in the program.

*b.* A retailer providing electronic funds transfer system equipment for transactions pursuant to the program shall be reimbursed seven cents for each approved transaction pursuant to the program utilizing the retailer’s equipment.

*c.* A retailer that provides electronic funds transfer system equipment for transactions pursuant to the program and who makes cash disbursements pursuant to the program utilizing the retailer’s equipment shall be paid a fee of seven cents by the department for each cash disbursement transaction by the retailer.

2. A point-of-sale terminal which is used only for purchases from a retailer by electronic benefits transfer utilizing electronic funds transfer systems is not a satellite terminal as defined in section 527.2.

3. For the purposes of this section, “retailer” means a business authorized by the United States department of agriculture to accept food stamp benefits.

Expansion of program to meet federal requirements; target implementation date of October 1, 2003; 2003 Acts, ch 175, §§ 34, 47

Section not amended; footnote revised

### 234.35 When state to pay foster care costs.

1. The department of human services is responsible for paying the cost of foster care for a child, according to rates established pursuant to section 234.38, under any of the following circumstances:

a. When a court has committed the child to the director of human services or the director's designee.

b. When a court has transferred legal custody of the child to the department of human services.

c. When the department has agreed to provide foster care services for the child for a period of not more than ninety days on the basis of a signed placement agreement between the department and the child's parent or guardian.

d. When the child has been placed in emergency care for a period of not more than thirty days upon approval of the director or the director's designee.

e. When a court has entered an order transferring the legal custody of the child to a foster care placement pursuant to section 232.52, subsection 2, paragraph "d", or section 232.102, subsection 1. However, payment for a group foster care placement shall be limited to those placements which conform to a regional group foster care plan established pursuant to section 232.143.

f. When the department has agreed to provide foster care services for a child who is eighteen years of age or older on the basis of a signed placement agreement between the department and the child or the person acting on behalf of the child.

g. When the department has agreed to provide foster care services for the child on the basis of a signed placement agreement initiated before July 1, 1992, between the department and the child's parent or guardian.

h. When the child is placed in shelter care pursuant to section 232.20, subsection 1, or section 232.21.

i. When the court has entered an order in a voluntary foster care placement proceeding pursuant to section 232.182, subsection 5, placing the child into foster care.

2. Except as provided under section 234.38 for direct payment of foster parents, payment for foster care costs shall be limited to foster care providers with whom the department has a contract in force.

3. Payment for foster care services provided to a child who is eighteen years of age or older shall be limited to the following:

a. For a child who is eighteen years of age, family foster care or independent living arrangements.

b. For a child who is nineteen years of age, independent living arrangements.

c. For a child who is at imminent risk of becoming homeless or failing to graduate from high school or to obtain a graduate equivalency diploma, if the services are in the child's best interests, funding is available for the services, and an appropriate alternative service is unavailable.

4. The department shall report annually to the governor and general assembly by January 1 on the numbers of children for whom the state paid for independent living services during the immediately preceding fiscal year. The report shall detail the number of children, by county, who received such services, were discharged from such services, the voluntary or involuntary status of such services, and the reasons for discharge. The department shall assess the report data as part of any evaluation of independent living services or consideration for improving the services.

2003 Acts, ch 117, §9; 2003 Acts, ch 175, §37

See Iowa Acts for special provisions relating to foster care payments in a given fiscal year

For the fiscal year beginning July 1, 2003, the department shall utilize service areas and service area administrators in lieu of regions and regional administrators; see 2003 Acts, ch 175, §28, and governor's item veto message

Subsection 1, paragraph c amended  
NEW subsection 4

## CHAPTER 235

### CHILD WELFARE

#### 235.7 Transition committees.

1. *Committees established.* The department of human services shall establish and maintain local transition committees to address the transition needs of those children receiving child welfare services who are age sixteen or older and have a case permanency plan as defined in section 232.2. The department shall adopt rules establishing criteria for transition committee membership, operating policies, and basic functions. The rules shall provide flexibility for a committee to adopt protocols and other procedures appropriate for the geographic area addressed by the committee.

2. *Membership.* The department may authorize the governance boards of child welfare fund-

ing decategorization projects established under section 232.188 to appoint the transition committee membership and may utilize the boundaries of decategorization projects to establish the service areas for transition committees. The committee membership may include but is not limited to department of human services staff involved with foster care, child welfare, and adult services, juvenile court services staff, staff involved with county general relief under chapter 251 or 252, or of the single entry point process implemented under section 331.440, school district and area education agency staff involved with special education, and a child's court appointed special advocate, guardian ad litem, service providers, and other persons

knowledgeable about the child.

3. *Duties.* A transition committee shall review and approve the written plan of services required for the child's case permanency plan in accordance with section 232.2, subsection 4, paragraph "f", which, based upon an assessment of the child's needs, would assist the child in preparing for the transition from foster care to adulthood. In

addition, a transition committee shall identify and act to address any gaps existing in the services or other support available to meet the child and adult needs of individuals for whom service plans are approved.

2003 Acts, ch 117, §10  
NEW section

## CHAPTER 235A

### CHILD ABUSE

#### 235A.13 Definitions.

As used in chapter 232, division III, part 2, and sections 235A.13 to 235A.24, unless the context otherwise requires:

1. "*Assessment data*" means any of the following information pertaining to the department's evaluation of a family:

a. Identification of the strengths and needs of the child, and of the child's parent, home, and family.

b. Identification of services available from the department and informal and formal services and other support available in the community to meet identified strengths and needs.

2. "*Child abuse information*" means any or all of the following data maintained by the department in a manual or automated data storage system and individually identified:

a. Report data.

b. Assessment data.

c. Disposition data.

3. "*Confidentiality*" means the withholding of information from any manner of communication, public or private.

4. "*Department*" means the department of human services.

5. "*Disposition data*" means information pertaining to an opinion or decision as to the occurrence of child abuse, including:

a. Any intermediate or ultimate opinion or decision reached by assessment personnel.

b. Any opinion or decision reached in the course of judicial proceedings.

c. The present status of any case.

6. "*Expungement*" means the process of destroying child abuse information.

7. "*Individually identified*" means any report, assessment, or disposition data which names the person or persons responsible or believed responsible for the child abuse.

8. "*Multidisciplinary team*" means a group of individuals who possess knowledge and skills related to the diagnosis, assessment, and disposition of child abuse cases and who are professionals practicing in the disciplines of medicine, nursing, public health, substance abuse, domestic violence,

mental health, social work, child development, education, law, juvenile probation, or law enforcement, or a group established pursuant to section 235B.1, subsection 1.

9. "*Near fatality*" means a bodily injury which involves substantial risk of death, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty and includes a serious bodily injury as described in section 702.18.

10. "*Report data*" means any of the following information pertaining to an assessment of an allegation of child abuse in which the department has determined the alleged child abuse meets the definition of child abuse:

a. The name and address of the child and the child's parents or other persons responsible for the child's care.

b. The age of the child.

c. The nature and extent of the injury, including evidence of any previous injury.

d. Additional information as to the nature, extent, and cause of the injury, and the identity of the person or persons alleged to be responsible for the injury.

e. The names and conditions of other children in the child's home.

f. A recording made of an interview conducted under chapter 232 in association with a child abuse assessment.

g. Any other information believed to be helpful in establishing the information in paragraph "d".

11. "*Sealing*" means the process of removing child abuse information from authorized access as provided by this chapter.

2003 Acts, ch 44, §51; 2003 Acts, ch 62, §1

For additional definitions, see §232.68

Unnumbered paragraph 1 amended

Subsection 8 amended

#### 235A.15 Authorized access — procedures involving other states.

1. Notwithstanding chapter 22, the confidentiality of all child abuse information shall be maintained, except as specifically provided by this section.

2. Access to report data and disposition data

subject to placement in the central registry pursuant to section 232.71D is authorized only to the following persons or entities:

*a.* Subjects of a report as follows:

(1) To a child named in a report as a victim of abuse or to the child's attorney or guardian ad litem.

(2) To a parent or to the attorney for the parent of a child named in a report as a victim of abuse.

(3) To a guardian or legal custodian, or that person's attorney, of a child named in a report as a victim of abuse.

(4) To a person or the attorney for the person named in a report as having abused a child.

*b.* Persons involved in an assessment of child abuse as follows:

(1) To a health practitioner or mental health professional who is examining, attending, or treating a child whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to a child believed to have been the victim of abuse is requested by the department.

(2) To an employee or agent of the department of human services responsible for the assessment of a child abuse report.

(3) To a law enforcement officer responsible for assisting in an assessment of a child abuse allegation or for the temporary emergency removal of a child from the child's home.

(4) To a multidisciplinary team, or to parties to an interagency agreement entered into pursuant to section 280.25, if the department of human services approves the composition of the multidisciplinary team or the relevant provisions of the interagency agreement and determines that access to the team or to the parties to the interagency agreement is necessary to assist the department in the diagnosis, assessment, and disposition of a child abuse case.

(5) In an individual case, to each mandatory reporter who reported the child abuse.

(6) To the county attorney.

(7) To the juvenile court.

(8) To a licensing authority for a facility providing care to a child named in a report, if the licensing authority is notified of a relationship between facility policy and the alleged child abuse under section 232.71B.

(9) To a person or agency responsible for the care or supervision of a child named in a report as a victim of abuse or a person named in a report as having abused a child, if the juvenile court or department deems access to report data and disposition data by the person or agency to be necessary.

(10) To the child protection assistance team established in accordance with section 915.35 for the county in which the report was made.

*c.* Individuals, agencies, or facilities providing care to a child, but only with respect to disposition data and, if authorized in law to the extent neces-

sary for purposes of an employment evaluation, report data, for cases of founded child abuse placed in the central registry in accordance with section 232.71D as follows:

(1) To an administrator of a psychiatric medical institution for children licensed under chapter 135H.

(2) To an administrator of a child foster care facility licensed under chapter 237 if the data concerns a person employed or being considered for employment by the facility.

(3) To an administrator of a child care facility registered or licensed under chapter 237A if the data concerns a person employed or being considered for employment by or living in the facility.

(4) To the superintendent of the Iowa braille and sight saving school if the data concerns a person employed or being considered for employment or living in the school.

(5) To the superintendent of the school for the deaf if the data concerns a person employed or being considered for employment or living in the school.

(6) To an administrator of a community mental health center accredited under chapter 230A if the data concerns a person employed or being considered for employment by the center.

(7) To an administrator of a facility or program operated by the state, a city, or a county which provides services or care directly to children, if the data concerns a person employed by or being considered for employment by the facility or program.

(8) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the data concerns a person employed by or being considered by the agency for employment.

(9) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, if the data concerns a person employed by or being considered by the agency for employment.

(10) To an administrator of a child care resource and referral agency which has entered into an agreement authorized by the department to provide child care resource and referral services. Access is authorized if the data concerns a person providing child care services or a person employed by a provider of such services and the agency includes the provider as a referral or the provider has requested to be included as a referral.

(11) To an administrator of a hospital licensed under chapter 135B if the data concerns a person employed or being considered for employment by the hospital.

*d.* Report data and disposition data, and assessment data to the extent necessary for resolution of the proceeding, relating to judicial and administrative proceedings as follows:

(1) To a juvenile court involved in an adjudica-

tion or disposition of a child named in a report.

(2) To a district court upon a finding that data is necessary for the resolution of an issue arising in any phase of a case involving child abuse.

(3) To a court or administrative agency hearing an appeal for correction of report data and disposition data as provided in section 235A.19.

(4) To an expert witness at any stage of an appeal necessary for correction of report data and disposition data as provided in section 235A.19.

(5) To a probation or parole officer, juvenile court officer, court appointed special advocate as defined in section 232.2, or adult correctional officer having custody or supervision of, or conducting an investigation for a court or the board of parole regarding, a person named in a report as a victim of child abuse or as having abused a child.

(6) To the department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

(7) Each board of examiners specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

*e.* Others as follows, but only with respect to report data and disposition data for cases of founded child abuse subject to placement in the registry pursuant to section 232.71D:

(1) To a person conducting bona fide research on child abuse, but without data identifying individuals named in a child abuse report, unless having that data open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the child, the child's guardian or guardian ad litem and the person named in a report as having abused a child give permission to release the data.

(2) To registry or department personnel when necessary to the performance of their official duties or to a person or agency under contract with the department to carry out official duties and functions of the department.

(3) To the department of justice for the sole purpose of the filing of a claim for restitution or compensation pursuant to sections 915.21 and 915.84. Data provided pursuant to this subparagraph is subject to the provisions of section 915.90.

(4) To a legally constituted child protection agency of another state which is investigating or assessing or treating a child named in a report as having been abused or which is investigating or assessing or treating a person named as having abused a child.

(5) To a public or licensed child placing agency of another state responsible for an adoptive or foster care preplacement or placement evaluation.

(6) To the attorney for the department of human services who is responsible for representing

the department.

(7) To the child advocacy and local citizen foster care review boards created pursuant to sections 237.16 and 237.19.

(8) To an employee or agent of the department of human services regarding a person who is providing child care if the person is not registered or licensed to operate a child care facility.

(9) To the board of educational examiners created under chapter 272 for purposes of determining whether a practitioner's license should be denied or revoked.

(10) To a legally constituted child protection agency in another state if the agency is conducting a records check of a person who is providing care or has applied to provide care to a child in the other state.

(11) To the legally authorized protection and advocacy agency recognized in section 135C.2, if a person identified in the information as a victim or a perpetrator of abuse resides in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(12) To the department of human services for a record check relating to employment or residence pursuant to section 218.13.

(13) To the Iowa board for the treatment of sexual abusers for purposes of certifying sex offender treatment providers.

(14) To an employee or agent of the department responsible for registering or licensing or approving the registration or licensing of an agency or facility, or to an individual providing care to a child and regulated by the department.

(15) To an employee of the department responsible for an adoptive placement, a certified adoption investigator, or licensed child placing agency responsible for an adoptive placement.

(16) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(17) To the department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

*f.* Only with respect to disposition data for cases of founded child abuse subject to placement in the central registry pursuant to section 232.71D, to a person who submits written authorization from an individual allowing the person access to data pursuant to this subsection on behalf of the individual in order to verify whether the individual is named in a founded child abuse report as having abused a child.

3. Access to report data and disposition data for a case of child abuse determined to meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the follow-

ing persons:

*a.* Subjects of a report identified in subsection 2, paragraph “*a*”.

*b.* Persons involved in an assessment of child abuse identified in subsection 2, paragraph “*b*”, subparagraphs (2), (3), (4), (6), (7), and (9).

*c.* Others identified in subsection 2, paragraph “*e*”, subparagraphs (2), (3), and (6).

*d.* The department of justice for purposes of review by the prosecutor’s review committee or the commitment of sexually violent predators as provided in chapter 229A.

4. Access to report data for a case of child abuse determined to not meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following:

*a.* Subjects of a report identified in subsection 2, paragraph “*a*”.

*b.* Persons involved in an assessment of child abuse identified in subsection 2, paragraph “*b*”, subparagraphs (2), (6), and (7).

*c.* Others identified in subsection 2, paragraph “*e*”, subparagraph (2).

*d.* The department of justice for purposes of review by the prosecutor’s review committee or the commitment of sexually violent predators as provided in chapter 229A.

5. Access to disposition data subject to placement in the central registry pursuant to section 232.71D is authorized to the department of administrative services or to the personnel office of a public employer, as defined in section 20.3, as necessary for presentation in grievance or arbitration procedures provided for in sections 8A.415 and 20.18. Disposition data introduced into a grievance or arbitration proceeding shall not be considered a part of the public record of a case.

6. *a.* If a child who is a legal resident of another state is present in this state and a report of child abuse is made concerning the child, the department shall act to ensure the safety of the child. The department shall contact the child’s state of legal residency to coordinate the assessment of the report. If the child’s state of residency refuses to conduct an assessment, the department shall commence an appropriate assessment.

*b.* If a report of child abuse is made concerning an alleged perpetrator who resides in this state and a child who resides in another state, the department shall assist the child’s state of residency in conducting an assessment of the report. The assistance shall include but is not limited to an offer to interview the alleged perpetrator and any other relevant source. If the child’s state of residency refuses to conduct an assessment of the report, the department shall commence an appropriate assessment. The department shall seek to develop protocols with states contiguous to this state for coordination in the assessment of a report of child abuse when a person involved with the report is a resident of another state.

7. Upon the request of a person listed in this subsection, child abuse information relating to a specific case of child abuse involving a fatality or near fatality to a child and reported to the department shall be disclosed to that person by the director of human services. The purpose of the disclosure is to provide for oversight of the department and others involved with the state’s child protection system in order to improve the system. After completing a review of the child abuse information received, an authorized requester may issue a report to the governor regarding the specific case of child abuse. The following persons are authorized to make a request and receive child abuse information under this section relating to a specific case of child abuse involving a fatality or near fatality to a child:

*a.* The governor or the governor’s designee.

*b.* The member of the senate or employee of the general assembly designated by the majority leader or minority leader of the senate.

*c.* The member of the house of representatives or employee of the general assembly designated by the speaker or minority leader of the house of representatives.

8. Upon the request of the governor, the department shall disclose child abuse information to the governor relating to a specific case of child abuse reported to the department.

9. If the department receives a request for child abuse information relating to a case of a fatality or near fatality to a child, within five business days of receiving the request the director of human services or the director’s designee shall consult with the county attorney responsible for prosecution of any alleged perpetrator of the fatality or near fatality and shall disclose child abuse information relating to the case and the child in accordance with this subsection. The director or the director’s designee shall release all child abuse information associated with the case and the child, except for the following:

*a.* The substance or content of any mental health or psychological information that is confidential under chapter 228.

*b.* Information that constitutes the substance or contains the content of an attorney work product or is a privileged communication under section 622.10.

*c.* Information pertaining to the child, the child’s family, or any other person that is not directly related to the cause of the fatality or near fatality.

*d.* Information that would reveal the identity of any individual who provided information relating to a report of child abuse or an assessment of such a report involving the child.

*e.* Information that the director or the director’s designee reasonably believes is likely to cause mental or physical harm to a sibling of the child or to another child residing in the child’s household.

*f.* Information that the director or the director's designee reasonably believes is likely to jeopardize the prosecution of any alleged perpetrator of the fatality or near fatality.

*g.* Information that the director or the director's designee reasonably believes is likely to jeopardize the rights of any alleged perpetrator of the fatality or near fatality to a fair trial.

*h.* Information that the director or the direc-

tor's designee reasonably believes is likely to undermine an ongoing or future criminal investigation.

*i.* Information, the release of which is a violation of federal law or regulation.

2003 Acts, ch 107, §2; 2003 Acts, ch 145, §217, 286

See §235A.24

Terminology change applied

Subsection 2, paragraph b, NEW subparagraph (10)

Subsection 5 amended

## CHAPTER 235B

### ADULT ABUSE

Legislative services agency to monitor reporting, investigations, workload and performance of personnel, and report annually by February 1; elder affairs, human services, and inspections and appeals departments to cooperate; 87 Acts, ch 182, §11; 2003 Acts, ch 35, §46, 49

#### **235B.3 Dependent adult abuse reports.**

1. The department shall receive dependent adult abuse reports and shall collect, maintain, and disseminate the reports by establishing a central registry for dependent adult abuse information. The department shall evaluate the reports expeditiously. However, the department of inspections and appeals is solely responsible for the evaluation and disposition of dependent adult abuse cases within health care facilities and shall inform the department of human services of such evaluations and dispositions.

Reports of dependent adult abuse which is the result of the acts or omissions of the dependent adult shall be collected and maintained in the files of the dependent adult as assessments only and shall not be included in the central registry.

2. All of the following persons shall report suspected dependent adult abuse to the department:

*a.* A social worker.

*b.* A certified psychologist.

*c.* A person who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered abuse, including:

(1) A member of the staff of a community mental health center, a member of the staff of a hospital, a member of the staff or employee of a public or private health care facility as defined in section 135C.1.

(2) A peace officer.

(3) An in-home homemaker-home health aide.

(4) An individual employed as an outreach person.

(5) A health practitioner, as defined in section 232.68.

(6) A member of the staff or an employee of a supported community living service, sheltered workshop, or work activity center.

*d.* A person who performs inspections of elder group homes for the department of inspections

and appeals and a resident advocate committee member assigned to an elder group home pursuant to chapter 231B.

3. *a.* If a staff member or employee is required to report pursuant to this section, the person shall immediately notify the person in charge or the person's designated agent, and the person in charge or the designated agent shall make the report by the end of the next business day.

*b.* The employer or supervisor of a person who is required to or may make a report pursuant to this section shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

4. Any other person who believes that a dependent adult has suffered abuse may report the suspected abuse to the department of human services.

5. Following the reporting of suspected dependent adult abuse, the department of human services or an agency approved by the department shall complete an assessment of necessary services and shall make appropriate referrals for receipt of these services. The assessment shall include interviews with the dependent adult, and, if appropriate, with the alleged perpetrator of the dependent adult abuse and with any person believed to have knowledge of the circumstances of the case. The department may provide necessary protective services and may establish a sliding fee schedule for those persons able to pay a portion of the protective services.

6. Upon a showing of probable cause that a dependent adult has been abused, a court may authorize a person, also authorized by the department, to make an evaluation, to enter the residence of, and to examine the dependent adult. Upon a showing of probable cause that a dependent adult has been financially exploited, a court

may authorize a person, also authorized by the department, to make an evaluation, and to gain access to the financial records of the dependent adult.

7. If the department determines that disclosure is necessary for the protection of a dependent adult, the department may disclose to a subject of a dependent adult abuse report referred to in section 235B.6, subsection 2, paragraph “a”, that an individual is listed in the child or dependent adult abuse registry or is required to register with the sex offender registry in accordance with chapter 692A.

8. The department shall inform the appropriate county attorneys of any reports of dependent adult abuse. The department may request information from any person believed to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, a social services agency in the state, or any person who is required pursuant to subsection 2 to report dependent adult abuse, whether or not the person made the specific dependent adult abuse report, shall cooperate and assist in the evaluation upon the request of the department. If the department’s assessment reveals that dependent adult abuse exists which might constitute a criminal offense, a report shall be made to the appropriate law enforcement agency. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

a. If, upon completion of the evaluation or upon referral from the department of inspections and appeals, the department determines that the best interests of the dependent adult require court action, the department shall initiate action for the appointment of a guardian or conservator or for admission or commitment to an appropriate institution or facility pursuant to the applicable procedures under chapter 125, 222, 229, or 633, or shall pursue other remedies provided by law. The appropriate county attorney shall assist the department in the preparation of the necessary papers to initiate the action and shall appear and represent the department at all district court proceedings.

b. The department shall assist the court during all stages of court proceedings involving a suspected case of dependent adult abuse.

c. In every case involving abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult if necessary to protect the dependent adult’s best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to this section, the court shall require

the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

9. A person participating in good faith in reporting or cooperating with or assisting the department in evaluating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participating in good faith in a judicial proceeding resulting from the report or cooperation or assistance or relating to the subject matter of the report, cooperation, or assistance.

10. It shall be unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to subsection 2 or 4, or cooperating with, or assisting the department of human services in evaluating a case of dependent adult abuse, or participating in judicial proceedings relating to the reporting or cooperation or assistance based solely upon the person’s reporting or assistance relative to the instance of dependent adult abuse. A person or employer found in violation of this subsection is guilty of a simple misdemeanor.

11. A person required by this section to report a suspected case of dependent adult abuse who knowingly and willfully fails to do so commits a simple misdemeanor. A person required by this section to report a suspected case of dependent adult abuse who knowingly fails to do so or who knowingly, in violation of subsection 3, interferes with the making of such a report or applies a requirement that results in such a failure is civilly liable for the damages proximately caused by the failure.

12. The department of inspections and appeals shall adopt rules which require licensed health care facilities to separate an alleged dependent adult abuser from a victim following an allegation of perpetration of abuse and prior to the completion of an investigation of the allegation.

2003 Acts, ch 98, §2; 2003 Acts, ch 123, §2; 2003 Acts, ch 166, §27; 2003 Acts, ch 179, §69

Subsection 2, paragraph d amended

Subsection 5 amended

NEW subsection 7 and former subsections 7 – 11 renumbered as 8 – 12

### **235B.6 Authorized access.**

1. Notwithstanding chapter 22, the confidentiality of all dependent adult abuse information shall be maintained, except as specifically pro-

vided by subsections 2 and 3.

2. Access to dependent adult abuse information other than unfounded dependent adult abuse information is authorized only to the following persons:

*a.* A subject of a report including all of the following:

(1) To an adult named in a report as a victim of abuse or to the adult's attorney or guardian ad litem.

(2) To a guardian or legal custodian, or that person's attorney, of an adult named in a report as a victim of abuse.

(3) To the person or the attorney for the person named in a report as having abused an adult.

*b.* A person involved in an investigation of dependent adult abuse including all of the following:

(1) A health practitioner or mental health professional who is examining, attending, or treating an adult whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to an adult believed to have been the victim of abuse is requested by the department.

(2) An employee or agent of the department responsible for the investigation of a dependent adult abuse report or for the purpose of performing record checks as required under section 135C.33.

(3) A representative of the department involved in the certification or accreditation of an agency or program providing care or services to a dependent adult believed to have been a victim of abuse.

(4) A law enforcement officer responsible for assisting in an investigation of a dependent adult abuse allegation.

(5) A multidisciplinary team, if the department of human services approves the composition of the multidisciplinary team and determines that access to the team is necessary to assist the department in the investigation, diagnosis, assessment, and disposition of a case of dependent adult abuse.

(6) The mandatory reporter who reported the dependent adult abuse in an individual case.

(7) Each board of examiners specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

*c.* A person providing care to an adult including all of the following:

(1) A licensing authority for a facility providing care to an adult named in a report.

(2) A person authorized as responsible for the care or supervision of an adult named in a report as a victim of abuse or a person named in a report as having abused an adult if the court or registry deems access to dependent adult abuse informa-

tion by such person to be necessary.

(3) An employee or agent of the department responsible for registering or licensing or approving the registration or licensing of a person, or to an individual providing care to an adult and regulated by the department.

(4) The legally authorized protection and advocacy agency recognized pursuant to section 135C.2 if a person identified in the information as a victim or a perpetrator of abuse resided in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(5) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the information concerns a person employed by or being considered by the agency for employment.

(6) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, if the information concerns a person employed by or being considered by the agency for employment.

(7) To an administrator of a hospital licensed under chapter 135B if the data concerns a person employed or being considered for employment by the hospital.

(8) An employee of an agency requested by the department to provide case management or other services to the dependent adult.

*d.* Relating to judicial and administrative proceedings, persons including all of the following:

(1) A court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving dependent adult abuse.

(2) A court or administrative agency hearing an appeal for correction of dependent adult abuse information as provided in section 235B.10.

(3) An expert witness at any stage of an appeal necessary for correction of dependent adult abuse information as provided in section 235B.10.

*e.* Other persons including all of the following:

(1) A person conducting bona fide research on dependent adult abuse, but without information identifying individuals named in a dependent adult abuse report, unless having that information open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the adult, the adult's guardian or guardian ad litem, and the person named in a report as having abused an adult give permission to release the information.

(2) Registry or department personnel when necessary to the performance of their official duties or a person or agency under contract with the department to carry out official duties and functions of the registry.

(3) The department of justice for the sole purpose of the filing of a claim for reparation pursuant

to sections 915.21 and 915.84.

(4) A legally constituted adult protection agency of another state which is investigating or treating an adult named in a report as having been abused.

(5) The attorney for the department who is responsible for representing the department.

(6) A health care facility administrator or the administrator's designee, following the appeals process, for the purpose of hiring staff or continued employment of staff.

(7) To the administrator of an agency providing care to a dependent adult in another state, for the purpose of performing an employment background check.

(8) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(9) The department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

(10) The long-term care resident's advocate if the victim resides in a long-term care facility or the alleged perpetrator is an employee of a long-term care facility.

3. Access to unfounded dependent adult abuse information is authorized only to those persons identified in subsection 2, paragraph "a", paragraph "b", subparagraphs (2), (5), and (6), and paragraph "e", subparagraphs (2) and (10).

2003 Acts, ch 98, §3 - 5  
Subsection 2, paragraph c, NEW subparagraph (8)  
Subsection 2, paragraph e, NEW subparagraph (10)  
Subsection 3 amended

### **235B.9 Sealing and expungement of dependent adult abuse information.**

1. Dependent adult abuse information which

is determined by a preponderance of the evidence to be founded, shall be sealed ten years after the receipt of the initial report of such abuse by the registry unless good cause is shown why the information should remain open to authorized access. If a subsequent report of founded dependent adult abuse involving the adult named in the initial report as the victim of abuse or a person named in such report as having abused an adult is received by the registry within the ten-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause is shown why the information should remain open to authorized access.

2. Dependent adult abuse information which is determined by a preponderance of the evidence to be unfounded shall be expunged one year from the date it is determined to be unfounded.

3. However, if a correction of dependent adult abuse information is requested under section 235B.10 and the issue is not resolved at the end of one year the information shall be retained until the issue is resolved and if the dependent adult abuse information is not determined to be founded, the information shall be expunged one year from the date it is determined to be unfounded.

4. The registry, at least annually, shall review and determine the current status of dependent adult abuse reports which are at least one year old and in connection with which no investigatory report has been filed by the department. If no investigatory report has been filed, the registry shall request the department to file a report. If a report is not filed within ninety days subsequent to a request, the report and relative information shall be sealed and remain sealed unless good cause is shown why the information should remain open to authorized access.

2003 Acts, ch 98, §6  
Subsections 1 - 3 amended

## CHAPTER 236

### DOMESTIC ABUSE

#### **236.2 Definitions.**

For purposes of this chapter, unless a different meaning is clearly indicated by the context:

1. "*Department*" means the department of justice.

2. "*Domestic abuse*" means committing assault as defined in section 708.1 under any of the following circumstances:

a. The assault is between family or household members who resided together at the time of the assault.

b. The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault.

c. The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.

d. The assault is between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault.

e. The assault is between persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault. In determining whether persons are or have been in an intimate relationship, the court may consider the following nonex-

clusive list of factors:

- (1) The duration of the relationship.
- (2) The frequency of interaction.
- (3) Whether the relationship has been terminated.
- (4) The nature of the relationship, characterized by either party's expectation of sexual or romantic involvement.

A person may be involved in an intimate relationship with more than one person at a time.

3. "Emergency shelter services" include, but are not limited to, secure crisis shelters or housing for victims of domestic abuse.

4. a. "Family or household members" means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity.

b. "Family or household members" does not include children under age eighteen or persons listed in paragraph "a".

5. "Intimate relationship" means a significant romantic involvement that need not include sexual involvement. An intimate relationship does not include casual social relationships or associations in a business or professional capacity.

6. "Plaintiff" includes a person filing an action on behalf of an unemancipated minor.

7. "Pro se" means a person proceeding on the person's own behalf without legal representation.

8. "Support services" include, but are not limited to, legal services, counseling services, transportation services, child care services, and advocacy services.

2003 Acts, ch 44, §52  
NEW subsection 6 and former subsections 6 and 7 renumbered as 7 and 8

**236.3 Commencement of actions — waiver to juvenile court.**

A person, including a parent or guardian on behalf of an unemancipated minor, may seek relief from domestic abuse by filing a verified petition in the district court. Venue shall lie where either party resides. The petition shall state the:

1. Name of the plaintiff and the name and address of the plaintiff's attorney, if any. If the plaintiff is proceeding pro se, the petition shall state a mailing address for the plaintiff. A mailing address may be provided by the plaintiff pursuant to section 236.10.
2. Name and address of the parent or guardian

filing the petition, if the petition is being filed on behalf of an unemancipated minor. A mailing address may be provided by the plaintiff pursuant to section 236.10.

3. Name and address, if known, of the defendant.
4. Relationship of the plaintiff to the defendant.
5. Nature of the alleged domestic abuse.
6. Name and age of each child under eighteen whose welfare may be affected by the controversy.
7. Desired relief, including a request for temporary or emergency orders.

A temporary or emergency order shall be based on a showing of a prima facie case of domestic abuse. If the factual basis for the alleged domestic abuse is contested, the court shall issue a protective order based upon a finding of domestic abuse by a preponderance of the evidence.

The filing fee and court costs for an order for protection and in a contempt action under this chapter shall be waived for the plaintiff. The clerk of court, the sheriff of any county in this state, and other law enforcement and corrections officers shall perform their duties relating to service of process without charge to the plaintiff. When an order for protection is entered by the court, the court may direct the defendant to pay to the clerk of court the fees for the filing of the petition and reasonable costs of service of process if the court determines the defendant has the ability to pay the plaintiff's fees and costs.

If the person against whom relief from domestic abuse is being sought is seventeen years of age or younger, the district court shall waive its jurisdiction over the action to the juvenile court.

2003 Acts, ch 44, §53; 2003 Acts, ch 151, §7  
Subsection 2 amended  
Unnumbered paragraph 3 amended

**236.15A Income tax checkoff for domestic abuse services.** Repealed by 97 Acts, ch 158, § 48; 97 Acts, ch 209, § 13, 15.

Repeal entry revised

**236.15B Income tax checkoff for domestic abuse services.** Repealed by 2003 Acts, ch 44, § 111.

For disposition of amendment intended by 2003 Acts, ch 145, §218, see Code editor's note to §2.9

**CHAPTER 237**

**CHILD FOSTER CARE FACILITIES**

**237.18 Duties of state board.**

The state board shall:

1. Review the activities and actions of local boards.
2. Adopt rules pursuant to chapter 17A to:
  - a. Establish a recordkeeping system for the

files of local review boards including individual case reviews.

- b. Accumulate data and develop an annual report regarding children in foster care. The report shall include:
  - (1) Personal data regarding the total number

of days of foster care provided and the characteristics of the children receiving foster care.

(2) The number of placements of children in foster care.

(3) The frequency and results of court reviews.

c. Evaluate the judicial and administrative data collected on foster care and disseminate the data to the governor, the supreme court, the chief judge of each judicial district, the department, and child-placing agencies.

d. Establish mandatory training programs for members of the state and local review boards including an initial training program and periodic in-service training programs. Training shall focus on, but not be limited to, the following:

(1) The history, philosophy and role of the juvenile court in the child protection system.

(2) Juvenile court procedures under the juvenile justice act.

(3) The foster care administrative review process of the department of human services.

(4) The role and procedures of the citizen's foster care review system.

(5) The Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272.

(6) The purpose of case permanency plans, and the type of information that will be available in those plans.

(7) The situations where the goals of either reuniting the child with the child's family or adoption would be appropriate.

(8) The legal processes that may lead to foster care placement.

(9) The types and number of children involved in those legal processes.

(10) The types of foster care placement available, with emphasis on the types and number of facilities available on a regional basis.

(11) The impact of specific physical or mental conditions of a child on the type of placement most appropriate and the kind of progress that should be expected in those situations.

e. Establish procedures for the local review board consistent with the provisions of section 237.20.

f. Establish grounds and procedures for removal of a local review board member.

g. Establish procedures and protocols for administering the court appointed special advocate program in accordance with subsection 7.

3. Assign the case of each child receiving foster care within the judicial district to the appropriate local board.

4. Assist local boards in reviewing each case of a child receiving foster care, as provided in section 237.20.

5. Employ appropriate staff in accordance with available funding. The board shall coordinate with the department of inspections and appeals regarding administrative functions of the board.

6. In conjunction with the legislative services agency and in consultation with the department of human services, supreme court, and private foster care providers, develop and maintain an evaluation program regarding citizen foster care review programming. The evaluation program shall be designed to evaluate the effectiveness of citizen reviews in improving case permanency planning and meeting case permanency planning goals, identify the amount of time children spend in foster care placements, and identify problem issues in the foster care system. The state board shall submit an annual evaluation report to the governor and the general assembly.

7. Administer the court appointed special advocate program, including but not limited to performance of all of the following:

a. Establish standards for the program, including but not limited to standards for selection and screening of volunteers, preservice training, ongoing education, and assignment and supervision of volunteers. Identifying information concerning a court appointed special advocate, other than the advocate's name, shall not be considered to be a public record under chapter 22.

b. Implement the court appointed special advocate program in additional areas of the state.

c. Promote adherence to the national guidelines for state and local court appointed special advocate programs.

d. Issue an annual report of the court appointed special advocate program for submission to the general assembly, the governor, and the supreme court.

e. Employ appropriate court appointed special advocate program staff in accordance with available funding. The state board shall coordinate with the department of inspections and appeals the performance of the administrative functions of the state board.

8. Receive gifts, grants, or donations made for any of the purposes of the state board's programs and disburse and administer the funds received in accordance with the terms of the donor and under the direction of program staff. The funds received shall be used according to any restrictions attached to the funds and any unrestricted funds shall be retained and applied to the applicable program budget for the next succeeding fiscal year.

The state board shall make recommendations to the general assembly, the department, to child-placing agencies, the governor, the supreme court, the chief judge of each judicial district, and to the judicial branch. The recommendations shall include, but are not limited to, identification of systemic problems in the foster care and the juvenile justice systems, specific proposals for improvements that assist the systems in being more cost-effective and better able to protect the best interests of children, and necessary changes relating to the data collected and the annual report made un-

der subsection 2, paragraph “b”.

2003 Acts, ch 35, §45, 49  
Terminology change applied

**237.20 Local board duties.**

A local board shall, except in delinquency cases, do the following:

1. Review at least every six months the case of each child receiving foster care assigned to the local board by the state board to determine whether satisfactory progress is being made toward the goals of the case permanency plan pursuant to section 237.22. As much as is possible, review shall be conducted immediately prior to court reviews of the case.

During each review, the agency responsible for the placement of or services provided to the child shall attend the review and the local board shall review all of the following:

*a.* The past, current, and future status of the child and placement as shown through the case permanency plan and case progress reports submitted by the agency responsible for the placement of the child and other information the board may require.

*b.* The efforts of the agency responsible for the placement of the child to locate and provide services to the biological or adoptive parents of the child.

*c.* The efforts of the agency responsible for the placement of the child to facilitate the return of the child to the home or to find an alternative permanent placement other than foster care if reunion with the parent or previous custodian is not feasible. The agency shall report to the board all factors which either favor or mitigate against a decision or alternative with regard to these matters.

*d.* Any problems, solutions, or alternatives which may be capable of investigation, or other matters with regard to the child which the agency responsible for the placement of the child or the board feels should be investigated with regard to the best interests of the state or of the child.

*e.* The compliance of the interested parties with the decision-making rights and responsibilities contained in the family foster care or preadoptive care agreement applicable to a child.

The review shall include issues pertaining to the case permanency plan and shall not include issues that do not pertain to the case permanency plan. A person notified pursuant to subsection 4 shall either attend the review or submit testimony as requested by the local board or in accordance with a written protocol jointly developed by the state board and the department. Oral testimony may, upon the request of the testifier or upon motion of the local board, be given in a private setting when to do so would facilitate the presentation of evidence. Local board questions shall pertain to the permanency plan and shall not include issues that do not pertain to the permanency plan.

A person who gives oral testimony has the right to representation by counsel at the review.

An agency or individual providing services to the child shall submit testimony as requested by the board. The testimony may be written or oral, or may be a tape recorded telephone call. Written testimony from other interested parties may also be considered by the board in its review.

2. *a.* Submit to the appropriate court within fifteen days after the review under subsection 1, the findings and recommendations of the review. The local board shall ensure that the most recent report is available for a court hearing. The report to the court shall include information regarding the case permanency plan and the progress in attaining the permanency goals. The report shall not include issues that do not pertain to the case permanency plan. The findings and recommendations shall include the proposed date of the next review by the local board. The local board shall notify the persons specified in subsection 4 of the findings and recommendations.

*b.* If the person or agency responsible for services provided to the child disagrees with the review findings or recommendations, the person or agency shall respond during the review or submit a statement to the local board and the court within ten working days of receiving the local board's report. The response shall explain the reasons the person or agency disagrees with the board's findings or does not plan to implement the board's recommendations.

3. Encourage placement of the child in the most appropriate setting reflecting the provisions of chapter 232.

4. Notify the following persons at least ten days before the review of a case of a child receiving foster care:

*a.* The person, court, or agency responsible for the child.

*b.* The parent or parents of the child unless termination of parental rights has occurred pursuant to section 232.117.

*c.* The foster care provider of the child.

*d.* The child receiving foster care if the child is fourteen years of age or older. The child shall be informed of the review's purpose and procedure, and of the right to have a guardian ad litem present.

*e.* The guardian ad litem of the foster child. An attorney appointed as guardian ad litem shall be eligible for compensation under section 232.141, subsection 2.

*f.* The department.

*g.* The county attorney.

*h.* The person providing services to the child or the child's family.

The notice shall include a statement that the person notified has the right to representation by counsel at the review.

2003 Acts, ch 151, §8  
Unnumbered paragraph 1 amended

## CHAPTER 237A

### CHILD CARE FACILITIES

#### 237A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. “*Administrator*” means the administrator of the division of the department designated by the director to administer this chapter.

2. “*Child*” means either of the following:

*a.* A person twelve years of age or younger.

*b.* A person thirteen years of age or older but younger than nineteen years of age who has a developmental disability as defined under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Pub. L. No. 106-402, as codified in 42 U.S.C. § 15002(8).

3. “*Child care*” means the care, supervision, and guidance of a child by a person other than the child’s parent, guardian, or custodian for periods of less than twenty-four hours per day per child on a regular basis, but does not include care, supervision, and guidance of a child by any of the following:

*a.* An instructional program for children who are attending prekindergarten as defined by the state board of education under section 256.11 or a higher grade level and are at least four years of age administered by any of the following:

(1) A public or nonpublic school system accredited by the department of education or the state board of regents.

(2) A nonpublic school system which is not accredited by the department of education or the state board of regents.

*b.* A program provided under section 279.49 or 280.3A.

*c.* Any of the following church-related programs:

(1) An instructional program.

(2) A youth program other than a preschool, before or after school child care program, or other child care program.

(3) A program providing care to children on church premises while the children’s parents are attending church-related or church-sponsored activities on the church premises.

*d.* Short-term classes of less than two weeks’ duration held between school terms or during a break within a school term.

*e.* A child care center for sick children operated as part of a pediatrics unit in a hospital licensed by the department of inspections and appeals pursuant to chapter 135B.

*f.* A program operated not more than one day per week by volunteers which meets all of the following conditions:

(1) Not more than eleven children are served per volunteer.

(2) The program operates for less than four

hours during any twenty-four-hour period.

(3) The program is provided at no cost to the children’s parent, guardian, or custodian.

*g.* A program administered by a political subdivision of the state which is primarily for recreational or social purposes and is limited to children who are five years of age or older and attending school.

*h.* An after school program continuously offered throughout the school year calendar to children who are at least five years of age and are enrolled in school, and attend the program intermittently or a summer-only program for such children. The program must be provided through a nominal membership fee or at no cost.

*i.* A special activity program which meets less than four hours per day for the sole purpose of the special activity. Special activity programs include but are not limited to music or dance classes, organized athletic or sports programs, recreational classes, scouting programs, and hobby or craft clubs or classes.

*j.* A nationally accredited camp.

*k.* A structured program for the purpose of providing therapeutic, rehabilitative, or supervisory services to children under any of the following:

(1) A purchase of service or managed care contract with the department.

(2) A contract approved by a local decategorization governance board created under section 232.188.

(3) An arrangement approved by a juvenile court order.

*l.* Care provided on-site to children of parents residing in an emergency, homeless, or domestic violence shelter.

*m.* A child care facility providing respite care to a licensed foster family home for a period of twenty-four hours or more to a child who is placed with that licensed foster family home.

*n.* A program offered to a child whose parent, guardian, or custodian is engaged solely in a recreational or social activity, remains immediately available and accessible on the physical premises on which the child’s care is provided, and does not engage in employment while the care is provided.

4. “*Child care center*” or “*center*” means a facility providing child care or preschool services for seven or more children, except when the facility is registered as a child development home.

5. “*Child care facility*” or “*facility*” means a child care center, preschool, or a registered child development home.

6. “*Child care home*” means a person or program providing child care to five or fewer children at any one time that is not registered to provide child care under this chapter, as authorized under

section 237A.3.

7. “*Child development home*” means a person or program registered under section 237A.3A that may provide child care to six or more children at any one time.

8. “*Department*” means the department of human services.

9. “*Director*” means the director of human services.

10. “*Infant*” means a child who is less than twenty-four months of age.

11. “*Involvement with child care*” means licensed or registered under this chapter, employed in a child care facility, residing in a child care facility, receiving public funding for providing child care, or providing child care as a child care home provider, or residing in a child care home.

12. “*Licensed center*” means a center issued a full or provisional license by the department under the provisions of this chapter or a center for which a license is being processed.

13. “*Poverty level*” means the poverty level defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

14. “*Preschool*” means a child care facility which provides to children ages three through five, for periods of time not exceeding three hours per day, programs designed to help the children to develop intellectual skills, social skills, and motor skills, and to extend their interest and understanding of the world about them.

15. “*School*” means kindergarten or a higher grade level.

16. “*State child care advisory council*” means the state child care advisory council established pursuant to sections 237A.21 and 237A.22.

2003 Acts, ch 81, §1  
2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31  
NEW subsection 11 and former subsections 11 – 15 renumbered as 12 – 16

### 237A.2 Licensing of child care centers.

1. A person shall not establish or operate a child care center without obtaining a license under the provisions of this chapter. A center may operate for a specified period of time, to be established by rule of the department, if application for a license has been made. If the department denies an application for an initial license, notwithstanding section 17A.18, the applicant center shall not continue to provide child care pending the outcome of an evidentiary hearing. The department shall issue a license if it determines that all of the following conditions have been met:

a. An application for a license or a renewal has been filed with the administrator on forms provided by the department.

b. The center is maintained to comply with state health and fire laws.

c. The center is maintained to comply with rules adopted under section 237A.12.

2. a. A person denied a license under this section shall receive written notice of the denial stating the reasons for denial and shall be provided with an opportunity for an evidentiary hearing.

b. A license issued under this chapter shall be valid for twenty-four months from the date of issuance. A license shall remain valid unless it is revoked or suspended in accordance with the provisions of section 237A.8 or is reduced to a provisional license under subsection 3. The department may inspect a licensed center at any time. A record of the license shall be kept by the department.

c. The license shall be posted in a conspicuous place in the center and shall state the particular premises in which child care may be offered and the number of individuals who may be received for care at any one time. A greater number of children than is authorized by the license shall not be kept in the center at any one time.

3. The administrator may reduce a previously issued license to a provisional license or issue a provisional license for a period of time not to exceed one year if the center does not meet standards required under this section. A provisional license shall not be renewable in regard to the same standards for more than two consecutive years. A provisional license shall be posted in a conspicuous place in the center as provided in this section. If written plans to bring the center up to standards, giving specific dates for completion of work, are submitted to and approved by the department, the provisional license shall be renewable as provided in this subsection.

4. A program which is not a child care center by reason of the exceptions to the definition of child care in section 237A.1, subsection 3, but which provides care, supervision, and guidance to a child may be issued a license if the program complies with all the provisions of this chapter.

5. If the department has denied or revoked a license because the applicant or person has continually or repeatedly failed to operate a licensed center in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not own or operate a child care center for a period of twelve months from the date the license is denied or revoked. The department shall not act on an application for a license submitted by the applicant or person during the twelve-month period. The applicant or person shall be prohibited from involvement with child care unless the involvement is specifically permitted by the department.

2003 Acts, ch 44, §54; 2003 Acts, ch 81, §2  
2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 5 amended

### 237A.3 Child care homes.

1. A person or program providing child care to five children or fewer at any one time is a child care home provider and is not required to register under section 237A.3A as a child development home.

However, the person or program may register as a child development home.

2. If a person or program has been prohibited by the department from involvement with child care, the person or program shall not provide child care as a child care home provider and is subject to penalty under section 237A.19 or injunction under section 237A.20 for doing so.

2003 Acts, ch 81, §3  
2002 amendment is effective October 1, 2002; applicability to providers;  
2002 Acts, ch 1142, §31  
Section amended

### **237A.3A Child development homes.**

#### *1. Registration.*

*a.* A person shall not establish or operate a child development home unless the person obtains a certificate of registration. The department shall issue a certificate of registration upon receipt of a statement from the person or upon completion of an inspection conducted by the department or a designee of the department verifying that the person complies with applicable rules adopted by the department pursuant to this section and section 237A.12.

*b.* The certificate of registration shall be posted in a conspicuous place in the child development home and shall state the name of the registrant, the registration category of the child development home, the maximum number of children who may be present for child care at any one time, and the address of the child development home. In addition, the certificate shall include a checklist of registration compliances.

*c.* The registration process for a child development home shall be repeated every twenty-four months as provided by rule.

*d.* A person who holds a child foster care license under chapter 237 shall register as a child development home provider in order to provide child care.

*2. Revocation or denial of registration.* If the department has denied or revoked a certificate of registration because a person has continually or repeatedly failed to operate a registered or licensed child care facility in compliance with this chapter and rules adopted pursuant to this chapter, the person shall not operate or establish a registered child development home for a period of twelve months from the date the registration or license was denied or revoked. The department shall not act on an application for registration submitted by the person during the twelve-month period. The applicant or person shall be prohibited from involvement with child care unless the involvement is specifically permitted by the department.

#### *3. Rules.*

*a.* Three categories of standards shall be applicable to child development homes. The initial designations of the categories, which may be revised by the department, shall be "A", "B", and "C", as

ranked from less stringent standards and capacity to more stringent standards and capacity. The "C" registration category standards shall require the highest level of provider qualifications and allow the greatest capacity of the three categories. The department of human services, in consultation with the Iowa department of public health, shall adopt rules applying standards to each category specifying provider qualifications and training, health and safety requirements, capacity, amount of space available per child, and other minimum requirements. The capacity requirements shall take into consideration the provider's own children, children who have a mild illness, children receiving part-time child care, and children served as a sibling group in overnight care.

*b.* The rules shall allow a child development home to be registered in a particular category for which the provider is qualified even though the amount of space required to be available for the maximum number of children authorized for that category exceeds the actual amount of space available in that home. However, the total number of children authorized for the child development home at that category of registration shall be limited by the amount of space available per child.

*c.* In consultation with the state fire marshal, the department shall adopt rules relating to the provision of fire extinguishers, smoke detectors, and two exits accessible to children in a child development home.

#### *4. Number of children.*

*a.* In determining the number of children present for child care at any one time in a child development home, each child present in the child development home shall be considered as being provided child care unless the child is described by one of the following exceptions:

(1) The child's parent, guardian, or custodian operates or established the child development home and the child is attending school or the child is provided child care full-time on a regular basis by another person.

(2) The child has been present in the child development home for more than seventy-two consecutive hours and the child is attending school or the child is provided child care full-time on a regular basis by another person.

*b.* For purposes of determining the number of children present for child care in a child development home, a child receiving foster care from a child development home provider shall be considered to be the child of the provider.

5. Smoking, as defined in section 142B.1, shall not be permitted during a child development home's hours of operation in an area of the child development home which may be used by the children receiving child care.

2003 Acts, ch 81, §4  
2002 amendments are effective October 1, 2002; applicability to providers; transition exception for child development home registration; 2002 Acts, ch 1142, §30, 31  
Subsection 2 amended

### 237A.5 Personnel.

1. All personnel in licensed or registered facilities shall have good health as evidenced by a report following a preemployment physical examination taken within six months prior to beginning employment. The examination shall include communicable disease tests by a licensed physician as defined in section 135C.1 and shall be repeated every three years after initial employment. Controlled medical conditions which would not affect the performance of the employee in the capacity employed shall not prohibit employment.

2. *a.* For the purposes of this section, unless the context otherwise requires:

(1) “*Person subject to an evaluation*” means a person who has committed a transgression and who is described by any of the following:

(a) The person is being considered for licensure or registration or is registered or licensed under this chapter.

(b) The person is being considered by a child care facility for employment involving direct responsibility for a child or with access to a child when the child is alone or is employed with such responsibilities.

(c) The person will reside or resides in a child care facility.

(d) The person has applied for or receives public funding for providing child care.

(e) The person will reside or resides in a child care home that is not registered under this chapter but that receives public funding for providing child care.

(2) “*Transgression*” means the existence of any of the following in a person’s record:

(a) Conviction of a crime.

(b) A record of having committed founded child or dependent adult abuse.

(c) Listing in the sex offender registry under chapter 692A.

(d) A record of having committed a public or civil offense.

(e) The department has revoked a child care facility registration or license due to the person’s continued or repeated failure to operate the child care facility in compliance with this chapter and rules adopted pursuant to this chapter.

*b.* The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. In addition, the department may conduct dependent adult abuse, sex offender registry, and other public or civil offense record checks in this state or in other states. If the department identifies an individual as a person subject to an evaluation, an evaluation shall be performed to determine whether prohibition of the person’s involvement with child care is warranted. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

Prior to performing an evaluation, the depart-

ment shall notify the affected person, licensee, registrant, or child care home applying for or receiving public funding for providing child care, that an evaluation will be conducted to determine whether prohibition of the person’s involvement with child care is warranted.

*c.* In an evaluation, the department shall consider the nature and seriousness of the transgression in relation to the position sought or held, the time elapsed since the commission of the transgression, the circumstances under which the transgression was committed, the degree of rehabilitation, the likelihood that the person will commit the transgression again, and the number of transgressions committed by the person involved. In addition to record check information, the department may utilize information from the department’s case records in performing the evaluation. The department may permit a person who is evaluated to maintain involvement with child care, if the person complies with the department’s conditions and corrective action plan relating to the person’s involvement with child care. The department has final authority in determining whether prohibition of the person’s involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

*d.* (1) A person subject to an evaluation shall be prohibited from involvement with child care if the person has a record of founded child or dependent adult abuse that was determined to be sexual abuse, the person is listed on the sex offender registry under chapter 692A, or the person has committed any of the following felony-level offenses:

(a) Child endangerment or neglect or abandonment of a dependent person.

(b) Domestic abuse.

(c) A crime against a child including but not limited to sexual exploitation of a minor.

(d) A forcible felony.

(2) If, within five years prior to the date of application for registration or licensure under this chapter, for employment or residence in a child care facility or child care home, or for receipt of public funding for providing child care, a person subject to an evaluation has been convicted of a controlled substance offense under chapter 124 or has been found to have committed physical abuse, the person shall be prohibited from involvement with child care for a period of five years from the date of conviction or founded abuse. After the five-year prohibition period, the person may submit an application for registration or licensure under this chapter, or to receive public funding for providing child care or may request an evaluation, and the department shall perform an evaluation and, based upon the criteria in paragraph “*c*”, shall determine whether prohibition of the person’s involvement with child care continues to be warranted.

e. If the department determines, through an evaluation of a person's transgression, that the person's prohibition of involvement with child care is warranted, the person shall be prohibited from involvement with child care. The department may identify a period of time after which the person may request that another record check and evaluation be performed. A person who continues involvement with child care in violation of this subsection is subject to penalty under section 237A.19 or injunction under section 237A.20.

f. If it has been determined that a child receiving child care from a child care facility or a child care home which receives public funding for providing child care is the victim of founded child abuse committed by an employee, license or registration holder, child care home provider, or resident of the child care facility or child care home for which a report is placed in the central registry pursuant to section 232.71D, the administrator shall provide notification at the time of the determination to the parents, guardians, and custodians of children receiving care from the facility or child care home. A notification made under this paragraph shall identify the type of abuse but shall not identify the victim or perpetrator or circumstances of the founded abuse.

3. On or after July 1, 1994, a licensee or registrant shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

4. On or after July 1, 1994, a licensee or registrant shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

5. A person who serves as an unpaid volunteer in a child care facility shall not be required to complete training as a mandatory reporter of child abuse under section 232.69 or under any other requirement.

2003 Acts, ch 81, §5, 6  
 Subsection 2 amended  
 Subsection 3 stricken and former subsections 4 and 5 renumbered as 3 and 4

Subsection 6 stricken and former subsection 7 renumbered as 5

### **237A.13 State child care assistance.**

1. A state child care assistance program is established in the department to assist children in families who meet eligibility guidelines and are described by any of the following circumstances:

a. The child's parent, guardian, or custodian is participating in approved academic or vocational training.

b. The child's parent, guardian, or custodian is seeking employment. Eligibility for assistance while seeking employment shall be limited to

thirty days during a twelve-month period.

c. The child's parent, guardian, or custodian is employed and the family income meets income requirements.

d. The child's parent, guardian, or custodian is absent for a limited period of time due to hospitalization, physical illness, or mental illness, or is present but is unable to care for the child for a limited period as verified by a physician.

e. The child needs protective services to prevent or alleviate child abuse or neglect.

2. Services under the program may be provided in a licensed child care center, a child development home, the home of a relative, the child's own home, a child care home, or in a facility exempt from licensing or registration.

3. The department shall set reimbursement rates as authorized by appropriations enacted for payment of the reimbursements. The department shall conduct a statewide reimbursement rate survey to compile information on each county and the survey shall be conducted at least every two years. The department shall set rates in a manner so as to provide incentives for an unregistered provider to become registered.

4. The department shall not apply waiting list requirements to any of the following persons:

a. Persons deemed to be eligible for benefits under the state child care assistance program in accordance with section 239B.24.

b. A family that is receiving state child care assistance at the time a child is born into the family. The newborn child shall be approved for services when the family reports the birth of the child.

c. Children who need protective services to prevent or alleviate child abuse or neglect.

d. A child in a family that is eligible for state child care assistance and that receives a state adoption subsidy for the child.

5. Based upon the availability of the funding appropriated for state child care assistance for a fiscal year, the department shall establish waiting lists for state child care assistance in descending order of prioritization as follows:

a. Families with an income at or below one hundred percent of the federal poverty level whose members are employed at least twenty-eight hours per week, and parents with a family income at or below one hundred percent of the federal poverty level who are under the age of twenty-one years and are participating in an educational program leading to a high school diploma or the equivalent.

b. Parents with a family income at or below one hundred percent of the federal poverty level who are under the age of twenty-one years and are participating, at a satisfactory level, in an approved training program or in an educational program.

c. Families with an income of more than one hundred percent but not more than one hundred forty percent of the federal poverty level whose members are employed at least twenty-eight hours per week.

d. Families with an income at or below one hundred seventy-five percent of the federal poverty level whose members are employed at least twenty-eight hours per week with a special needs child as a member of the family.

6. A child care facility that previously received child care wrap-around funding, meets the requirements for being a shared vision program except that a shared vision program is not operated in the county in which the facility is located, and is providing a child care wrap-around service that is included in the community empowerment area board's plan for the community empowerment area in which the facility is located shall be deemed to be qualified for child care wrap-around funding.

7. Nothing in this section shall be construed as or is intended as, or shall imply, a grant of entitlement for services to persons who are eligible for assistance due to an income level or other eligibility circumstance addressed in this section. Any state obligation to provide services pursuant to this section is limited to the extent of the funds appropriated for the purposes of state child care assistance.

2003 Acts, ch 81, §7, 8  
2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31  
Subsection 1, paragraph d amended  
Subsection 4, NEW paragraph d

**237A.19 Penalty.**

1. A person who establishes, conducts, manages, or operates a center without a license commits a serious misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, shall be considered a separate offense.

2. If registration is required under section 237A.3A, a person who establishes, conducts, manages, or operates a child development home without registering or a person who operates a child development home contrary to section 237A.5, commits a simple misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of the violation, is a separate offense. A single charge alleging continuing violation may be made in lieu of filing charges for each day of violation.

3. A person who establishes, conducts, manages, or operates a child care home in violation of section 237A.3, subsection 2, or a person or program that has been prohibited by the department from involvement with child care but continues that involvement commits a simple misdemeanor. Each day of continuing violation after conviction, or notice from the department by certified mail of

the violation, is a separate offense. A single charge alleging continuing violation may be made in lieu of filing charges for each day of violation.

2003 Acts, ch 81, §9  
2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31  
NEW subsection 3

**237A.20 Injunction.**

A person who establishes, conducts, manages, or operates a center without a license or a child development home without a certificate of registration, if registration is required under section 237A.3A, may be restrained by temporary or permanent injunction. A person who has been convicted of a crime against a person, a person with a record of founded child abuse, or a person who has been prohibited by the department from involvement with child care may be restrained by temporary or permanent injunction from providing unregistered, registered, or licensed child care or from other involvement with child care. The action may be instituted by the state, the county attorney, a political subdivision of the state, or an interested person.

2003 Acts, ch 81, §10  
2002 amendments are effective October 1, 2002; applicability to providers; 2002 Acts, ch 1142, §31  
Section amended

**237A.24 Reserved.**

**237A.25 Consumer information.**

1. The department shall develop consumer information material to assist parents in selecting a child care provider. In developing the material, the department shall consult with department of human services staff, department of education staff, the state child care advisory council, the Iowa empowerment board, and child care resource and referral services. In addition, the department may consult with other entities at the local, state, and national level.

2. The consumer information material developed by the department for parents and other consumers of child care services shall include but is not limited to all of the following:

a. A pamphlet or other printed material containing consumer-oriented information on locating a quality child care provider.

b. Information explaining important considerations a consumer should take into account in selecting a licensed or registered child care provider.

c. Information explaining how a consumer can identify quality services, including what questions to ask of providers and what a consumer might expect or demand to know before selecting a provider.

d. An explanation of the applicable laws and regulations written in layperson's terms.

e. An explanation of what it means for a provider to be licensed, registered, or unregistered.

f. An explanation of the information considered in registry and record background checks.

g. Other information deemed relevant to consumers.

3. The department shall implement and publicize an internet page or site that provides all of the following:

a. The written information developed pursuant to subsections 1 and 2.

b. Regular informational updates, including when a child care provider was last subject to a state quality review or inspection and, based upon a final score or review, the results indicating whether the provider passed or failed the review or inspection.

c. Capability for a consumer to be able to access information concerning child care providers, such as informational updates, identification of provider location, name, and capacity, and identification of providers participating in the state child care assistance program and those participating in the child care food program, by sorting the information or employing other means that provide the information in a manner that is useful to the consumer. Information regarding provider location shall identify providers located in the vicinity of an address selected by a consumer and provide contact information without listing the specific addresses of the providers.

d. Other information deemed appropriate by the department.

2003 Acts, 1st Ex, ch 2, §18, 209  
NEW section

### **237A.29 Public funding of child care — sanctions.**

1. State funds and federal funds provided to the state in accordance with federal requirements shall not be used to pay for the care, supervision, and guidance of a child for periods of less than twenty-four hours per day on a regular basis unless the care, supervision, and guidance is defined as child care as used in this chapter.

2. a. For the purposes of this subsection, “*fraudulent means*” means knowingly making or causing to be made a false statement or a misrepresentation of a material fact, knowingly failing to disclose a material fact, or committing a fraudulent practice.

b. A child care provider that has been found by the department of inspections and appeals in an administrative proceeding or in a judicial proceeding to have obtained, or has agreed to entry of a civil judgment or judgment by confession that includes a conclusion of law that the child care provider has obtained, by fraudulent means, public funding for provision of child care in an amount equal to or in excess of the minimum amount for a fraudulent practice in the second degree under section 714.10, subsection 1, shall be subject to sanction in accordance with this subsection. Such child care provider shall be subject to a period during which receipt of public funding for provision of

child care is conditioned upon no further violations and to one or more of the following sanctions as determined by the department of human services:

(1) Ineligibility to receive public funding for provision of child care.

(2) Suspension from receipt of public funding for provision of child care.

(3) Special review of the child care provider’s claims for providing publicly funded child care.

c. The following factors shall be considered in determining the sanction or sanctions to be imposed under paragraph “b”, subparagraphs (1) through (3):

(1) Seriousness of the violation.

(2) Extent of the violation.

(3) History of prior violations.

(4) Prior imposition of sanctions.

(5) Prior provision of provider education.

(6) Provider willingness to obey program rules.

(7) Whether a lesser sanction will be sufficient to remedy the problem.

d. In determining the value of the public funding obtained by fraudulent means, if the public funding is obtained by two or more acts of fraudulent means by the same person or in the same location, or is obtained by different persons by two or more acts which occur in approximately the same location or time period so that the acts of fraudulent means used to obtain the public funding are attributable to a single scheme, plan, or conspiracy, these acts may be considered as a single instance of the use of fraudulent means and the value may be the total value of all moneys involved.

3. a. If a child care provider is subject to sanctions under subsection 2, within five business days of the date the sanctions were imposed, the provider shall submit to the department the names and addresses of children receiving child care from the provider. The department shall send information to the parents of the children regarding the provider’s actions leading to the imposition of the sanctions and the nature of the sanctions imposed.

b. If the child care provider fails to submit the names and addresses within the time period required by paragraph “a”, the department shall request that the attorney general file a petition with the district court of the county in which the provider is located for issuance of a temporary injunction enjoining the provider from providing child care until the names and addresses are submitted to the department. The attorney general may file the petition upon receiving the request from the department. Any temporary injunction may be granted without a bond being required from the department.

c. If the sanctions imposed under subsection 2 involve the provider’s suspension or ineligibility for receiving public funding for provision of child

care, the department shall not impose those sanctions before the parents of the affected children are informed, and upon request, shall provide assistance to the parents in locating replacement

child care.

2003 Acts, ch 44, §55; 2003 Acts, ch 81, §11, 12  
 Subsection 2, paragraph b, unnumbered paragraph 1 amended  
 Subsection 2, paragraph d amended  
 Subsection 3, paragraphs a and b amended

## CHAPTER 239B

### FAMILY INVESTMENT PROGRAM

#### 239B.2A School attendance.

1. As a condition of eligibility for an applicant for or a recipient of assistance under this chapter, the department shall require a child's parent or other specified relative whose needs are included in the cash assistance grant payable to the child's family to cooperate with efforts to ensure children receiving assistance under this chapter complete educational requirements through the sixth grade. As a further condition of eligibility, an applicant or recipient shall provide written authorization for release of information to a school concerning the receipt of assistance and for release of information by a school concerning the child's compliance with attendance requirements.

2. If the department of human services receives written notification from a school truancy officer under section 299.12 that a child receiving assistance under this chapter is deemed to be truant, the child's family shall be subject to sanction as provided in this section. The sanction shall continue to apply until the department of human services receives written notification from the school truancy officer of any of the following:

*a.* The child is complying with the attendance policy applicable to the child's school.

*b.* The child has satisfactorily completed educational requirements through the sixth grade.

*c.* The child's school has determined there is good cause for the child's nonattendance and the school withdraws the written notification.

*d.* The child is no longer enrolled in the school for which the written notification was provided and the child's family demonstrates that the child is enrolled in and is attending another school or is otherwise receiving equivalent schooling as authorized under state law.

3. The sanction under this section shall be a deduction of twenty-five percent from the net cash assistance grant amount payable to the child's family prior to any deduction for recoupment of prior overpayment. If more than one child in the family is deemed to be truant, the sanction shall continue to apply until the department receives written notification from the school truancy officer, as provided in subsection 2 concerning each child.

4. Notwithstanding any contrary provision of this chapter, unless prohibited by federal law, the

department may release or make information available to a school truancy officer, as defined in section 299.12, regarding persons applying for or receiving assistance under this chapter as necessary to verify the family investment program assistance status of a child of a family who may be subject to sanction under this section. The department shall implement protocols restricting information access under this section by region or other means to provide for the minimum access to information necessary to implement the purposes of this section. The department may adopt rules as necessary to administer this section.

Requirements relating to school attendance by children participating in the family investment program are suspended for the period beginning July 1, 2003, and ending June 30, 2004; 2003 Acts, ch 175, §46  
 Section not amended; footnote added

#### 239B.14 Fraudulent practices — recovery of overpayments.

1. An individual who obtains, or attempts to obtain, or aids or abets an individual to obtain, by means of a willfully false statement or representation, by knowingly failing to disclose a material fact, or by impersonation, or any fraudulent device, any assistance or other benefits under this chapter to which the individual is not entitled, commits a fraudulent practice.

2. An individual who commits a fraudulent practice under this section is personally liable for the amount of assistance or other benefits fraudulently obtained. The amount of the assistance or other benefits may be recovered from the offender or the offender's estate in an action brought or by claim filed in the name of the state and the recovered funds shall be deposited in the family investment program account. The action or claim filed in the name of the state shall not be considered an election of remedies to the exclusion of other remedies.

3. The department shall adopt rules pursuant to chapter 17A as necessary to recover overpayments of assistance and benefits provided under this chapter. The recovery methods shall include but are not limited to reducing the amount of assistance or benefits provided.

Fraudulent practices; see §714.8 et seq.  
 Use of recovered moneys generated through fraud and recoupment activities for additional fraud and recoupment activities; 2000 Acts, ch 1228, §34; 2002 Acts, 2nd Ex, ch 1003, §140, 151; 2003 Acts, ch 175, §33  
 Section not amended; footnote revised

## CHAPTER 249

### STATE SUPPLEMENTARY ASSISTANCE

#### 249.8 Cancellation of warrants.

The director of the department of administrative services, as of January, April, July, and October 1 of each year, shall stop payment on and issue duplicates of all state supplementary assistance warrants which have been outstanding and unredeemed by the treasurer of state for six months or longer. No bond of indemnity shall be required for the issuance of such duplicate warrants which shall be canceled immediately by the director of

the department of administrative services. If the original warrants are subsequently presented for payment, warrants in lieu thereof shall be issued by the director of the department of administrative services at the discretion of and upon certification by the director of human services or the director's designee.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 249A

### MEDICAL ASSISTANCE

See Iowa Acts for special provisions relating to medical assistance reimbursements in a given year  
Modified price-based case-mix reimbursement for nursing facilities; three-year phase-in period; 2001 Acts, ch 192, §4; 2002 Acts, ch 1172, §2; 2003 Acts, ch 112, §9; 2003 Acts, ch 175, §50; 2003 Acts, ch 179, §165  
Medical assistance utilization review; 2003 Acts, ch 112, §10  
Chronic disease management pilot project; 2003 Acts, ch 112, §12; 2003 Acts, ch 179, §166, 167  
State maximum allowable cost (SMAC) program for prescription drugs; 2003 Acts, ch 112, §7; 2003 Acts, ch 179, §164

#### 249A.3 Eligibility.

The extent of and the limitations upon eligibility for assistance under this chapter is prescribed by this section, subject to federal requirements, and by laws appropriating funds for assistance provided pursuant to this chapter.

1. Medical assistance shall be provided to, or on behalf of, any individual or family residing in the state of Iowa, including those residents who are temporarily absent from the state, who:

*a.* Is a recipient of federal supplemental security income or who would be eligible for federal supplemental security income if living in their own home.

*b.* Is an individual who is eligible for the family investment program or is an individual who would be eligible for unborn child payments under the family investment program, as authorized by Title IV-A of the federal Social Security Act, if the family investment program provided for unborn child payments during the entire pregnancy.

*c.* Was a recipient of one of the previous categorical assistance programs as of December 31, 1973, and would continue to meet the eligibility requirements for one of the previous categorical assistance programs as the requirements existed on that date.

*d.* Is a child up to one year of age who was born on or after October 1, 1984, to a woman receiving medical assistance on the date of the child's birth,

who continues to be a member of the mother's household, and whose mother continues to receive medical assistance.

*e.* Is a pregnant woman whose pregnancy has been medically verified and who qualifies under either of the following:

(1) The woman would be eligible for cash assistance under the family investment program, if the child were born and living with the woman in the month of payment.

(2) The woman meets the income and resource requirements of the family investment program, provided the unborn child is considered a member of the household, and the woman's family is treated as though deprivation exists.

*f.* Is a child who is less than seven years of age and who meets the income and resource requirements of the family investment program.

*g.* (1) Is a child who is one through five years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6401, whose income is not more than one hundred thirty-three percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

(2) Is a child who has attained six years of age but has not attained nineteen years of age, whose income is not more than one hundred thirty-three

percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

*h.* Is a woman who, while pregnant, meets eligibility requirements for assistance under the federal Social Security Act, section 1902(l), and continues to meet the requirements except for income. The woman is eligible to receive assistance until sixty days after the date pregnancy ends.

*i.* Is a pregnant woman who is determined to be presumptively eligible by a health care provider qualified under the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9407. The woman is eligible for ambulatory prenatal care assistance until the last day of the month following the month of the presumptive eligibility determination. If the department receives the woman's medical assistance application by the last day of the month following the month of the presumptive eligibility determination, the woman is eligible for ambulatory prenatal care assistance until the department actually determines the woman's eligibility or ineligibility for medical assistance. The costs of services provided during the presumptive eligibility period shall be paid by the medical assistance program for those persons who are determined to be ineligible through the regular eligibility determination process.

*j.* Is a pregnant woman or infant less than one year of age whose income does not exceed the federally prescribed percentage of the poverty level in accordance with the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302.

*k.* Is a pregnant woman or infant whose income is more than the limit prescribed under the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302, but not more than two hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

*l.* Is an infant whose income is not more than two hundred percent of the federal poverty level, as defined by the most recently revised income guidelines published by the United States department of health and human services.

*m.* Is a child for whom adoption assistance or foster care maintenance payments are paid under Title IV-E of the federal Social Security Act.

*n.* Is an individual or family who is ineligible for the family investment program because of requirements that do not apply under Title XIX of the federal Social Security Act.

*o.* Was a federal supplemental security income or a state supplementary assistance recipient, as defined by section 249.1, and a recipient of federal social security benefits at one time since August 1, 1977, and would be eligible for federal supplemental security income or state supplementary assistance but for the increases due to the cost of living

in federal social security benefits since the last date of concurrent eligibility.

*p.* Is an individual whose spouse is deceased and who is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, due to the elimination of the actuarial reduction formula for federal social security benefits under the federal Social Security Act and subsequent cost of living increases.

*q.* Is an individual who is at least sixty years of age and is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of receipt of social security widow or widower benefits and is not eligible for federal Medicare, part A coverage.

*r.* Is an individual with a disability, and is at least eighteen years of age, who receives parental social security benefits under the federal Social Security Act and is not eligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of the receipt of the social security benefits.

*s.* Is an individual who is no longer eligible for the family investment program due to earned income. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

*t.* Is an individual who is no longer eligible for the family investment program due to the receipt of child or spousal support. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

2. Medical assistance may also, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, other individuals and families who are not excluded under subsection 5 of this section and whose incomes and resources are insufficient to meet the cost of necessary medical care and services in accordance with the following order of priorities:

*a.* As allowed under 42 U.S.C. § 1396a(a)(10)(A)(ii)(XIII), individuals with disabilities, who are less than sixty-five years of age, who are members of families whose income is less than two hundred fifty percent of the most recently revised official poverty guidelines published by the United States department of health and human services for the family, who have earned income and who are eligible for medical assistance or additional medical assistance under this section if earnings are disregarded. As allowed by 42 U.S.C. § 1396a(r)(2), unearned income shall also be disregarded in determining whether an individual is eligible for assistance under this paragraph. For the purposes of determining the amount of an individual's resources under this paragraph and as allowed by 42 U.S.C. § 1396a(r)(2), a maximum of ten thousand dollars of available resources shall be disregarded, and

any additional resources held in a retirement account, in a medical savings account, or in any other account approved under rules adopted by the department shall also be disregarded. Individuals eligible for assistance under this paragraph, whose individual income exceeds one hundred fifty percent of the official poverty guidelines published by the United States department of health and human services for an individual, shall pay a premium. The amount of the premium shall be based on a sliding fee schedule adopted by rule of the department and shall be based on a percentage of the individual's income. The maximum premium payable by an individual whose income exceeds one hundred fifty percent of the official poverty guidelines shall be commensurate with the cost of state employees' group health insurance in this state.

b. As provided under the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000, Pub. L. No. 106-354, women who meet all of the following criteria:

(1) Are not described in 42 U.S.C. § 1396a(a)(10)(A)(i).

(2) Have not attained age sixty-five.

(3) Have been screened for breast and cervical cancer under the United States centers for disease control and prevention breast and cervical cancer early detection program established under 42 U.S.C. § 300k et seq., in accordance with the requirements of 42 U.S.C. § 300n, and need treatment for breast or cervical cancer. A woman is considered screened for breast and cervical cancer under this subparagraph if the woman is screened by any provider or entity, and the state grantee of the United States centers for disease control and prevention funds under Title XV of the federal Public Health Services Act has elected to include screening activities by that provider or entity as screening activities pursuant to Title XV of the federal Public Health Services Act. This screening includes but is not limited to breast or cervical cancer screenings or related diagnostic services provided by family planning or community health centers and breast cancer screenings funded by the Susan G. Komen foundation which are provided to women who meet the eligibility requirements established by the state grantee of the United States centers for disease control and prevention funds under Title XV of the federal Public Health Services Act.

(4) Are not otherwise covered under creditable coverage as defined in 42 U.S.C. § 300gg(c).

A woman who meets the criteria of this paragraph shall be presumptively eligible for medical assistance.

c. Individuals who are receiving care in a hospital or in a basic nursing home, intermediate nursing home, skilled nursing home or extended care facility, as defined by section 135C.1, and who meet all eligibility requirements for federal supplemental security income except that their in-

come exceeds the allowable maximum therefor, but whose income is not in excess of the maximum established by subsection 4 for eligibility for medical assistance and is insufficient to meet the full cost of their care in the hospital or health care facility on the basis of standards established by the department.

d. Individuals under twenty-one years of age living in a licensed foster home, or in a private home pursuant to a subsidized adoption arrangement, for whom the department accepts financial responsibility in whole or in part and who are not eligible under subsection 1.

e. Individuals who are receiving care in an institution for mental diseases, and who are under twenty-one years of age and whose income and resources are such that they are eligible for the family investment program, or who are sixty-five years of age or older and who meet the conditions for eligibility in paragraph "a" of this subsection.

f. Individuals and families whose incomes and resources are such that they are eligible for federal supplemental security income or the family investment program, but who are not actually receiving such public assistance.

g. Individuals who are receiving state supplementary assistance as defined by section 249.1 or other persons whose needs are considered in computing the recipient's assistance grant.

h. Individuals under twenty-one years of age who qualify on a financial basis for, but who are otherwise ineligible to receive assistance under the family investment program.

i. Individuals and families who would be eligible under subsection 1 or 2 of this section except for excess income or resources, or a reasonable category of those individuals and families.

j. Individuals who have attained the age of twenty-one but have not yet attained the age of sixty-five who qualify on a financial basis for, but who are otherwise ineligible to receive, federal supplemental security income or assistance under the family investment program.

Notwithstanding the provisions of this subsection establishing priorities for individuals and families to receive medical assistance, the department may determine within the priorities listed in this subsection which persons shall receive medical assistance based on income levels established by the department, subject to the limitations provided in subsection 4.

3. Additional medical assistance may, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, either:

a. Only those individuals and families described in subsection 1 of this section; or

b. Those individuals and families described in both subsections 1 and 2.

4. Discretionary medical assistance, within the limits of available funds and in accordance with section 249A.4, subsection 1, may be pro-

vided to or on behalf of those individuals and families described in subsection 2, paragraph “i” of this section.

5. Assistance shall not be granted under this chapter to:

*a.* An individual or family whose income, considered to be available to the individual or family, exceeds federally prescribed limitations.

*b.* An individual or family whose resources, considered to be available to the individual or family, exceed federally prescribed limitations.

5A. In determining eligibility for children under subsection 1, paragraphs “b”, “f”, “g”, “j”, “k”, “n”, and “s”; subsection 2, paragraphs “c”, “e”, “f”, “h”, and “i”; and subsection 5, paragraph “b”, all resources of the family, other than monthly income, shall be disregarded.

6. In determining the eligibility of an individual for medical assistance under this chapter, for resources transferred to the individual’s spouse before October 1, 1989, or to a person other than the individual’s spouse before July 1, 1989, the department shall include, as resources still available to the individual, those nonexempt resources or interests in resources, owned by the individual within the preceding twenty-four months, which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance under this chapter.

*a.* A transaction described in this subsection is presumed to have been for the purpose of establishing eligibility for medical assistance under this chapter unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

*b.* The value of a resource or an interest in a resource in determining eligibility under this subsection is the fair market value of the resource or interest at the time of the transaction less the amount of any compensation received.

*c.* If a transaction described in this subsection results in uncompensated value exceeding twelve thousand dollars, the department shall provide by rule for a period of ineligibility which exceeds twenty-four months and has a reasonable relationship to the uncompensated value above twelve thousand dollars.

7. In determining the eligibility of an individual for medical assistance under this chapter, the department shall consider resources transferred to the individual’s spouse on or after October 1, 1989, or to a person other than the individual’s spouse on or after July 1, 1989, and prior to August 11, 1993, as provided by the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 303(b), as amended by the federal Family Support Act of 1988, Pub. L. No. 100-485, § 608(d)(16)(B), (D), and the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6411(e)(1).

8. Medicare cost sharing shall be provided in accordance with the provisions of Title XIX of the

federal Social Security Act, section 1902(a)(10)(E), as codified in 42 U.S.C. § 1396a(a)(10)(E), to or on behalf of an individual who is a resident of the state or a resident who is temporarily absent from the state, and who is a member of any of the following eligibility categories:

*a.* A qualified Medicare beneficiary as defined under Title XIX of the federal Social Security Act, section 1905(p)(1), as codified in 42 U.S.C. § 1396d(p)(1).

*b.* A qualified disabled and working person as defined under Title XIX of the federal Social Security Act, section 1905(s), as codified in 42 U.S.C. § 1396d(s).

*c.* A specified low-income Medicare beneficiary as defined under Title XIX of the federal Social Security Act, section 1902(a)(10)(E)(iii), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iii).

*d.* An additional specified low-income Medicare beneficiary as described under Title XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(I), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iv)(I).

*e.* An additional specified low-income Medicare beneficiary described under Title XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(II), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iv)(II).

9. Beginning October 1, 1990, in determining the eligibility of an institutionalized individual for assistance under this chapter, the department shall establish a minimum community spouse resource allowance amount of twenty-four thousand dollars to be retained for the benefit of the institutionalized individual’s community spouse in accordance with the federal Social Security Act, section 1924(f) as codified in 42 U.S.C. § 1396r-5(f).

10. Group health plan cost sharing shall be provided as required by Title XIX of the federal Social Security Act, section 1906, as codified in 42 U.S.C. § 1396e.

11. *a.* In determining the eligibility of an individual for medical assistance, the department shall consider transfers of assets made on or after August 11, 1993, as provided by the federal Social Security Act, section 1917(c), as codified in 42 U.S.C. § 1396p(c).

*b.* The department shall exercise the option provided in 42 U.S.C. § 1396p(c) to provide a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual. For noninstitutionalized individuals, the number of months of ineligibility shall be equal to the total, cumulative uncompensated value of all assets transferred by the individual or the individual’s spouse on or after the look-back date specified in 42 U.S.C. § 1396p(c)(1)(B)(i), divided by the average monthly cost to a private patient for nursing facility services in Iowa at the time of application. The services for which noninstitutionalized individuals shall be made ineligible shall include

any long-term care services for which medical assistance is otherwise available. Notwithstanding section 17A.4, the department may adopt rules providing a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual without notice of opportunity for public comment, to be effective immediately upon filing under section 17A.5, subsection 2, paragraph “b”, subparagraph (1).

c. A disclaimer of any property, interest, or right pursuant to section 633.704 constitutes a transfer of assets for the purpose of determining eligibility for medical assistance in an amount equal to the value of the property, interest, or right disclaimed.

d. Failure of a surviving spouse to take against a will pursuant to chapter 633, division V, constitutes a transfer of assets for the purpose of determining eligibility for medical assistance to the extent that the value received by taking against the will would have exceeded the value of the inheritance received under the will.

12. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established on or before August 10, 1993, as available to the individual, in accordance with the federal Comprehensive Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-272, § 9506(a), as amended by the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9435(c).

13. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established after August 10, 1993, as available to the individual, in accordance with 42 U.S.C. § 1396p(d) and sections 633.708 and 633.709.

2003 Acts, ch 62, § 2

Spousal support debt for medical assistance to institutionalized spouse; community spouse resource allowance; chapter 249B

Subsection 2, paragraph a amended

#### **249A.4 Duties of director.**

The director shall be responsible for the effective and impartial administration of this chapter and shall, in accordance with the standards and priorities established by this chapter, by applicable federal law, by the regulations and directives issued pursuant to federal law, by applicable court orders, and by the state plan approved in accordance with federal law, make rules, establish policies, and prescribe procedures to implement this chapter. Without limiting the generality of the foregoing delegation of authority, the director is hereby specifically empowered and directed to:

1. Determine the greatest amount, duration, and scope of assistance which may be provided, and the broadest range of eligible individuals to whom assistance may effectively be provided, un-

der this chapter within the limitations of available funds. In so doing, the director shall at least every six months evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing a like program, and compare the probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period. After each evaluation of the scope of the program, the director shall report to the general assembly through the legislative council or in another manner as the general assembly may by resolution direct.

2. Reserved.

3. Have authority to provide for payment under this chapter of assistance rendered to any applicant prior to the date the application is filed.

4. Have authority to contract with any corporation authorized to engage in this state in insuring groups or individuals for all or part of the cost of medical, hospital, or other health care or with any corporation maintaining and operating a medical, hospital, or health service prepayment plan under the provisions of chapter 514 or with any health maintenance organization authorized to operate in this state, for any or all of the benefits to which any recipients are entitled under this chapter to be provided by such corporation or health maintenance organization on a prepaid individual or group basis.

5. May, to the extent possible, contract with a private organization or organizations whereby such organization will handle the processing of and the payment of claims for services rendered under the provisions of this chapter and under such rules and regulations as shall be promulgated by such department. The state department may give due consideration to the advantages of contracting with any organization which may be serving in Iowa as “intermediary” or “carrier” under Title XVIII of the federal Social Security Act, as amended.

6. Shall cooperate with any agency of the state or federal government in any manner as may be necessary to qualify for federal aid and assistance for medical assistance in conformity with the provisions of chapter 249, this chapter and Titles XVI and XIX of the federal Social Security Act, as amended.

7. Shall provide for the professional freedom of those licensed practitioners who determine the need for or provide medical care and services, and shall provide freedom of choice to recipients to select the provider of care and services, except when the recipient is eligible for participation in a health maintenance organization or prepaid health plan which limits provider selection and which is approved by the department. However, this shall not limit the freedom of choice to recipients to select providers in instances where such provider services are eligible for reimbursement

under the medical assistance program but are not provided under the health maintenance organization or under the prepaid health plan, or where the recipient has an already established program of specialized medical care with a particular provider. The department may also restrict the recipient's selection of providers to control the individual recipient's overuse of care and services, provided the department can document this overuse. The department shall promulgate rules for determining the overuse of services, including rights of appeal by the recipient.

Advanced registered nurse practitioners licensed pursuant to chapter 152 shall be regarded as approved providers of health care services, including primary care, for purposes of managed care or prepaid services contracts under the medical assistance program. This paragraph shall not be construed to expand the scope of practice of an advanced registered nurse practitioner pursuant to chapter 152.

8. Shall advise and consult at least semiannually with a council composed of the presidents of the following organizations, or a president's representative who is a member of the organization represented by the president: the Iowa medical society, the Iowa osteopathic medical association, the Iowa academy of family physicians, the Iowa chapter of the American academy of pediatrics, the Iowa physical therapy association, the Iowa dental association, the Iowa nurses association, the Iowa pharmacy association, the Iowa podiatric medical society, the Iowa optometric association, the Iowa association of community providers, the Iowa psychological association, the Iowa psychiatric society, the Iowa chapter of the national association of social workers, the Iowa hospital association, the Iowa association of rural health clinics, the opticians' association of Iowa, inc., the Iowa association of hearing health professionals, the Iowa speech and hearing association, the Iowa health care association, the Iowa association for home care, the Iowa council of health care centers, the Iowa physician assistant society, the Iowa association of nurse practitioners, the Iowa occupational therapy association, the Iowa association of homes and services for the aging, the ARC of Iowa which was formerly known as the association for retarded citizens of Iowa, the alliance for the mentally ill of Iowa, Iowa state association of counties, and the governor's developmental disabilities council, together with one person designated by the Iowa chiropractic society; one state representative from each of the two major political parties appointed by the speaker of the house, one state senator from each of the two major political parties appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, each for a term of two years; four public representatives, appointed by the governor for staggered terms of two years each, none of whom shall be members of, or practi-

tioners of, or have a pecuniary interest in any of the professions or businesses represented by any of the several professional groups and associations specifically represented on the council under this subsection, and at least one of whom shall be a recipient of medical assistance; the director of public health, or a representative designated by the director; the dean of Des Moines university — osteopathic medical center, or a representative designated by the dean; and the dean of the university of Iowa college of medicine, or a representative designated by the dean.

For each council meeting, other than those held during the time the general assembly is in session, each legislative member of the council shall be reimbursed for actual traveling and other necessary expenses and shall receive a per diem as specified in section 7E.6 for each day in attendance, as shall the public representatives, regardless of whether the general assembly is in session.

The director shall consider the advice and consultation offered by the council in the director's preparation of medical assistance budget recommendations.

9. Adopt rules pursuant to chapter 17A in determining the method and level of reimbursement for all medical and health services referred to in section 249A.2, subsection 1 or 7, after considering all of the following:

*a.* The promotion of efficient and cost-effective delivery of medical and health services.

*b.* Compliance with federal law and regulations.

*c.* The level of state and federal appropriations for medical assistance.

*d.* Reimbursement at a level as near as possible to actual costs and charges after priority is given to the considerations in paragraphs "a", "b", and "c".

10. Shall provide an opportunity for a fair hearing before the department of inspections and appeals to an individual whose claim for medical assistance under this chapter is denied or is not acted upon with reasonable promptness. Upon completion of a hearing, the department of inspections and appeals shall issue a decision which is subject to review by the department of human services.

11. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, § 1902(l), resources which are used as tools of the trade shall not be considered.

12. In determining the medical assistance eligibility of a pregnant woman, infant, or child under the federal Social Security Act, § 1902(l), or pursuant to section 249A.3, subsection 2, paragraph "i", the department shall establish resource standards and exclusions not less generous than the resource standards and exclusions adopted pursuant to section 255A.5, if in compliance with federal laws and regulations.

13. In implementing subsection 9, relating to reimbursement for medical and health services under this chapter, when a selected out-of-state acute care hospital facility is involved, a contractual arrangement may be developed with the out-of-state facility that is in accordance with the requirements of Titles XVIII and XIX of the federal Social Security Act. The contractual arrangement is not subject to other reimbursement standards, policies, and rate setting procedures required under this chapter.

14. A medical assistance copayment shall only be applied to those services and products specified in administrative rules of the department in effect on February 1, 1991, which under federal medical assistance requirements, are provided at the option of the state.

15. Establish appropriate reimbursement rates for community mental health centers that are accredited by the mental health and developmental disabilities commission. The reimbursement rates shall be phased in over the three-year period beginning July 1, 1998, and ending June 30, 2001.

Judicial review of the decisions of the department of human services may be sought in accordance with chapter 17A. If a petition for judicial review is filed, the department of human services shall furnish the petitioner with a copy of the application and all supporting papers, a transcript of the testimony taken at the hearing, if any, and a copy of its decision.

2003 Acts, ch 21, §1

Subsection 7, NEW unnumbered paragraph 2

#### **249A.5 Recovery of payment.**

1. Medical assistance paid to, or on behalf of, a recipient or paid to a provider of services is not recoverable, except as provided in subsection 2, unless the assistance was incorrectly paid. Assistance incorrectly paid is recoverable from the provider, or from the recipient, while living, as a debt due the state and, upon the recipient's death, as a claim classified with taxes having preference under the laws of this state.

2. The provision of medical assistance to an individual who is fifty-five years of age or older, or who is a resident of a nursing facility, intermediate care facility for persons with mental retardation, or mental health institute, who cannot reasonably be expected to be discharged and return to the individual's home, creates a debt due the department from the individual's estate for all medical assistance provided on the individual's behalf, upon the individual's death.

*a.* The department shall waive the collection of the debt created under this subsection from the estate of a recipient of medical assistance to the extent that collection of the debt would result in either of the following:

(1) Reduction in the amount received from the recipient's estate by a surviving spouse, or by a

surviving child who was under age twenty-one, blind, or permanently and totally disabled at the time of the individual's death.

(2) Otherwise work an undue hardship as determined on the basis of criteria established pursuant to 42 U.S.C. § 1396p(b)(3).

*b.* If the collection of all or part of a debt is waived pursuant to subsection 2, paragraph "a", to the extent the medical assistance recipient's estate was received by the following persons, the amount waived shall be a debt due from one of the following, as applicable:

(1) The estate of the medical assistance recipient's surviving spouse or child who is blind or has a disability, upon the death of such spouse or child.

(2) A surviving child who was under twenty-one years of age at the time of the medical assistance recipient's death, upon the child reaching the age of twenty-one or from the estate of the child if the child dies prior to reaching the age of twenty-one.

(3) The estate of the recipient of the undue hardship waiver, at the time of death of the hardship waiver recipient, or from the hardship waiver recipient when the hardship no longer exists.

*c.* For purposes of this section, the estate of a medical assistance recipient, surviving spouse, or surviving child includes any real property, personal property, or other asset in which the recipient, spouse, or child had any legal title or interest at the time of the recipient's, spouse's, or child's death, to the extent of such interests, including but not limited to interests in jointly held property, retained life estates, and interests in trusts.

*d.* For purposes of collection of a debt created by this subsection, all assets included in the estate of a medical assistance recipient, surviving spouse, or surviving child pursuant to paragraph "c" are subject to probate.

*e.* Interest shall accrue on a debt due under this subsection, at the rate provided pursuant to section 535.3, beginning six months after the death of a medical assistance recipient, surviving spouse, or surviving child.

*f.* (1) If a debt is due under this subsection from the estate of a recipient, the administrator of the nursing facility, intermediate care facility for persons with mental retardation, or mental health institute in which the recipient resided at the time of the recipient's death, and the personal representative of the recipient, if applicable, shall report the death to the department within ten days of the death of the recipient.

(2) If a personal representative or executor of an estate makes a distribution either in whole or in part of the property of an estate to the heirs, next of kin, distributees, legatees, or devisees without having executed the obligations pursuant to section 633.425, the personal representative or executor may be held personally liable for the amount of medical assistance paid on behalf of the recipient, to the full value of any property belong-

ing to the estate which may have been in the custody or control of the personal representative or executor.

(3) For the purposes of this paragraph, “*executor*” means executor as defined in section 633.3, and “*personal representative*” means a person who filed a medical assistance application on behalf of the recipient or who manages the financial affairs of the recipient.

2003 Acts, ch 62, §3  
Subsection 2, paragraph b amended

#### **249A.12 Assistance to persons with mental retardation.**

1. Assistance may be furnished under this chapter to an otherwise eligible recipient who is a resident of a health care facility licensed under chapter 135C and certified as an intermediate care facility for persons with mental retardation.

2. A county shall reimburse the department on a monthly basis for that portion of the cost of assistance provided under this section to a recipient with legal settlement in the county, which is not paid from federal funds, if the recipient’s placement has been approved by the appropriate review organization as medically necessary and appropriate. The department’s goal for the maximum time period for submission of a claim to a county is not more than sixty days following the submission of the claim by the provider of the service to the department. The department’s goal for completion and crediting of a county for cost settlement for the actual costs of a home and community-based waiver service is within two hundred seventy days of the close of a fiscal year for which cost reports are due from providers. The department shall place all reimbursements from counties in the appropriation for medical assistance, and may use the reimbursed funds in the same manner and for any purpose for which the appropriation for medical assistance may be used.

3. If a county reimburses the department for medical assistance provided under this section and the amount of medical assistance is subsequently repaid through a medical assistance income trust or a medical assistance special needs trust as defined in section 633.707, the department shall reimburse the county on a proportionate basis. The department shall adopt rules to implement this subsection.

4. *a.* Effective July 1, 1995, the state shall be responsible for all of the nonfederal share of the costs of intermediate care facility for persons with mental retardation services provided under medical assistance to minors. Notwithstanding subsection 2 and contrary provisions of section 222.73, effective July 1, 1995, a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of such services provided to minors.

*b.* Effective July 1, 1995, the state shall be responsible for all of the nonfederal share of medical

assistance home and community-based services waivers for persons with mental retardation services provided to minors and a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of the services.

*c.* Effective February 1, 2002, the state shall be responsible for all of the nonfederal share of the costs of intermediate care facility for persons with mental retardation services provided under medical assistance attributable to the assessment fee for intermediate care facilities for individuals with mental retardation imposed pursuant to section 249A.21. Notwithstanding subsection 2, effective February 1, 2003, a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of such services attributable to the assessment fee.

5. *a.* The mental health and developmental disabilities commission shall recommend to the department the actions necessary to assist in the transition of individuals being served in an intermediate care facility for persons with mental retardation, who are appropriate for the transition, to services funded under a medical assistance waiver for home and community-based services for persons with mental retardation in a manner which maximizes the use of existing public and private facilities. The actions may include but are not limited to submitting any of the following or a combination of any of the following as a request for a revision of the medical assistance waiver for home and community-based services for persons with mental retardation in effect as of June 30, 1996:

(1) Allow for the transition of intermediate care facilities for persons with mental retardation licensed under chapter 135C as of June 30, 1996, to services funded under the medical assistance waiver for home and community-based services for persons with mental retardation. The request shall be for inclusion of additional persons under the waiver associated with the transition.

(2) Allow for reimbursement under the waiver for day program or other service costs.

(3) Allow for exception provisions in which an intermediate care facility for persons with mental retardation which does not meet size and other facility-related requirements under the waiver in effect on June 30, 1996, may convert to a waiver service for a set period of time such as five years. Following the set period of time, the facility would be subject to the waiver requirements applicable to services which were not operating under the exception provisions.

*b.* In implementing the provisions of this subsection, the mental health and developmental disabilities commission shall consult with other states. The waiver revision request or other action necessary to assist in the transition of service provision from intermediate care facilities for persons with mental retardation to alternative programs

shall be implemented by the department in a manner that can appropriately meet the needs of individuals at an overall lower cost to counties, the federal government, and the state. In addition, the department shall take into consideration significant federal changes to the medical assistance program in formulating the department's actions under this subsection. The department shall consult with the mental health and developmental disabilities commission in adopting rules for oversight of facilities converted pursuant to this subsection. A transition approach described in paragraph "a" may be modified as necessary to obtain federal waiver approval.

6. *a.* Effective July 1, 2003, the provisions of the home and community-based services waiver for persons with mental retardation shall include adult day care, prevocational, and transportation services. Transportation shall be included as a separately payable service.

*b.* The department of human services shall seek federal approval to amend the home and community-based services waiver for persons with mental retardation to include day habilitation services. Inclusion of day habilitation services in the waiver shall take effect upon receipt of federal approval and no later than July 1, 2004.

*c.* The person's county of legal settlement shall pay for the nonfederal share of the cost of services provided under the waiver, and the state shall pay for the nonfederal share of such costs if the person does not have a county of legal settlement.

2003 Acts, ch 62, §4, 8; 2003 Acts, ch 118, §1  
Appropriations to fund the costs under subsection 4 from the property tax relief fund; see §426B.1(3)

Obligation to pay for costs of service rendered prior to July 1, 1997; disputed billings; see 2001 Acts, ch 155, §12, 13

2003 amendment adding subsection 4, paragraph c, takes effect April 24, 2003, and applies retroactively to February 1, 2002; 2003 Acts, ch 62, §8

Editorial change applied  
Subsection 4, NEW paragraph c  
NEW subsection 6

#### **249A.20A Preferred drug list program.**

1. The department shall establish and implement a preferred drug list program under the medical assistance program. The department shall submit a medical assistance state plan amendment to the centers for Medicare and Medicaid services of the United States department of health and human services, no later than May 1, 2003, to implement the program.

2. *a.* A medical assistance pharmaceutical and therapeutics committee shall be established within the department by July 1, 2003, for the purpose of developing and providing ongoing review of the preferred drug list.

*b.* (1) The members of the committee shall be appointed by the governor and shall include health care professionals who possess recognized knowledge and expertise in one or more of the following:

(a) The clinically appropriate prescribing of covered outpatient drugs.

(b) The clinically appropriate dispensing and monitoring of covered outpatient drugs.

(c) Drug use review, evaluation, and intervention.

(d) Medical quality assurance.

(2) The membership of the committee shall be comprised of at least one third but not more than fifty-one percent licensed and actively practicing physicians and at least one third licensed and actively practicing pharmacists.

*c.* The members shall be appointed to terms of two years. Members may be appointed to more than one term. The department shall provide staff support to the committee. Committee members shall select a chairperson and vice chairperson annually from the committee membership.

3. The pharmaceutical and therapeutics committee shall recommend a preferred drug list to the department. The committee shall develop the preferred drug list by considering each drug's clinically meaningful therapeutic advantages in terms of safety, effectiveness, and clinical outcome. The committee shall use evidence-based research methods in selecting the drugs to be included on the preferred drug list. The committee shall periodically review all drug classes included on the preferred drug list and may amend the list to ensure that the list provides for medically appropriate drug therapies for medical assistance recipients and achieves cost savings to the medical assistance program. The department may procure a sole source contract with an outside entity or contractor to provide professional administrative support to the pharmaceutical and therapeutics committee in researching and recommending drugs to be placed on the preferred drug list.

4. With the exception of drugs prescribed for the treatment of human immunodeficiency virus or acquired immune deficiency syndrome, transplantation, or cancer and drugs prescribed for mental illness with the exception of drugs and drug compounds that do not have a significant variation in a therapeutic profile or side effect profile within a therapeutic class, prescribing and dispensing of prescription drugs not included on the preferred drug list shall be subject to prior authorization.

5. The department may negotiate supplemental rebates from manufacturers that are in addition to those required by Title XIX of the federal Social Security Act. The committee shall consider a product for inclusion on the preferred drug list if the manufacturer provides a supplemental rebate. The department may procure a sole source contract with an outside entity or contractor to conduct negotiations for supplemental rebates.

6. The department shall adopt rules to provide a procedure under which the department and the pharmaceutical and therapeutics committee may disclose information relating to the prices manufacturers or wholesalers charge for pharma-

ceuticals. The procedures established shall comply with 42 U.S.C. § 1396r-8 and with chapter 550.

7. The department shall publish and disseminate the preferred drug list to all medical assistance providers in this state.

8. Until such time as the pharmaceutical and therapeutics committee is operational, the department shall adopt and utilize a preferred drug list developed by a midwestern state that has received approval for its medical assistance state plan amendment from the centers for Medicare and Medicaid services of the United States department of health and human services.

9. The department may procure a sole source contract with an outside entity or contactor to participate in a pharmaceutical pooling program with midwestern or other states to provide for an enlarged pool of individuals for the purchase of pharmaceutical products and services for medical assistance recipients.

10. The department may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph “b”, to implement this section.

11. Any savings realized under this section may be used to the extent necessary to pay the costs associated with implementation of this section prior to reversion to the medical assistance program. The department shall report the amount of any savings realized and the amount of any costs paid to the legislative fiscal committee on a quarterly basis.

2003 Acts, ch 112, §3, 14; 2003 Acts, ch 179, §161  
NEW section

#### **249A.20B Nursing facility quality assurance assessment.**

1. Reserved.

2. The department of human services shall submit a medical assistance state plan amendment to the centers for Medicare and Medicaid services of the United States department of health and human services to effectuate the nursing facility quality assurance assessment.

3. The department of human services shall submit an application to the secretary of the United States department of health and human services to request a waiver of the uniform tax requirement pursuant to 42 U.S.C. § 1396b(w)(3)(E) and 42 C.F.R. § 433.68(e)(2).

2003 Acts, ch 112, §4, 14

For future amendments effective upon receipt of approval of the medical assistance plan amendment and the application for waiver of the uniform tax requirement and future strike of this section if approvals are not received, see 2003 Acts, ch 112, §4, 13; 2003 Acts, ch 179, §162

NEW section

#### **249A.26A State and county participation in funding for rehabilitation services for persons with chronic mental illness.**

The county of legal settlement shall pay for the

nonfederal share of the cost of rehabilitation services provided under the medical assistance program for persons with chronic mental illness, except that the state shall pay for the nonfederal share of such costs if the person does not have a county of legal settlement.

2003 Acts, ch 62, §5  
NEW section

#### **249A.32 Medical assistance home and community-based services waivers — consumer-directed attendant care — termination of contract.**

1. A case manager for a medical assistance home and community-based services waiver may terminate the contract of a person providing consumer-directed attendant care services to whom payment is being made for provision of such services under the waiver if the case manager determines that the person has breached the contract by not providing the services agreed to under the contract.

2. For the purposes of this section, “consumer” and “waiver” mean consumer and waiver as defined in section 249A.29.

2003 Acts, ch 118, §2  
NEW section

#### **249A.33 Pharmaceutical settlement account — medical assistance program.**

1. A pharmaceutical settlement account is created in the state treasury under the authority of the department of human services. Moneys received from settlements relating to provision of pharmaceuticals under the medical assistance program shall be deposited in the account.

2. Moneys in the account shall be used only as provided in appropriations from the account to the department for the purpose of technology upgrades under the medical assistance program.

3. The account shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the account shall not be considered revenue of the state, but rather shall be funds of the account. The moneys in the account are not subject to reversion to the general fund of the state under section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the account shall be credited to the account.

4. The treasurer of state shall provide a quarterly report of account activities and balances to the director.

2003 Acts, ch 178, §55  
NEW section

## CHAPTER 249B

### MEDICAL ASSISTANCE TO INSTITUTIONALIZED SPOUSES

#### **249B.3 Notice of spousal support debt — failure to respond — hearing — order.**

1. The department shall issue a notice establishing and demanding payment of an accrued or accruing spousal support debt due and owing to the department. The notice shall be served upon the community spouse in accordance with the rules of civil procedure. The notice shall include all of the following:

*a.* The amount of medical assistance provided to the institutionalized spouse which creates the spousal support debt.

*b.* A computation of spousal support debt, the minimum monthly maintenance needs allowance, and the community spouse resource allowance.

*c.* A demand for immediate payment of the spousal support debt.

*d.* (1) A statement that if the community spouse desires to discuss the amount of support that the community spouse should be required to pay, the community spouse, within ten days after being served, may contact the unit of the department which issued the notice and request a conference.

(2) A statement that if a conference is requested, the community spouse has ten days from the date set for the conference or twenty days from the date of service of the original notice, whichever is later, to send a request for a hearing to the unit of the department which issued the notice.

(3) A statement that after the holding of the conference, the department may issue a new notice and finding of financial responsibility to be sent to the community spouse by regular mail addressed to the community spouse's last known address, or if applicable, to the last known address of the community spouse's attorney.

(4) A statement that if the department issues a new notice and finding of financial responsibility, the community spouse has ten days from the date of issuance of the new notice or twenty days from the date of service of the original notice, whichever is later, to send a request for a hearing to the unit of the department which issued the notice.

*e.* A statement that if the community spouse objects to all or any part of the notice or finding of financial responsibility and no negotiation conference is requested, the community spouse, within twenty days of the date of service, shall send to the unit of the department which issued the notice, a

written response setting forth any objections and requesting a hearing.

*f.* A statement that if a timely written request for a hearing is received by the unit of the department which issued the notice, the spouse has the right to a hearing to be held in district court; and that if no timely written response is received, the department will enter an order in accordance with the notice and finding of financial responsibility.

*g.* A statement that, as soon as the order is entered, the property of the community spouse is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

*h.* A statement that the community spouse must notify the department of any change of address or employment.

*i.* A statement that if the community spouse has any questions, the community spouse should telephone or visit the department or consult an attorney.

*j.* Other information as the department finds appropriate.

2. If a timely written response setting forth objections and requesting a hearing is received by the unit of the department which issued the notice, a hearing shall be held in district court.

3. If timely written response and request for hearing is not received by the department, the department may enter an order in accordance with the notice, and the order shall specify all of the following:

*a.* The amount to be paid with directions as to the manner of payment.

*b.* The amount of the spousal support debt accrued and accruing in favor of the department.

*c.* Notice that the property of the community spouse is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

4. The community spouse shall be sent a copy of the order by regular mail addressed to the community spouse's last known address, or if applicable, to the last known address of the community spouse's attorney. The order is final, and action by the department to enforce and collect upon the order may be taken from the date of the issuance of the order.

2003 Acts, ch 112, §6  
Subsection 1, unnumbered paragraph 1 amended

## CHAPTER 249H

### SENIOR LIVING PROGRAM

#### **249H.6 Nursing facility conversion and long-term care services development grants.**

1. The department of human services, at the direction of the senior living coordinating unit, may use moneys appropriated to the department from the senior living trust fund to award grants to any of the following:

*a.* A licensed nursing facility that has been an approved provider under the medical assistance program for the two-year period prior to application for the grant. The grant awarded may be used to convert all or a portion of the licensed nursing facility to a certified assisted-living program and may be used for capital or one-time expenditures, including but not limited to start-up expenses, training expenses, and operating losses for the first year of operation following conversion associated with the nursing facility conversion.

*b.* A long-term care provider or a licensed nursing facility that has been an approved provider under the medical assistance program for the two-year period prior to application for the grant or a provider that will meet applicable medical assistance provider requirements as specified in subsection 2, paragraph “*c*” or “*d*”. The grant awarded may be used for capital or one-time expenditures, including but not limited to start-up expenses, training expenses, and operating losses for the first year of operation for long-term care service development.

2. A grant shall be awarded only to an applicant who meets all of the following criteria, as applicable to the type of grant:

*a.* The applicant is a long-term care provider or a nursing facility that is located in an area determined by the senior living coordinating unit to be underserved with respect to a particular long-term care alternative service, and that has demonstrated the ability or potential to provide quality long-term care alternative services.

*b.* The applicant is able to provide a minimum matching contribution of twenty percent of the total cost of any conversion, remodeling, or construction.

*c.* The applicant is applying for a nursing facility conversion grant and is able to demonstrate all of the following:

(1) Conversion of the nursing facility or a distinct portion of the nursing facility to an assisted-living program is projected to offer efficient and economical care to individuals requiring long-term care services in the service area.

(2) Assisted-living services are otherwise not likely to be available in the area for individuals eligible for services under the medical assistance program.

(3) The resulting reduction in the availability

of nursing facility services is not projected to cause undue hardship on those individuals requiring nursing facility services for a period of at least ten years.

(4) Public support following a community-based assessment.

(5) Conversion of the nursing facility is projected to result in a lower per client reimbursement cost to the grant applicant under the medical assistance program.

*d.* The applicant is applying for a long-term care service development grant and is able to demonstrate all of the following:

(1) Long-term care service development is projected to offer efficient and economical care to individuals requiring long-term care services in the service area.

(2) The proposed long-term care alternative is otherwise not likely to be available in the area for individuals eligible for services under the medical assistance program.

(3) Public support following a community-based assessment.

*e.* The applicant agrees to do all of the following as applicable to the type of grant:

(1) Participate and maintain a minimum medical assistance client base participation rate of forty percent, subject to the demand for participation by individuals eligible for medical assistance.

(2) Provide a service delivery package that is affordable for those individuals eligible for services under the medical assistance home and community-based services waiver program.

(3) Provide a refund to the senior living trust fund, on an amortized basis, in the amount of the grant, if the applicant or the applicant’s successor in interest ceases to operate an affordable long-term care alternative within the first ten-year period of operation following the awarding of the grant or if the applicant or the applicant’s successor in interest fails to maintain a participation rate of forty percent in accordance with subparagraph (1).

3. The department of human services shall adopt rules in consultation with the senior living coordinating unit, pursuant to chapter 17A, to provide all of the following:

*a.* An application process and eligibility criteria for the awarding of grants. The eligibility criteria shall include but are not limited to the applicant’s demonstration of an affordable service package, the applicant’s use of the funds for allowable costs, and the applicant’s ability to refund the funds if required under subsection 2, paragraph “*e*”, subparagraph (3). The primary eligibility criterion used shall be the applicant’s potential impact on the overall goal of moving toward a bal-

anced, comprehensive, affordable, high-quality, long-term care system.

*b.* Criteria to be utilized in determining the amount of the grant awarded.

*c.* Weighted criteria to be utilized in prioritizing the awarding of grants to individual grantees during a grant cycle. Greater weight shall be given to the applicant's demonstration of potential reduction of nursing facility beds, the applicant's ability to meet demonstrated community need, and the established history of the applicant in providing quality long-term care services.

*d.* Policies and procedures for certification of the matching funds required of applicants under subsection 2, paragraph "b".

*e.* Other procedures the department of human services deems necessary for the proper administration of this section, including but not limited to the submission of progress reports on a bimonthly basis to the senior living coordinating unit.

4. The department of human services shall adopt rules to ensure that a nursing facility that receives a nursing facility conversion grant allocates costs in an equitable manner.

5. In addition to the types of grants described in subsection 1, the department of human services, at the direction of the senior living coordinating unit, may also use moneys appropriated to the department from the senior living trust fund to award grants, of not more than one hundred thousand dollars per grant, to licensed nursing facilities that are awarded nursing facility conversion grants and agree, as part of the nursing facility conversion, to also provide adult day services, child care for children with special needs, safe shelter for victims of dependent adult abuse, or respite care.

6. The department of human services shall establish a calendar for receiving and evaluating applications and for awarding of grants.

7. *a.* The department of human services shall develop a cost report to be completed by a grantee which includes, but is not limited to, revenue, costs, loans undertaken by the grantee, fixed assets of the grantee, a balance sheet, and a profit and loss statement.

*b.* Grantees shall submit, annually, completed cost reports to the department of human services regarding the project for a period of ten years following the date of initial operation of the grantee's long-term care alternative.

8. The department of human services, in consultation with the department of elder affairs, shall provide annual reports to the governor and the general assembly concerning grants awarded. The annual report shall include the total number of applicants and approved applicants, an overview of the various grants awarded, and detailed reports of the cost of each project funded by a grant and information submitted by the approved applicant.

9. For the purpose of this section, "underserved" means areas in which four and four-tenths percent of the number of individuals sixty-five years of age and older is not greater than the number of currently licensed nursing facility beds and certified assisted-living units. In addition, the department, in determining if an area is underserved, may consider additional information gathered through the department's own research or submitted by an applicant, including but not limited to any of the following:

*a.* Availability of and access to long-term care alternatives relative to individuals eligible for medical assistance.

*b.* The current number of seniors and persons with disabilities and the projected number of these individuals.

*c.* The current number of seniors and persons with disabilities requiring professional nursing care and the projected number of these individuals.

*d.* The current availability of long-term care alternatives and any known changes in the availability of such alternatives.

10. This section does not create an entitlement to any funds available for grants under this section, and the department of human services may only award grants to the extent funds are available and within its discretion, to the extent applications are approved.

11. In addition to any other remedies provided by law, the department of human services may recoup any grant funding previously awarded and disbursed to a grantee or the grantee's successor in interest and may reduce the amount of any grant awarded, but not yet disbursed, to a grantee or the grantee's successor in interest, by the amount of any refund owed by a grantee or the grantee's successor in interest pursuant to subsection 2, paragraph "e", subparagraph (3).

12. The senior living coordinating unit shall review projects that receive grants under this section to ensure that the goal to provide alternatives to nursing facility care is being met and that an adequate number of nursing facility services remains to meet the needs of Iowans.

For future repeal of this section, see §249H.11

Certification of programs established through nursing facility conversion grants; 2003 Acts, ch 175, §51

Section not amended; footnote revised

#### **249H.9 Senior living program information — electronic access — education — advisory council.**

1. The department of elder affairs and the area agencies on aging, in consultation with the senior living coordinating unit, shall create, on a county basis, a database directory of all health care and support services available to seniors. The department of elder affairs shall make the database electronically available to the public, and shall update the database on at least a monthly basis.

2. The department of elder affairs shall seek foundation funding to develop and provide an educational program for individuals aged twenty-one and older which assists participants in planning for and financing health care services and other supports in their senior years.

3. The department of human services shall develop and distribute an informational packet to the public that explains, in layperson terms, the law, regulations, and rules under the medical assistance program relative to health care services options for seniors, including but not limited to those relating to transfer of assets, prepaid funer-

al expenses, and life insurance policies.

4. The director of human services, the director of the department of elder affairs, the director of public health, the director of the department of inspections and appeals, the director of revenue, and the commissioner of insurance shall constitute a senior advisory council to provide oversight in the development and operation of all informational aspects of the senior living program under this section.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 251

### EMERGENCY RELIEF ADMINISTRATION

#### **251.5 Duties of the service area advisory board.**

A service area advisory board created in section 217.43 shall perform the following activities for any county in the board's service area concerning emergency relief:

1. Cooperate with a county's board of supervisors in all matters pertaining to administration of relief.
2. At the request of a county's board of supervisors, prepare requests for grants of state funds.
3. At the request of a county's board of supervi-

sors, administer county relief funds.

4. In a county receiving grants of state funds upon approval of the director of the department of administrative services and the county's board of supervisors, administer both state and county relief funds.

5. Perform other duties as may be prescribed by the administrator and a county's board of supervisors.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 252A

### SUPPORT OF DEPENDENTS

#### **252A.5 When proceeding may be maintained.**

Unless prohibited pursuant to 28 U.S.C. § 1738B, a proceeding to compel support of a dependent may be maintained under this chapter in any of the following cases:

1. Where the petitioner and the respondent are residents of or domiciled or found in this state or where this state may exercise personal jurisdiction over a nonresident respondent under section 252K.201.
2. Whenever the state or a political subdivision thereof furnishes support to a dependent, it has the same right through proceedings instituted by the petitioner's representative to invoke the provisions hereof as the dependent to whom the support was furnished, for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support; the petition in such case may be verified by any official having knowledge of such expenditures without further verifi-

cation of any person and consent of the dependent shall not be required in order to institute proceedings under this chapter. The child support recovery unit may bring the action based upon a statement of a witness, regardless of age, with knowledge of the circumstances, including, but not limited to, statements by the mother of the dependent or a relative of the mother or the putative father.

3. If the child support recovery unit is providing services, the unit has the same right to invoke the provisions of this section as the dependent for which support is owed for the purpose of securing support. The petition in such case may be verified by any official having knowledge of the request for services by the unit, without further verification by any other person, and consent of the dependent shall not be required in order to institute proceedings under this chapter. The child support recovery unit may bring the action based upon the statement of a witness, regardless of age, with knowledge of the circumstances, including, but

not limited to, statements by the mother of the dependent or a relative of the mother or the putative father.

2003 Acts, ch 62, §6  
Subsection 1 amended

#### **252A.6 How commenced — trial.**

1. A proceeding under this chapter shall be commenced by filing a verified petition in the court in equity in the county where the dependent resides or is domiciled, or if the dependent does not reside in or is not domiciled in this state, where the petitioner or respondent resides, or where public assistance has been provided for the dependent. The petition shall show the name, age, residence, and circumstances of the dependent, alleging that the dependent is in need of and is entitled to support from the respondent, giving the respondent's name, age, residence, and circumstances, and praying that the respondent be compelled to furnish such support. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of the respondent's person, other names and aliases by which the respondent has been or is known, the name of the respondent's employer, the respondent's fingerprints, or social security number.

2. It shall not be necessary for the dependent or the dependent's witnesses to appear personally at a hearing on the petition, but it shall be the duty of the petitioner's representative to appear on behalf of and represent the petitioner at all stages of the proceeding.

3. If at a hearing on the petition the respondent controverts the petition and enters a verified denial of any of the material allegations, the judge presiding at the hearing shall stay the proceedings. The petitioner shall be given the opportunity to present further evidence to address issues which the respondent has controverted.

4. If the respondent appears at the hearing

and fails to answer the petition or admits the allegations of the petition, or if, after a hearing, the court has found and determined that the prayer of the petitioner, or any part of the prayer, is supported by the evidence adduced in the proceeding, and that the dependent is in need of and entitled to support from a party, the court shall make and enter an order directing a party to furnish support for the dependent and to pay a sum as the court determines pursuant to section 598.21. Upon entry of an order for support or upon failure of a person to make payments pursuant to an order for support, the court may require a party to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the party's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

5. The court making such order may require the party to make payment at specified intervals to the clerk of the district court or to the collection services center, and to report personally to the sheriff or any other official, at such times as may be deemed necessary.

6. A party who willfully fails to comply with or who violates the terms or conditions of the support order or of the party's probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

7. Except as provided in 28 U.S.C. § 1738B, any order of support issued by a court shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both. This subsection also applies to orders entered following an administrative process including, but not limited to, the administrative processes provided pursuant to chapters 252C and 252F.

2003 Acts, ch 62, §7  
Subsection 1 amended

## **CHAPTER 252B**

### **CHILD SUPPORT RECOVERY**

#### **252B.5 Services of unit.**

The child support recovery unit shall provide the following services:

1. Assistance in the location of an absent parent or any other person who has an obligation to support the child of the resident parent.

2. Aid in establishing paternity and securing a court or administrative order for support pursuant to chapter 252A, 252C, 252F, or 600B, or any other chapter providing for the establishment of

paternity or support.

3. Aid in enforcing through court or administrative proceedings an existing court order for support issued pursuant to chapter 252A, 252C, 252F, 598, or 600B, or any other chapter under which child or medical support is granted. The director may enter into a contract with a private collection agency to collect support payments for cases which have been identified by the department as difficult collection cases if the department

determines that this form of collection is more cost-effective than departmental collection methods. The department shall utilize, to the maximum extent possible, every available automated process to collect support payments prior to referral of a case to a private collection agency. A private collection agency with whom the department enters a contract under this subsection shall comply with state and federal confidentiality requirements and debt collection laws. The director may use a portion of the state share of funds collected through this means to pay the costs of any contract authorized under this subsection.

4. Assistance to set off against a debtor's income tax refund or rebate any support debt, which is assigned to the department of human services or which the child support recovery unit is attempting to collect on behalf of any individual not eligible as a public assistance recipient, which has accrued through written contract, subrogation, or court judgment, and which is in the form of a liquidated sum due and owing for the care, support, or maintenance of a child. Unless the periodic payment plan provisions for a retroactive modification pursuant to section 598.21, subsection 8, apply, the entire amount of a judgment for accrued support, notwithstanding compliance with a periodic payment plan or regardless of the date of entry of the judgment, is due and owing as of the date of entry of the judgment and is delinquent for the purposes of setoff, including for setoff against a debtor's federal income tax refund or other federal nontax payment. The department of human services shall adopt rules pursuant to chapter 17A necessary to assist the department of administrative services in the implementation of the child support setoff as established under section 8A.504.

5. Determine periodically whether an individual receiving unemployment compensation benefits under chapter 96 owes a support obligation which is being enforced by the unit, and enforce the support obligation through court or administrative proceedings to have specified amounts withheld from the individual's unemployment compensation benefits.

6. Assistance in obtaining medical support as defined in chapter 252E.

7. At the request of either parent who is subject to the order of support or upon its own initiation, review the amount of the support award in accordance with the guidelines established pursuant to section 598.21, subsection 4, and Title IV-D of the federal Social Security Act, as amended, and take action to initiate modification proceedings if the criteria established pursuant to this section are met. However, a review of a support award is not required if the child support recovery unit determines that such a review would not be in the best interest of the child and neither parent has requested such review.

The department shall adopt rules no later than

October 13, 1990, setting forth the process for review of requests for modification of support obligations and the criteria and process for taking action to initiate modification proceedings.

8. *a.* Assistance, in consultation with the department of administrative services, in identifying and taking action against self-employed individuals as identified by the following conditions:

(1) The individual owes support pursuant to a court or administrative order being enforced by the unit and is delinquent in an amount equal to or greater than the support obligation amount assessed for one month.

(2) The individual has filed a state income tax return in the preceding twelve months.

(3) The individual has no reported tax withholding amount on the most recent state income tax return.

(4) The individual has failed to enter into or comply with a formalized repayment plan with the unit.

(5) The individual has failed to make either all current support payments in accordance with the court or administrative order or to make payments against any delinquency in each of the preceding twelve months.

*b.* Notwithstanding section 252B.9, the unit may forward information to the department of administrative services as necessary to implement this subsection, including but not limited to both of the following:

(1) The name and social security number of the individual.

(2) Support obligation information in the specific case, including the amount of the delinquency.

9. The review and adjustment, modification, or alteration of a support order pursuant to chapter 252H upon adoption of rules pursuant to chapter 17A and periodic notification, at a minimum of once every three years, to parents subject to a support order of their rights to these services.

10. The unit shall not establish orders for spousal support. The unit shall enforce orders for spousal support only if the spouse is the custodial parent of a child for whom the unit is also enforcing a child support or medical support order.

11. *a.* Comply with federal procedures to periodically certify to the secretary of the United States department of health and human services, a list of the names of obligors determined by the unit to owe delinquent support, under a support order as defined in section 252J.1, in excess of five thousand dollars. The certification of the delinquent amount owed may be based upon one or more support orders being enforced by the unit if the delinquent support owed exceeds five thousand dollars. The certification shall include any amounts which are delinquent pursuant to the periodic payment plan when a modified order has been retroactively applied. The certification shall be in a format and shall include any supporting

documentation required by the secretary.

b. All of the following shall apply to an action initiated by the unit under this subsection:

(1) The obligor shall be sent a notice by regular mail in accordance with federal law and regulations and the notice shall remain in effect until support delinquencies have been paid in full. The notice shall include all of the following:

(a) A statement regarding the amount of delinquent support owed by the obligor.

(b) A statement providing information that if the delinquency is in excess of five thousand dollars, the United States secretary of state may apply a passport sanction by revoking, restricting, limiting, or refusing to issue a passport as provided in 42 U.S.C. § 652(k).

(c) Information regarding the procedures for challenging the certification by the unit.

(2) (a) A challenge shall be based upon mistake of fact. For the purposes of this subsection, “*mistake of fact*” means a mistake in the identity of the obligor or a mistake in the amount of the delinquent child support owed if the amount did not exceed five thousand dollars on the date of the unit’s decision on the challenge.

If the obligor chooses to challenge the certification, the obligor shall notify the unit within the time period specified in the notice to the obligor. The obligor shall include any relevant information with the challenge.

(b) Upon timely receipt of the challenge, the unit shall review the certification for a mistake of fact, or refer the challenge for review to the child support agency in the state chosen by the obligor as provided by federal law.

(c) Following the unit’s review of the certification, the unit shall send a written decision to the obligor within ten days of timely receipt of the challenge.

(i) If the unit determines that a mistake of fact exists, the unit shall send notification in accordance with federal procedures withdrawing the certification for passport sanction.

(ii) If the unit determines that a mistake of fact does not exist, the obligor may contest the determination within ten days following the issuance of the decision by submitting a written request for a contested case proceeding pursuant to chapter 17A.

(3) Following issuance of a final decision under chapter 17A that no mistake of fact exists, the obligor may request a hearing before the district court pursuant to chapter 17A. The department shall transmit a copy of its record to the district court pursuant to chapter 17A. The scope of the review by the district court shall be limited to demonstration of a mistake of fact. Issues related to visitation, custody, or other provisions not related to the support provisions of a support order are not grounds for a hearing under this subsection.

c. Following certification to the secretary, if

the unit determines that an obligor no longer owes delinquent support in excess of five thousand dollars, the unit shall provide information and notice as the secretary requires to withdraw the certification for passport sanction.

2003 Acts, ch 145, §219, 220  
Subsections 4 and 8 amended

#### **252B.22 Liens — motor vehicle registration — task force.**

1. The child support recovery unit created in this chapter shall establish a task force to assist in the development and implementation of all of the following:

a. The filing of notices of liens and actions to release liens.

b. The process for delaying the renewal of a motor vehicle registration due to a support delinquency and recommendations for additional statutory changes to the general assembly.

2. Members of the task force may include, but shall not be limited to, representatives, appointed by the respective entity, of the Iowa land title association, the Iowa realtors’ association, the Iowa state bar association, the Iowa county recorders’ association, the Iowa clerks of court association, the Iowa county treasurers’ association, the Iowa automobile dealers’ association, the Iowa bankers association, the Iowa recreational vehicle dealers’ association, the independent automobile dealers’ association of Iowa, the Iowa mortgage bankers’ association, the Iowa motorcycle association, the Iowa credit union league, department of administrative services, state department of transportation, the office of the secretary of state, the office of the state court administrator, and other constituency groups and agencies which have an interest in a statewide support lien index to the record liens. Appointments are not subject to sections 69.16 and 69.16A. Vacancies shall be filled by the original appointment authority and in the manner of the original appointments.

2003 Acts, ch 145, §286  
Terminology change applied

#### **252B.23 Surcharge.**

1. A surcharge shall be due and payable by the obligor on a support arrearage identified as difficult to collect and referred by the unit on or after January 1, 1998, to a collection entity under contract with the unit or other state entity. The amount of the surcharge shall be a percent of the amount of the support arrearage referred to the collection entity and shall be specified in the contract with the collection entity. For the purpose of this chapter, a “*collection entity*” includes but is not limited to a state agency, including the central collection unit of the department of revenue, or a private collection agency. Use of a collection entity is in addition to any other legal means by which support payments may be collected. The unit shall continue to use other enforcement actions, as ap-

appropriate.

2. *a.* Notice that a surcharge may be assessed on a support arrearage referred to a collection entity pursuant to this section shall be provided to an obligor in accordance with one of the following as applicable:

(1) In the order establishing or modifying the support obligation. The unit or district court shall include notice in any new or modified support order issued on or after July 1, 1997.

(2) Through notice sent by the unit by regular mail to the last known address of the support obligor.

*b.* The notice shall also advise that any appropriate information may be provided to a collection entity for purposes of administering and enforcing the surcharge.

3. Arrearages submitted for referral and surcharge pursuant to this section shall meet all of the following criteria:

*a.* The arrearages owed shall be based on a court or administrative order which establishes the support obligation.

*b.* The arrearage is due for a case in which the unit is providing services pursuant to this chapter and one for which the arrearage has been identified as difficult to collect by the unit.

*c.* The obligor was provided notice pursuant to subsection 2 at least fifteen days prior to sending the notice of referral pursuant to subsection 4.

4. The unit shall send notice of referral to the obligor by regular mail to the obligor's last known address, with proof of service completed according to rule of civil procedure 1.442, at least thirty days prior to the date the arrearage is referred to the collection entity. The notice shall inform the obligor of all of the following:

*a.* The arrearage will be referred to a collection entity.

*b.* Upon referral, a surcharge is due and payable by the obligor.

*c.* The amount of the surcharge.

*d.* That the obligor may avoid referral by paying the amount of the arrearage to the collection services center within twenty days of the date of notice of referral.

*e.* That the obligor may contest the referral by submitting a written request for review of the unit. The request shall be received by the unit within twenty days of the date of the notice of referral.

*f.* The right to contest the referral is limited to a mistake of fact, which includes a mistake in the identity of the obligor, a mistake as to fulfillment of the requirements for referral under this subsection, or a mistake in the amount of the arrearages.

*g.* The unit shall issue a written decision following a requested review.

*h.* Following the issuance of a written decision by the unit denying that a mistake of fact exists, the obligor may request a hearing to challenge the surcharge by sending a written request for a hear-

ing to the office of the unit which issued the decision. The request shall be received by the office of the unit which issued the decision within ten days of the unit's written decision. The only grounds for a hearing shall be mistake of fact. Following receipt of the written request, the unit which receives the request shall certify the matter for hearing in the district court in the county in which the underlying support order is filed.

*i.* The address of the collection services center for payment of the arrearages.

5. If the obligor pays the amount of arrearage within twenty days of the date of the notice of referral, referral of the arrearage to a collection entity shall not be made.

6. If the obligor requests a review or court hearing pursuant to this section, referral of the arrearages shall be stayed pending the decision of the unit or the court.

7. Actions of the unit under this section shall not be subject to contested case proceedings or further review pursuant to chapter 17A and any resulting court hearing shall be an original hearing before the district court. However, the department shall establish, by rule pursuant to chapter 17A, an internal process to provide an additional review by the administrator of the child support recovery unit or the administrator's designee.

8. If an obligor does not pay the amount of the arrearage, does not contest the referral, or if following the unit's review and any court hearing the unit or court does not find a mistake of fact, the arrearages shall be referred to a collection entity. Following the review or hearing, if the unit or court finds a mistake in the amount of the arrearage, the arrearages shall be referred to the collection entity in the appropriate arrearage amount. For arrearages referred to a collection entity, the obligor shall pay a surcharge equal to a percent of the amount of the support arrearage due as of the date of the referral. The surcharge is in addition to the arrearages and any other fees or charges owed, and shall be enforced by the collection entity as provided under section 252B.5. Upon referral to the collection entity, the surcharge is an automatic judgment against the obligor.

9. The director or the director's designee may file a notice of the surcharge with the clerk of the district court in the county in which the underlying support order is filed. Upon filing, the clerk shall enter the amount of the surcharge on the lien index and judgment docket.

10. Following referral of a support arrearage to a collection entity, the surcharge shall be due and owing and enforceable by a collection entity or the unit notwithstanding satisfaction of the support obligation or whether the collection entity is enforcing a support arrearage. However, the unit may waive payment of all or a portion of the surcharge if waiver will facilitate the collection of the support arrearage.

11. All surcharge payments shall be received

and disbursed by the collection services center.

12. *a.* A payment received by the collection services center which meets all the following conditions shall be allocated as specified in paragraph “*b*”:

(1) The payment is for a case in which arrearages have been referred to a collection entity.

(2) A surcharge is assessed on the arrearages.

(3) The payment is collected under the provisions of the contract with the collection entity.

*b.* A payment meeting all of the conditions in paragraph “*a*” shall be allocated between support and costs and fees, and the surcharge according to the following formula:

(1) The payment shall be divided by the sum of one hundred percent plus the percent specified in the contract.

(2) The quotient shall be the amount allocated to the support arrearage and other fees and costs.

(3) The difference between the dividend and the quotient shall be the amount allocated to the surcharge.

13. Any computer or software programs developed and any records used in relation to a contract with a collection entity remain the property of the department.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 252G

### CENTRAL EMPLOYEE REGISTRY

#### **252G.2 Establishment of central employee registry.**

By January 1, 1994, the unit shall establish a centralized employee registry database for the purpose of receiving and maintaining information on newly hired or rehired employees from employers. The unit shall establish the database and the department may adopt rules in conjunction with

the department of revenue and the department of workforce development to identify appropriate uses of the registry and to implement this chapter, including implementation through the entering of agreements pursuant to chapter 28E.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 255

### MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

#### **255.1 Complaint — determination of medical assistance eligibility.**

Any adult resident of the state may file a complaint in the office of the county general assistance director charging that any legal resident of Iowa residing in the county where the complaint is filed is pregnant or is suffering from some malady or deformity that can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither such person nor persons legally chargeable with the person’s support are able to pay therefor.

The county general assistance director shall ascertain from the local office of human services if an applicant for the indigent patient program would qualify for medical assistance or the medically needy program under chapter 249A without the spend-down provision required pursuant to section 249A.3, subsection 2, paragraph “*i*”. If the applicant qualifies, the patient shall be certified for medical assistance and shall not be counted under this chapter.

2003 Acts, ch 151, §9  
Unnumbered paragraph 1 amended

#### **255.4 Examination by physician.**

Upon the filing of such complaint, the county general assistance director shall appoint a competent physician and surgeon, living in the vicinity of the patient, who shall personally examine the patient with respect to the pregnancy, malady, or deformity. The director may, after the expiration of five years from the filing of a complaint, destroy the complaint and all papers or records in connection with the complaint.

2003 Acts, ch 151, §10  
Section amended

#### **255.5 Report by physician.**

Such physician shall make a report in duplicate on blanks furnished as provided in this chapter, answering the questions contained in the blanks and setting forth the information required, giving such history of the case as will be likely to aid the medical or surgical treatment or hospital care of such patient, describing the pregnancy, deformity, or malady in detail, and stating whether or not in the physician’s opinion the pregnancy, deformity, or malady can probably be improved or cured or

advantageously treated, which report shall be filed in the office of the county general assistance director.

2003 Acts, ch 151, §11  
Section amended

#### **255.6 Investigation and report.**

When a complaint is filed in the office of the county general assistance director, the director shall furnish the county attorney and board of supervisors with a copy and the board shall, by the general assistance director or other agent it selects, make a thorough investigation of facts as to the legal residence of the patient and the ability of the patient or others chargeable with the patient's support to pay the expense of treatment and care, and shall file a report of the investigation with the board at or before the time of hearing.

2003 Acts, ch 151, §12  
Section amended

#### **255.7 Notice of hearing — duty of county attorney.**

When the physician's report has been filed, the county general assistance director shall set a time and place for hearing on the matter, and the county attorney shall cause such patient and the parent or parents, guardian, or person having the legal custody of said patient, if under legal disability, to be served with such notice of the time and place of the hearing as the director may prescribe.

2003 Acts, ch 151, §13  
Section amended

#### **255.8 Determination by board of supervisors.**

If the board of supervisors finds that the patient is a legal resident of Iowa and is pregnant or is suffering from a malady or deformity which can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither the patient nor any person legally chargeable with the patient's support is able to pay the expenses, the county general assistance director, except in obstetrical cases and orthopedic cases, shall immediately ascertain from the admitting physician at the university hospital whether the person can be received as a patient within a period of thirty days, and if the patient can be received, the board shall direct that the patient be sent to the university hospital for proper medical and surgical treatment and hospital care. If the board ascertains, except in obstetrical cases and orthopedic cases, that a person of the age or sex of the patient, or afflicted by the complaint, disease, or deformity with which the person is afflicted, cannot be received as a patient at the university hospital within the period of thirty days, the board of supervisors shall direct the county to provide adequate treatment at county expense for the patient at home or in a hospital. Obstetrical cases and orthopedic cases may be

committed to the university hospital without regard to the limiting period of thirty days.

In any case of emergency, the board of supervisors without previous inquiry may at its discretion order the patient to be immediately taken to and accepted by the university hospital for the necessary care as provided in section 255.11, but if such a patient cannot be immediately accepted at the university hospital as ascertained by telephone if necessary, the board of supervisors shall direct the county to provide adequate treatment at county expense for the patient at home or in a hospital.

2003 Acts, ch 151, §14  
Section amended

#### **255.10 Religious belief — denial of order.**

The board of supervisors in its discretion may refuse to make such order in any case where the board finds the patient or the patient's parent, parents, or guardian are members of a religious denomination whose tenets preclude dependence on the practice of medicine or surgery and desire in good faith to rely upon the practice of their religion for relief from disease or disorder.

2003 Acts, ch 151, §15  
Section amended

#### **255.11 Order in case of emergency.**

In cases of great emergency, when the board of supervisors is satisfied that delay would be seriously injurious to the patient, the board of supervisors may make such order with the consent of the patient, if an adult, or of the parent or parents, guardian, or person having the legal custody of the patient, if a minor or incompetent, without examination, report, notice, or hearing.

2003 Acts, ch 151, §16  
Section amended

#### **255.12 Certified copy of order.**

The county general assistance director shall prepare a certified copy of such order, which, together with a copy of the physician's report, shall be delivered to the admitting physician of such hospital at or before the time of the reception of the patient into the hospital.

2003 Acts, ch 151, §17  
Section amended

#### **255.13 Attendant — physician — compensation.**

If the physician appointed to examine the patient certifies that an attendant to accompany the patient to the hospital is necessary, and the university hospital attendant and ambulance service is not available, the county general assistance director may appoint an attendant who shall receive not exceeding two dollars per day for the time thus necessarily employed and actual necessary traveling expenses by the most feasible route to the hospital whether by ambulance, train, or automobile; but if such appointee is a relative of the patient or a member of the patient's immediate family, or receives a salary or other compensation from the

public for the appointee's services, no such per diem compensation shall be paid. The physician appointed to make the examination and report shall receive three dollars for each examination and report so made and the physician's actual necessary expenses incurred in making such examination, but if the physician receives a salary or other compensation from the public for the physician's full-time services, no such examination fee shall be paid. The actual, necessary expenses of transporting and caring for the patient shall be paid as provided in this chapter.

2003 Acts, ch 151, §18  
Section amended

#### **255.14 Payment of expenses.**

An itemized, verified statement of all charges provided for in sections 255.8 and 255.13, in cases where the patient is admitted or accepted for treatment at the university hospital shall be filed with the superintendent of the university hospital, and upon the superintendent's recommendation when approved by the board of supervisors, the charges shall be included on the regular bill for the maintenance, transportation and treatment of the patient, and be audited and paid in the manner as provided in this chapter.

2003 Acts, ch 151, §19  
Section amended

#### **255.21 Treatment outside hospital — attendant.**

If, in the judgment of the physician or surgeon to whom the patient has been assigned for treatment, continuous residence of the patient in the hospital is unnecessary, such patient may, by the hospital authorities, be sent to the patient's home or other appropriate place, and be required to return to the hospital when and for such length of time as may be for the patient's benefit. The hospital authorities may, if necessary, appoint an attendant to accompany such patient and discharged patients, and the compensation of such attendant shall be fixed by the state board of regents and charged by the hospital as part of the costs of transporting patients. The compensation paid to and the expenses of the attendant shall be audited and paid in the same manner as is provided by law for the compensation of an attendant appointed by the board of supervisors.

2003 Acts, ch 151, §20  
Section amended

#### **255.22 Treatment authorized.**

A minor or incompetent person shall not be treated for any malady or deformity except such as is reasonably well described in the order or the report of the examining physician, unless permission for such treatment is provided for in the order, or is granted by the person's parents or guardian; but the physician in charge may administer such treatment or perform such surgical operations as

are usually required in cases of emergency.

2003 Acts, ch 151, §21  
Section amended

#### **255.24 Record and report of expenses — purchases.**

The superintendent of said hospital shall keep a correct account of all medicine, care, and maintenance furnished to said patients, and shall make and file with the director of the department of administrative services an itemized, sworn statement of all expenses thereof incurred in said hospital. But the superintendent shall render separate bills showing the actual cost of all appliances, instruments, X-ray and other special services used in connection with such treatment, commitments, and transportation to and from the said university hospital, including the expenses of attendants and escorts.

All purchases of materials, appliances, instruments and supplies by the university hospital, in cases where more than one hundred dollars is to be expended, and where the prices of the commodity or commodities to be purchased are subject to competition, shall be upon open competitive quotations, and all contracts therefor shall be subject to the provisions of chapter 72. However, purchases may be made through a hospital group purchasing organization provided that university hospitals is a member of the organization and the group purchasing organization selects the items to be offered to members through a competitive bidding process.

2003 Acts, ch 145, §286  
See also §263A.13  
Terminology change applied

#### **255.24A Indigent patient program report.**

Funds shall not be allocated to the university hospital fund until the superintendent of the university of Iowa hospitals and clinics has filed with the department of administrative services and the legislative services agency a quarterly report containing the account required in section 255.24. The report shall include information required in section 255.24 for patients by the type of service provided.

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286  
See also §263A.13  
Terminology changes applied

#### **255.26 Expenses — how paid — action to reimburse county.**

Warrants issued under section 255.25 shall be promptly drawn on the treasurer of state and forwarded by the director of the department of administrative services to the treasurer of the state university, and the same shall be by the treasurer of the state university placed to the credit of the funds which are set aside for the support of the university hospital. The superintendent of the university hospital shall certify to the auditor of state on the first day of January, April, July, and

October of each year, the amount as herein provided not previously certified by the superintendent due the state from the several counties having patients chargeable thereto, and the auditor of state shall thereupon charge the same to the county so owing. A duplicate certificate shall also be mailed to the auditor of each county having patients chargeable thereto. Expenses for obstetrical patients served under section 255A.9 shall be reimbursed as specified in section 255A.9.

The county auditor, upon receipt of the certificate, shall enter it to the credit of the state in the ledger of state accounts, and at once issue a notice to the county treasurer authorizing the county treasurer to transfer the amount to the general state revenue, which notice shall be filed by the treasurer as authority for making the transfer. The county treasurer shall include the amount transferred in the next remittance of state taxes to the treasurer of state, to accrue to the credit of the university hospital fund.

The state auditor shall certify the total cost of commitment and caring for each indigent patient under the terms of this statute to the county auditor of such patient's legal residence, and such certificate shall be preserved by the county auditor and shall be a debt due from the patient or the persons legally responsible for the patient's care, maintenance or support; and whenever in the judgment of the board of supervisors the same or any part thereof shall be collectible, the said board may in its own name collect the same and is hereby authorized to institute suits for such purpose; and after deducting the county's share of such cost

shall cause the balance to be paid into the state treasury to reimburse the university hospital fund. Transportation shall be provided at no charge to a patient who is certified for medical assistance under chapter 249A, and shall be reimbursed from the university hospital fund.

Should any county fail to pay these bills within sixty days from the date of certificate from the superintendent, the director of the department of administrative services shall charge the delinquent county the penalty of one percent per month on and after sixty days from date of certificate until paid. Such penalties shall be credited to the general fund of the state.

2003 Acts, ch 145, §286  
Terminology change applied

### **255.27 Faculty to prepare blanks — printing.**

The medical faculty of the state university hospital shall from time to time prepare blanks containing questions and requiring information that it finds necessary and proper to be obtained by the physician who examines a patient under order of the board of supervisors. The blanks shall be printed by the state, and a sufficient supply shall be furnished by the director of the department of administrative services to the county general assistance director. The cost of printing the blanks shall be audited, allowed, and paid in the same manner as other bills for public printing.

2003 Acts, ch 145, §221; 2003 Acts, ch 151, §22  
See Code editor's note to §2.9  
Section amended

## CHAPTER 256

### DEPARTMENT OF EDUCATION

#### **256.5A Nonvoting member.**

The governor shall appoint the one nonvoting student member of the state board for a term of one year beginning and ending as provided in section 69.19. The nonvoting student member shall be appointed from a list of names submitted by the state board of education. Students enrolled in either grade ten or eleven in a public school may apply to the state board to serve as a nonvoting student member. The department shall develop an application process that requires the consent of the student's parent or guardian if the student is a minor, initial application approval by the school district in which the student applicant is enrolled, and submission of approved applications by a school district to the department. The nonvoting student member's school district of enrollment shall notify the student's parents if the student's grade point average falls during the period in which the student is a member of the state board.

The state board shall adopt rules under chapter 17A specifying criteria for the selection of applicants whose names shall be submitted to the governor. Criteria shall include, but are not limited to, academic excellence, participation in extracurricular and community activities, and interest in serving on the board. Rules adopted by the state board shall also require, if the student is a minor, supervision of the student by the student's parent or guardian while the student is engaged in authorized state board business at a location other than the community in which the student resides, unless the student's parent or guardian submits to the state board a signed release indicating the parent or guardian has determined that supervision of the student by the parent or guardian is unnecessary. The nonvoting student member appointment is not subject to section 69.16 or 69.16A. The nonvoting student member shall have been enrolled in a public school in Iowa for at least one

year prior to the member's appointment. A nonvoting student member who will not graduate from high school prior to the end of a second term may apply to the state board for submission of candidacy to the governor for a second one-year term. A nonvoting student member shall be paid a per diem as provided in section 7E.6 and the student and the student's parent or guardian shall be reimbursed for actual and necessary expenses incurred in the performance of the student's duties as a nonvoting member of the state board. A vacancy in the membership of the nonvoting student member shall not be filled until the expiration of the term.

2003 Acts, ch 180, §1  
Section amended

### 256.7 Duties of state board.

Except for the college student aid commission and the public broadcasting board and division, the state board shall:

1. Adopt and establish policy for programs and services of the department pursuant to law.
2. Constitute the state board for vocational education under chapter 258.
3. Prescribe standards and procedures for the approval of practitioner preparation programs and professional development programs, offered by practitioner preparation institutions and area education agencies, in this state. Procedures provided for approval of programs shall include procedures for enforcement of the prescribed standards and shall not include a procedure for the waiving of any of the standards prescribed.
4. Adopt, and update annually, a five-year plan for the achievement of educational goals in Iowa.
5. Adopt rules under chapter 17A for carrying out the responsibilities of the department.
6. Hear appeals of persons aggrieved by decisions of boards of directors of school corporations under chapter 290 and other appeals prescribed by law. The state board may review the record and shall review the decision of the director of the department of education or the administrative law judge designated for any appeals heard and decided by the director under chapter 290, and may affirm, modify, or vacate the decision, or may direct a rehearing before the director.
7. Adopt rules under chapter 17A for the use of telecommunications as an instructional tool for students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the state board of regents, and independent colleges and universities in elementary and secondary school classes and courses. The rules shall include but need not be limited to rules relating to programs, educational policy, instructional practices, staff development, use of pilot projects, curriculum monitoring, and

the accessibility of licensed teachers.

When curriculum is provided by means of telecommunications, it shall be taught by an appropriately licensed teacher. The teacher shall either be present in the classroom, or be present at the location at which the curriculum delivered by means of telecommunications originates.

The rules shall provide that when the curriculum is taught by an appropriately licensed teacher at the location at which the telecommunications originates, the curriculum received at a remote site shall be under the supervision of a licensed teacher. The licensed teacher at the originating site may provide supervision of students at a remote site or the school district in which the remote site is located may provide for supervision at the remote site if the school district deems it necessary or if requested to do so by the licensed teacher at the originating site. For the purposes of this subsection, "supervision" means that the curriculum is monitored by a licensed teacher and the teacher is accessible to the students receiving the curriculum by means of telecommunications.

The state board shall establish an advisory committee to make recommendations for rules required under this subsection on the use of telecommunications as an instructional tool. The committee shall be composed of representatives from community colleges, area education agencies, accredited or approved nonpublic schools, and local school districts from various enrollment categories. The representatives shall include board members, school administrators, teachers, parents, students, and associations interested in education.

For the purpose of the rules adopted by the state board, telecommunications means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications.

8. Rules adopted under this section shall provide that telecommunications shall not be used by school districts as the exclusive means to provide any course which is required by the minimum educational standards for accreditation.

9. Develop evaluation procedures that will measure the effects of instruction by means of telecommunications on student achievement, socialization, intellectual growth, motivation, and other related factors deemed relevant by the state board, for the development of an educational database. The state board shall consult with the state board of regents and the practitioner preparation departments at its institutions, other practitioner preparation departments located within private colleges and universities, educational research agencies or facilities, and other agencies deemed appropriate by the state board, in developing these procedures.

10. Adopt rules pursuant to chapter 17A relating to educational programs and budget limitations for educational programs pursuant to sec-

tions 282.29, 282.30, 282.31, and 282.33.

11. Prescribe guidelines for facility standards, maximum class sizes, and maximum in classroom pupil-teacher and teacher-aide ratios for grades kindergarten through three and before and after school and summer child care programs provided under the direction of the school district. The department also shall indicate modifications to such guidelines necessary to address the needs of at-risk children.

12. Elect to a two-year term, from its members in each even-numbered year, a president of the state board, who shall serve until a successor is elected and qualified.

13. Adopt rules and a procedure for accrediting all apprenticeship programs in the state which receive state or federal funding. In developing the rules, the state board shall consult with schools and labor or trade organizations affected by or currently operating apprenticeship or training programs. Rules adopted shall be the same or similar to criteria established for the operation of apprenticeship programs at community colleges.

14. Adopt rules which require each community college which establishes a new jobs training project or projects and receives funds derived from or associated with the project or projects to establish a separate account to act as a repository for any funds received and to report annually, by January 15, to the general assembly on funds received and disbursed during the preceding fiscal year in the form required by the department.

15. If funds are appropriated by the general assembly for the program, adopt rules for the administration of the teacher exchange program, including, but not limited to, rules for application to participate in the program, rules relating to the number of times that a given applicant may participate in the program, and rules describing reimbursable expenses and establishing honoraria for teacher participants.

16. Adopt rules that set standards for approval of family support preservice and in-service training programs, offered by area education agencies and practitioner preparation institutions, and family support programs offered by or through local school districts.

17. Receive and review the budget and unified plan of service submitted by the division of libraries and information services.

18. Adopt rules that include children who retain some sight but who have a medically diagnosed expectation of visual deterioration within the definition of children requiring special education pursuant to section 256B.2, subsection 1. Rules adopted pursuant to this subsection shall provide for or include, but are not limited to, the following:

*a.* A presumption that proficiency in braille reading and writing is essential for satisfactory educational progress for a visually impaired student who is not able to communicate in print with

the same level of proficiency as a student of otherwise comparable ability at the same grade level. This presumption includes a student as defined in paragraph "b". A student for whom braille services are appropriate, as defined in this subsection, is entitled to instruction in braille reading and writing that is sufficient to enable the pupil to communicate with the same level of proficiency as a pupil of otherwise comparable ability at the same grade level.

*b.* A pupil who retains some sight but who has a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

*c.* Instruction in braille reading and writing may be used in combination with other special education services appropriate to a pupil's educational needs.

*d.* The annual review of a pupil's individual education plan shall include discussion of instruction in braille reading and writing and a written explanation of the reasons why the pupil is using a given reading and writing medium or media. If the reasons have not changed since the previous year, the written explanation for the current year may refer to the fuller explanation from the previous year.

*e.* A pupil as defined in paragraph "b" whose primary learning medium is expected to change may begin instruction in the new medium before it is the only medium the pupil can effectively use.

*f.* A pupil who receives instruction in braille reading and writing pursuant to this subsection shall be taught by a teacher licensed to teach students with visual impairments.

19. Define the minimum school day as a day consisting of five and one-half hours of instructional time for grades one through twelve. The minimum hours shall be exclusive of the lunch period, but may include passing time between classes. Time spent on parent-teacher conferences shall be considered instructional time. A school or school district may record a day of school with less than the minimum instructional hours as a minimum school day if any of the following apply:

*a.* If emergency health or safety factors require the late arrival or early dismissal of students on a specific day.

*b.* If the total hours of instructional school time for grades one through twelve for any five consecutive school days equal a minimum of twenty-seven and one-half hours, even though any one day of school is less than the minimum instructional hours because of a staff development opportunity provided for the professional instructional staff or because parent-teacher conferences have been scheduled beyond the regular school day. Furthermore, if the total hours of instructional time for the first four consecutive days equal at least twenty-seven and one-half hours because

parent-teacher conferences have been scheduled beyond the regular school day, a school or school district may record zero hours of instructional time on the fifth consecutive school day as a minimum school day.

20. Adopt rules that require the board of directors of a school district to waive school fees for indigent families.

21. Develop and adopt rules incorporating accountability for, and reporting of, student achievement into the standards and accreditation process described in section 256.11. The rules shall provide for all of the following:

*a.* Requirements that all school districts and accredited nonpublic schools develop, implement, and file with the department a comprehensive school improvement plan that includes, but is not limited to, demonstrated school, parental, and community involvement in assessing educational needs, establishing local education standards and student achievement levels, and, as applicable, the consolidation of federal and state planning, goal-setting, and reporting requirements.

*b.* A set of core academic indicators in mathematics and reading in grades four, eight, and eleven, a set of core academic indicators in science in grades eight and eleven, and another set of core indicators that includes, but is not limited to, graduation rate, postsecondary education, and successful employment in Iowa. Annually, the department shall report state data for each indicator in the condition of education report.

*c.* A requirement that all school districts and accredited nonpublic schools annually report to the department and the local community the district-wide progress made in attaining student achievement goals on the academic and other core indicators and the district-wide progress made in attaining locally established student learning goals. The school districts and accredited nonpublic schools shall demonstrate the use of multiple assessment measures in determining student achievement levels. The school districts and accredited nonpublic schools shall also report the number of students who enter ninth grade but do not graduate from the school or school district; and the number of students who are tested and the percentage of students who are so tested annually. The board shall develop and adopt uniform definitions consistent with the federal No Child Left Behind Act of 2001, Pub. L. No. 107-110 and any federal regulations adopted pursuant to the federal Act. The school districts and accredited nonpublic schools may report on other locally determined factors influencing student achievement. The school districts and accredited nonpublic schools shall also report to the local community their results by individual attendance center.

22. Adopt rules and a procedure for the approval of para-educator preparation programs offered by a public school district, area education

agency, community college, institution of higher education under the state board of regents, or an accredited private institution as defined in section 261.9, subsection 1. The programs shall train and recommend individuals for para-educator certification under section 272.12.

23. Adopt rules directing the community colleges to annually and uniformly submit data from the most recent fiscal year to the division of community colleges and workforce preparation, using criteria determined and prescribed by the division via the management information system. Financial data submitted to the division by a community college shall be broken down by fund. Community colleges shall provide data to the division by a deadline set by the division. The deadline shall be set for a date that permits the division to include the data in a report submitted for state board approval and for review by December 15 of each year by the house and senate standing education committees and the joint subcommittee on education appropriations.

24. Adopt rules on or before January 1, 2001, to require school districts and accredited nonpublic schools to adopt local policies relating to health services, media services programs, and guidance programs, as part of the general accreditation standards applicable to school districts pursuant to section 256.11. This subsection shall be applicable strictly for reporting purposes and shall not be interpreted to require school districts and accredited nonpublic schools to provide or offer health services, media services programs, or guidance programs.

25. Adopt rules establishing standards for school district and area education agency career development programs and for individual teacher career development plans in accordance with section 284.6.

2003 Acts, ch 178, §56; 2003 Acts, ch 180, §2  
Subsection 10 amended  
Subsection 21, unnumbered paragraph 1 amended

### **256.9 Duties of director.**

Except for the college student aid commission and the public broadcasting board and division, the director shall:

1. Carry out programs and policies as determined by the state board.

2. Recommend to the state board rules necessary to implement programs and services of the department.

3. Establish divisions of the department as necessary or desirable in addition to divisions required by law. The organization of the department shall promote coordination of functions and services relating to administration, supervision, and improvement of instruction.

4. Employ personnel and assign duties and responsibilities of the department. The director shall appoint a deputy director and division administrators deemed necessary. They shall be ap-

pointed on the basis of their professional qualifications, experience in administration, and background. Members of the professional staff are not subject to the merit system provisions of chapter 8A, subchapter IV, and are subject to section 256.10.

5. Transmit to the department of management information about the distribution of state and federal funds pursuant to state law and rules of the department.

6. Develop a budget and transmit to the department of management estimates of expenditure requirements for all functions and services of the department.

7. Accept and administer federal funds apportioned to the state for educational and rehabilitation purposes and accept surplus commodities for distribution when made available by a governmental agency. The director may also accept grants and gifts on behalf of the department.

8. Cooperate with other governmental agencies and political subdivisions in the development of rules and enforcement of laws relating to education.

9. Conduct research on education matters.

10. Submit to each regular session of the general assembly recommendations relating to revisions or amendments to the school laws.

11. Approve, coordinate, and supervise the use of electronic data processing by school districts, area education agencies, and merged areas.

12. Act as the executive officer of the state board.

13. Act as custodian of a seal for the director's office and authenticate all true copies of decisions or documents.

14. Appoint advisory committees, in addition to those required by law, to advise in carrying out the programs, services, and functions of the department.

15. Provide the same educational supervision for the schools maintained by the director of human services as is provided for the public schools of the state and make recommendations to the director of human services for the improvement of the educational program in those institutions.

16. Interpret the school laws and rules relating to the school laws.

17. Hear and decide appeals arising from the school laws not otherwise specifically granted to the state board.

18. Prepare forms and procedures as necessary to be used by area education agency boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and cost accounting, the execution of contracts, and the submission of reports, and notify the area education agency board, district board, or school authorities when a report has not been filed in the manner or on the dates prescribed by law or by rule that the school will not be accredited

until the report has been properly filed.

19. Determine by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of the department, make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of the schools, and request a state audit of the accounts of a school district, area education agency, school official, or school employee handling school funds when it is apparent that an audit should be made.

20. Preserve reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions.

21. Keep a record of the business transacted by the director.

22. Endeavor to promote among the people of the state an interest in education.

23. Classify and define the various schools under the supervision of the department, formulate suitable courses of study, and publish and distribute the classifications and courses of study and promote their use.

24. Report biennially to the governor, at the time provided by law, the condition of the schools under the department's supervision, including the number of school districts, the number and value of schoolhouses, the enrollment and attendance in each district for the previous year, any measures proposed for the improvement of the public schools, financial and statistical information of public importance, and general information relating to educational affairs and conditions within the state or elsewhere. The report shall also review the programs and services of the department.

25. Direct area education agency administrators to arrange for professional teachers' meetings, demonstration teaching, or other field work for the improvement of instruction as best fits the needs of the public schools in each area.

26. Cause to be printed in book form, during the months of June and July in the year 1987 and every four years thereafter, if deemed necessary, all school laws then in force with forms, rulings, decisions, notes, and suggestions which may aid school officers in the proper discharge of their duties. A sufficient number shall be furnished to school officers, directors, superintendents, area administrators, members of the general assembly, and others as reasonably requested.

27. Direct that any amendments or changes in the school laws, with necessary notes and suggestions, be distributed as prescribed in subsection 26 annually.

28. Prepare and submit to each regular session of the general assembly a report containing the recommendations of the state board as to revisions, amendments, and new provisions of school laws.

29. Reserved.

30. Approve the salaries of area education

agency administrators.

31. Develop criteria and procedures to assist in the identification of at-risk children and their developmental needs.

32. Develop, in conjunction with the child development coordinating council or other similar agency, child-to-staff ratio recommendations and standards for at-risk programs based on national literature and test results and Iowa longitudinal test results.

33. Develop programs in conjunction with the center for early development education to be made available to the school districts to assist them in identification of at-risk children and their developmental needs.

34. Conduct or direct the area education agency to conduct feasibility surveys and studies, if requested under section 282.11, of the school districts within the area education agency service areas and all adjacent territory, including but not limited to contiguous districts in other states, for the purpose of evaluating and recommending proposed whole grade sharing agreements requested under section 282.7 and section 282.10, subsections 1 and 4. The surveys and studies shall be revised periodically to reflect reorganizations which may have taken place in the area education agency, adjacent territory, and contiguous districts in other states. The surveys and studies shall include a cover page containing recommendations and a short explanation of the recommendations. The factors to be used in determining the recommendations include, but are not limited to:

- a. The possibility of long-term survival of the proposed alliance.
- b. The adequacy of the proposed educational programs versus the educational opportunities offered through a different alliance.
- c. The financial strength of the new alliance.
- d. Geographical factors.
- e. The impact of the alliance on surrounding schools.

Copies of the completed surveys and studies shall be transmitted to the affected districts' school boards.

35. Develop standards and instructional materials to do all of the following:

- a. Assist school districts in developing appropriate before and after school programs for elementary school children.
- b. Assist school districts in the development of child care services and programs to complement half-day and all-day kindergarten programs.
- c. Assist school districts in the development of appropriate curricula for all-day, everyday kindergarten programs.
- d. Assist school districts in the development of appropriate curricula for the early elementary grades one through three.
- e. Assist prekindergarten instructors in the development of appropriate curricula and teaching practices.

Standards and materials developed shall include materials which employ developmentally appropriate practices and incorporate substantial parental involvement. The materials and standards shall include alternative teaching approaches including collaborative teaching and alternative dispute resolution training. The department shall consult with the child development coordinating council, the state child care advisory council, the department of human services, the state board of regents center for early developmental education, the area education agencies, the department of child development in the college of family and consumer sciences at Iowa state university of science and technology, the early childhood elementary division of the college of education at the university of Iowa, and the college of education at the university of northern Iowa, in developing these standards and materials.

For purposes of this section "*substantial parental involvement*" means the physical presence of parents in the classroom, learning experiences designed to enhance the skills of parents in parenting and in providing for their children's learning and development, or educational materials which may be borrowed for home use.

36. Develop, or direct the area education agencies to develop, a statewide technical assistance support network to provide school districts or district subcontractors under section 279.49 with assistance in creating developmentally appropriate programs under section 279.49.

37. Administer and approve grants to school districts which provide innovative in-school programming for at-risk children in grades kindergarten through three, in addition to regular school curricula for children participating in the program, with the funds for the grants being appropriated for at-risk children by the general assembly. Grants approved shall be for programs in schools with a high percentage of at-risk children. Preference shall be given to programs which integrate at-risk children with the rest of the school population, which agree to limit class size and pupil-teacher ratios, which include parental involvement, which demonstrate community support, which cooperate with other community agencies, which provide appropriate guidance counseling services, and which use teachers with an early childhood endorsement. Grant programs shall contain an evaluation component that measures student outcomes.

38. Develop a model written publications code including reasonable provisions for the regulation of the time, place, and manner of student expression.

39. Provide educational resources and technical assistance to schools relating to the implementation of the nutritional guidelines for food and beverages sold on public school grounds or on the grounds of nonpublic schools receiving funds under section 283A.10.

40. Develop an application and review process for the identification of quality instructional centers at the community colleges. The process developed shall include but is not limited to the development of criteria for the identification of a quality instructional center as well as for the enhancement of other program offerings in order to upgrade programs to quality instructional center status. Criteria established shall be designed to increase student access to programs, establish high quality occupational and vocational education programs, and enhance interinstitutional cooperation in program offerings.

41. Explore, in conjunction with the state board of regents, the need for coordination between school districts, area education agencies, regents institutions, and community colleges for purposes of delivery of courses, use of telecommunications, transportation, and other similar issues. Coordination may include, but is not limited to, coordination of calendars, programs, schedules, or telecommunications emissions.

42. Develop an application and review process for approval of administrative and program sharing agreements between two or more community colleges or a community college and an institution of higher education under the board of regents entered into pursuant to section 260C.46.

43. Prepare a plan and a report for ensuring that all Iowa children will be able to satisfy the requirements for high school graduation. The plan and report shall include a statement of the dimensions of the dropout problem in Iowa; a survey of existing programs geared to dropout prevention; a plan for use of competency-based outcome methods and measures; proposals for alternative means for satisfying graduation requirements including alternative high school settings, supervised vocational experiences, education experiences within the correctional system, screening and assessment mechanisms for identifying students who are at risk of dropping out and the development of an individualized education plan for identified students; a requirement that schools provide information to students who drop out of school on options for pursuing education at a later date; the development of basic materials and information for schools to present to students leaving school; a requirement that students notify their school districts of residence when the student discontinues school, including the reasons for leaving school and future plans for career development; a requirement that, unless a student chooses to make the information relating to the student leaving school confidential, schools make the information available to community colleges, area education agencies, and other educational institutions upon request; recommendations for the establishment of pilot projects for the development of model alternative options education programs; a plan for implementation of any recommended courses of action to attain a zero dropout

rate by the year 2000; and other requirements necessary to achieve the goals of this subsection. Alternative means for satisfying graduation requirements which relate to the development of individualized education plans for students who have dropped out of the regular school program shall include, but are not limited to, a tracking component that requires a school district to maintain periodic contact with a student, assistance to a dropout in curing any of the student's academic deficiencies, an assessment of the student's employability skills and plans to improve those skills, and treatment or counseling for a student's social needs. The department shall also prepare a cost estimate associated with implementation of proposals to attain a zero dropout rate, including but not limited to evaluation of existing funding sources and a recommended allocation of the financial burden among federal, state, local, and family resources.

44. If funds are appropriated by the general assembly for the program, administer the teacher exchange program, develop forms for requests to participate in the program, and process requests from teacher participants for reimbursement of expenses incurred as a result of participating in the program.

45. Develop in-service and preservice training programs through the area education agencies and practitioner preparation institutions and guidelines for school districts for the establishment of family support programs. Guidelines developed shall describe barriers to learning and development which can affect children served by family support programs.

46. Serve as an ex officio member of the commission of libraries.

47. Grant annual exemptions from one or more of the minimum education standards contained in section 256.11 and rules adopted by the state board of education to nonpublic schools or public school districts who are engaging in comprehensive school transformation efforts that are broadly consistent with the current standards, but require exemption from one or more standards in order to implement the comprehensive school transformation effort within the nonpublic school or school district. Nonpublic schools or public school districts wishing to be exempted from one or more of the minimum standards contained in section 256.11 and rules adopted by the state board of education shall file a request for an exemption with the department. Requests for exemption shall include all of the following:

a. A description of the nonpublic school or public school district's school transformation plan, including but not limited to new structures, methodologies, and creative approaches designed to help students achieve at higher levels.

b. Identification of the standard or standards for which the exemption is being sought, including a statement of the reasons for requesting the ex-

emption from the standard or standards.

c. Identification of a method for periodic demonstration that student achievement will not be lessened by the granting of the exemption.

The director shall develop a procedure for application for exemption and receipt, review, and evaluation of nonpublic school and public school district requests, including but not limited to development of criteria for the granting or denying of requests for exemptions and a time line for the submission, review, and granting or denying of requests for exemption from one or more standards.

48. Develop and administer, with the cooperation of the commission of veterans affairs, a program which shall be known as operation recognition. The purpose of the program is to award high school diplomas to veterans of World War I, World War II, and the Korean and Vietnam conflicts who left high school prior to graduation to enter United States military service. The department and the commission shall jointly develop an application procedure, distribute applications, and publicize the program to school districts, accredited nonpublic schools, county commissions of veteran affairs, veterans organizations, and state, regional, and local media. All honorably discharged veterans who are residents or former residents of the state; who served at any time between April 6, 1917, and November 11, 1918, at any time between September 16, 1940, and December 31, 1946, at any time between June 25, 1950, and January 31, 1955, or at any time between February 28, 1961, and May 5, 1975, all dates inclusive; and who did not return to school and complete their education after the war or conflict shall be eligible to receive a diploma. Diplomas may be issued posthumously. Upon approval of an application, the department shall issue an honorary high school diploma for an eligible veteran. The diploma shall indicate the veteran's school of attendance. The department and the commission shall work together to provide school districts, schools, communities, and county commissions of veteran affairs with information about hosting a diploma ceremony on or around Veterans Day. The diploma shall be mailed to the veteran or, if the veteran is deceased, to the veteran's family.

49. Reconcile, with the assistance of the community colleges, audited financial statements and the financial data submitted to the department. The reconciliation shall include an analysis of funding by funding source.

50. Develop core knowledge and skill criteria, based upon the Iowa teaching standards, for the evaluation, the advancement, and for teacher career development purposes pursuant to chapter 284. The criteria shall further define the characteristics of quality teaching as established by the Iowa teaching standards. The director, in consultation with the board of educational examiners, shall also develop a transition plan for imple-

mentation of the career development standards developed pursuant to section 256.7, subsection 25, with regard to licensure renewal requirements. The plan shall include a requirement that practitioners be allowed credit for career development completed prior to implementation of the career development standards developed pursuant to section 256.7, subsection 25.

51. Disburse, transfer, or receive funds as authorized or required under federal or state law or regulation in a manner that utilizes electronic transfer of the funds whenever possible.

52. Develop and implement a comprehensive management information system designed for the purpose of establishing standardized electronic data collections and reporting protocols that facilitate compliance with state and federal reporting requirements, improve school-to-school and district-to-district information exchanges, and maintain the confidentiality of individual student and staff data. The system shall provide for the electronic transfer of individual student records between schools, districts, postsecondary institutions, and the department. The director may establish, to the extent practicable, a uniform coding and reporting system, including a statewide uniform student identification system.

2003 Acts, ch 145, §222; 2003 Acts, ch 180, §3, 4  
Subsections 4 and 50 amended  
NEW subsection 52

### **256.12 Sharing instructors and services.**

1. The director, when necessary to realize the purposes of this chapter, shall approve the enrollment in public schools for specified courses of students who also are enrolled in private schools, when the courses in which they seek enrollment are not available to them in their private schools, provided the students have satisfactorily completed prerequisite courses, if any, or have otherwise shown equivalent competence through testing. Courses made available to students in this manner shall be considered as compliance by the private schools in which the students are enrolled with any standards or laws requiring private schools to offer or teach the courses.

2. This section does not deprive the respective boards of public school districts of any of their legal powers, statutory or otherwise, and in accepting the specially enrolled students, each of the boards shall prescribe the terms of the special enrollment, including but not limited to scheduling of courses and the length of class periods. In addition, the board of the affected public school district shall be given notice by the department of its decision to permit the special enrollment not later than six months prior to the opening of the affected public school district's school year, except that the board of the public school district may waive the notice requirement. School districts and area education agency boards shall make public school services, which shall include special edu-

cation programs and services and may include health services, services for remedial education programs, guidance services, and school testing services, available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students. However, services that are made available shall be provided on neutral sites, or in mobile units located off the nonpublic school premises as determined by the boards of the school districts and area education agencies providing the services, and not on nonpublic school property, except for health services, services funded by Title I of the federal Elementary and Secondary Education Act of 1965, diagnostic services for speech, hearing, and psychological purposes, and assistance with physical and communication needs of students with physical disabilities, and services of an educational interpreter, which may be provided on nonpublic school premises, with the permission of the lawful custodian.

Students enrolled in nonpublic schools who receive services pursuant to this subsection shall be weighted at the level provided for in section 256B.9, subsection 1.

A local school district providing services pursuant to this subsection shall submit an accounting to the department of education by August 1 following the school year for the actual costs of the special education programs and services provided. The department shall review and approve or modify the accounting by September 1 and shall notify the department of administrative services of the approved accounting amount. The department of administrative services shall adjust the September payment to the local school district for the next fiscal year by the difference between the amount generated by the weighting for the provision of services to nonpublic school students, as provided in this subsection, and the amount of the actual costs as reflected in the local school district's accounting. Any amount paid by the department of administrative services shall be deducted monthly from the state foundation aid paid under section 257.16 during that fiscal year to all school districts in the state. The portion of the total amount of the approved accounting amount that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year.

2003 Acts, ch 145, §286  
Terminology change applied

#### **256.18 Character education policy.**

1. It is the policy of the general assembly that Iowa's schools be the best and safest possible. To that end, each school is encouraged to instill the highest character and academic excellence in each student, in close cooperation with the student's parents, and with input from the community and

educators.

Schools should make every effort, formally and informally, to stress character qualities that will maintain a safe and orderly learning environment, and that will ultimately equip students to be model citizens. These qualities may include caring, civic virtue and citizenship, justice and fairness, respect, responsibility, trustworthiness, giving, honesty, self-discipline, respect for and obedience to the law, citizenship, courage, initiative, commitment, perseverance, kindness, compassion, service, loyalty, patience, the dignity and necessity of hard work, and any other qualities deemed appropriate by a school.

2. The department of education shall assist schools in accessing financial and curricular resources to implement programs stressing these character qualities. Schools are encouraged to use their existing resources to implement programs stressing these qualities. Whenever possible, the department shall develop partnerships with schools, nonprofit organizations, or an institution of higher education, or with a consortium of two or more of those entities, to design and implement character education programs that may be integrated into classroom instruction and may be carried out with other educational reforms.

3. The department of education shall report to the state board and to the general assembly regarding the success of any character education initiative.

2003 Acts, ch 180, §6  
Subsection 2, unnumbered paragraph 2 stricken

#### **256.18A Service learning.**

The board of directors of a school district or the authorities in charge of a nonpublic school may require a certain number of service learning units as a condition for the inclusion of a service learning endorsement on a student's diploma or as a condition of graduation from the district or school. For purposes of this paragraph, "service learning" means a method of teaching and learning which engages students in solving problems and addressing issues in their school or greater community as part of the academic curriculum.

2003 Acts, ch 27, §1  
NEW section

#### **256.19 Pilot projects to improve instructional programs.**

For fiscal years in which moneys are appropriated by the general assembly for the purpose of conducting pilot projects as approved by the state board of education to improve school district instructional programs, the state board of education shall notify the department of administrative services of the amounts necessary for each pilot project in order to reimburse the school districts for costs related to the approved pilot projects.

2003 Acts, ch 145, §286  
Terminology change applied

### 256.20 Year around schools.

Pursuant to section 279.10, subsection 1, relating to the maintenance of school during an entire year, the board of directors of a school district may request approval from the state board of education for a pilot project for a year around three semester school year.

The application shall describe the anticipated additional costs to the school district and the benefits to be gained from the three semester school year. Students would not be required to attend school more than two semesters each school year.

Participation in a pilot project shall not modify provisions of a master contract negotiated between a school district and a certified bargaining unit pursuant to chapter 20 unless mutually agreed upon.

If moneys are appropriated by the general assembly for funding the costs of pilot projects under this section, the state board of education shall notify the department of administrative services of the amounts to be paid to each school district with an approved pilot project.

2003 Acts, ch 145, §286  
Terminology change applied

### 256.39 Career pathways program.

1. If the general assembly appropriates moneys for the establishment of a career pathways program, the department of education shall develop a career pathways grant program, criteria for the formation of ongoing career pathways consortia in each merged area, and guidelines and a process to be used in selecting career pathways consortium grant recipients, including a requirement that grant recipients shall provide matching funds or match grant funds with in-kind resources on a dollar-for-dollar basis. A portion of the moneys appropriated by the general assembly shall be made available to schools to pay for the issuance of employability skills assessments to public or nonpublic school students. An existing partnership or organization, including a regional school-to-work partnership, that meets the established criteria, may be considered a consortium for grant application purposes. One or more school districts may be considered a consortium for grant application purposes, provided the district can demonstrate the manner in which a community college, area education agency, representatives from business and labor organizations, and others as determined within the region will be involved. Existing school-to-work partnerships are encouraged to assist the local consortia in developing a plan and budget. The department shall provide assistance to consortia in planning and implementing career pathways program efforts.

2. To be eligible for a career pathways grant, a career pathways consortium shall develop a career pathways program that includes, but is not limited to, the following:

a. Measure the employability skills of stu-

dents. Employability skills shall include, but are not limited to, reading for information, applied mathematics, listening, and writing.

b. Curricula designed to integrate academic and work-based learning to achieve high employability skills by all students related to career pathways. The curricula shall be designed through the cooperative efforts of secondary and postsecondary education professionals, business professionals, and community services professionals.

c. Staff development to implement the high-standard curriculum. These efforts may include team teaching techniques that utilize expertise from partnership businesses and postsecondary institutions.

3. In addition to the provisions of subsection 2, a career pathways program may include, but is not limited to, the following:

a. Career guidance and exploration for students.

b. Involvement and recognition of business, labor, and community organizations as partners in the career pathways program.

c. Provision for program accountability.

d. Encouragement of team teaching within the school or in partnership with postsecondary schools, and business, labor, community, and non-profit organizations.

e. Service learning opportunities for students.

4. Business, labor, and community organizations are encouraged to market the career pathways program to the local community and provide students with mentors, shadow professionals, speakers, field trip sites, summer jobs, internships, and job offers for students who graduate with high performance records. Students are encouraged to volunteer their time to community organizations in exchange for workplace learning opportunities that do not displace current employees.

5. In developing career pathways program efforts, each consortium shall make every effort to cooperate with the juvenile courts, the department of economic development, the department of workforce development, the department of human services, and the new Iowa schools development corporation.

6. The department of education shall direct and monitor the progress of each career pathways consortium in developing career pathways programs. By January 15, 1998, the department shall submit to the general assembly any findings and recommendations of the career pathways consortia, along with the department's recommendations for specific career pathways program efforts and for appropriate funding levels to implement and sustain the recommended programs.

7. Notwithstanding section 8.33, unencumbered or unobligated funds remaining on June 30 of the fiscal year for which the funds were appropriated shall not revert but shall be available for

expenditure for the following fiscal year for the purposes of this section.

2003 Acts, ch 180, §7  
Subsection 8 stricken

**256.52 Commission of libraries established — duties of commission and state librarian — state library fund created.**

1. The state commission of libraries consists of one member appointed by the supreme court, the director of the department of education, or the director's designee, and six members appointed by the governor to serve four-year terms beginning and ending as provided in section 69.19. Of the governor's appointees, one member shall be from the medical profession and five members selected at large. Not more than three of the members appointed by the governor shall be of the same gender. The members shall be reimbursed for their actual expenditures necessitated by their official duties. Members may also be eligible for compensation as provided in section 7E.6.

2. The commission shall elect one of its members as chairperson. The commission shall meet at the time and place specified by call of the chairperson. Five members are a quorum for the transaction of business.

3. The commission shall appoint the state librarian who shall administer the division, and serve at the pleasure of the commission.

The state librarian shall do all of the following:

a. Direct and organize the activities of the division.

b. Submit a biennial report to the governor on the activities and an evaluation of the division and its programs and policies.

c. Control all property of the division. The state librarian may dispose of, through sale, conveyance, or exchange, any library materials that may be obsolete or worn out or that may no longer be needed or appropriate to the mission of the state library of Iowa. These materials may be sold by the state library directly or the library may sell the materials by consignment with an outside entity. A state library fund is created in the state treasury. Proceeds from the sale of the library materials shall be remitted to the treasurer of state and credited to the state library fund and shall be used for the purchase of books and other library materials. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

d. Appoint and approve the technical, professional, excepting the medical librarian and the law librarian, secretarial, and clerical staff necessary to accomplish the purposes of the division subject to chapter 8A, subchapter IV.

e. Perform other duties imposed by law.

4. The commission shall adopt rules under chapter 17A for carrying out the responsibilities of the division.

5. The commission shall receive and approve

the budget and unified plan of service submitted by the division of libraries and information services.

2003 Acts, ch 145, §223  
Subsection 3, paragraph d amended

**256.53 State publications.**

Upon issuance of a state publication in any format, a state agency shall deposit with the division at no cost to the division, seventy-five copies of the publication or a lesser number if specified by the division, except as provided in section 2A.6.

2003 Acts, ch 35, §41, 49  
Section amended

**256.54 State library — medical and law libraries.**

The state library includes, but is not limited to, a medical library, a law library, and the state data center.

1. The medical library shall be administered by a medical librarian, appointed by the director subject to chapter 8A, subchapter IV, who shall do all of the following:

a. Operate the medical library which shall always be available for free use by the residents of Iowa under rules the commission adopts.

b. Give no preference to any school of medicine and shall secure books, periodicals, and pamphlets for every legally recognized school of medicine without discrimination.

c. Perform other duties imposed by law or prescribed by the rules of the commission.

2. The law library shall be administered by a law librarian appointed by the director subject to chapter 8A, subchapter IV, who shall do all of the following:

a. Operate the law library which shall be maintained in the state capitol or in rooms convenient to the state supreme court and which shall be available for free use by the residents of Iowa under rules the commission adopts.

b. Maintain, as an integral part of the law library, reports of various boards and agencies, copies of bills, journals, other information relating to current or proposed legislation, and copies of the Iowa administrative bulletin and Iowa administrative code and any publications incorporated by reference in the bulletin or code.

c. Arrange to make exchanges of all printed material published by the states and the government of the United States.

d. Perform other duties imposed by law or by the rules of the commission.

2003 Acts, ch 145, §224, 225  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 2, unnumbered paragraph 1 amended

**256.67A Insurance eligibility.**

Personnel employed by a library service area shall be considered state employees for purposes of eligibility for receiving employee health and dental insurance as provided to state employees

by the department of administrative services. If a library service area elects to participate in a state employee health and dental insurance program, the library service area shall continue to pay the costs of employee participation in a program from

funds appropriated for purposes of the library service areas by the general assembly.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 256A

### CHILD DEVELOPMENT ASSISTANCE

#### 256A.3 Duties of council.

The child development coordinating council shall:

1. Develop a definition of at-risk children for the purposes of this chapter. The definition shall include income, family structure, the child's level of development, and availability or accessibility for the child of a head start or other child care program as criteria.

2. Establish minimum guidelines for comprehensive early child development services for at-risk three-year- and four-year-old children. The guidelines shall reflect current research findings on the necessary components for cost-effective child development services.

3. At least biennially, develop an inventory of child development services provided to at-risk three-year- and four-year-old children in this state and identify the number of children receiving and not receiving these services, the types of programs under which the services are received, the degree to which each program meets the council's minimum guidelines for a comprehensive program, and the reasons children not receiving the services are not being served. The council is not required to conduct independent research in developing the inventory, but shall determine information needs necessary to provide a more complete inventory.

4. Make recommendations to the department of education and the general assembly regarding appropriate curricula and staff qualifications and training for early elementary education, coordination of the curricula with child development programs, and the development of an at-risk children definition for use in school-district-sponsored early elementary and before and after school child care programs.

5. Subject to the availability of funds appropriated or otherwise available for the purpose of providing child development services, award grants for programs that provide new or additional child development services to at-risk children.

In awarding program grants to an agency or individual, the council shall consider the following:

*a.* The quality of the staff and staff background in child development services.

*b.* The degree to which the program is or will be integrated with existing community resources and has the support of the local community.

*c.* The ability of the program to provide for child care in addition to child development services for families needing full-day child care.

*d.* A staff-to-children ratio within the guidelines established under subsection 2, but not less than one staff member per eight children.

*e.* The degree to which the program involves and works with the parents, and includes home visits, instruction for parents on parenting skills, on enhancement of skills in providing for their children's learning and development, and the physical, mental, and emotional development of children, and experiential education.

*f.* The manner in which health, medical, dental, and nutrition services are incorporated into the program.

*g.* The degree to which the program complements existing programs and services for at-risk three-year- and four-year-old children available in the area, including other child care services, services provided through the school district, and services available through area education agencies.

*h.* The degree to which the program can be monitored and evaluated to determine its ability to meet its goals.

*i.* The provision of transportation or other auxiliary services that may be necessary for families to participate in the program.

*j.* The provision of staff training and development, and staff compensation sufficient to assure continuity.

Program grants funded under this subsection may integrate children not meeting at-risk criteria into the program and shall establish a fee for participation in the program in the manner provided in section 279.49, but grant funds shall not be used to pay the costs for those children.

6. Encourage the submission of grant requests from all potential providers of child development services and shall be flexible in evaluating grants, recognizing that different types of programs may be suitable for different locations in the state. However, requests for grants must contain a procedure for evaluating the effectiveness of the program and accounting procedures for monitoring the expenditure of grant moneys.

The council shall seek to use performance-based measures to evaluate programs. Not more than five percent of any state funds appropriated for

child development purposes may be used for administration and evaluation.

7. Encourage the establishment of regional councils designed to facilitate the development on a regional basis of programs for at-risk three-year- and four-year-old children.

8. Annually, submit recommendations to the governor and the general assembly on the need for investment in child development services in the state.

9. Subject to a decision by the council to initiate the programs, develop criteria for and award grants under section 279.51, subsection 2.

10. Encourage the establishment of programs that will enhance the skills of parents in parenting and in providing for the learning and development of their children.

2003 Acts, ch 108, §45  
Subsection 11 stricken

#### **256A.4 Family support programs.**

1. The board of directors of each school district may develop and offer a program which provides outreach and incentives for the voluntary participation of expectant parents and parents of children in the period of life from birth through age five, who reside within district boundaries, in educational family support experiences designed to assist parents in learning about the physical, mental, and emotional development of their children. A board may contract with another school district or public or private nonprofit agency for provision of the approved program or program site.

A family support program shall meet multicultural gender fair guidelines. The program shall encourage parents to be aware of practices that may affect equitable development of children. The program shall include parents in the planning, implementation, and evaluation of the program. A program shall be designed to meet the needs of the residents of the participating district and may use unique approaches to provide for those needs. The goals of a family support program shall include, but are not limited to, the following:

*a.* Family involvement as a key component of school improvement with an emphasis on communication and active family participation in family support programming.

*b.* Family participation in the planning and decision-making process for the program and encouragement of long-term parental involvement in their children's education.

*c.* Meeting the educational and developmental needs of expectant parents and parents of young children.

*d.* Developmentally appropriate activities for children that include those skills necessary for adaptation to both the home and school environments.

2. The department of education shall develop guidelines for family support programs. Program

components may include, but are not limited to, all of the following:

*a.* Instruction, techniques, and materials designed to educate parents about the physical, mental, character, and emotional development of children.

*b.* Instruction, techniques, and materials designed to enhance the skills of parents in assisting in their children's learning and development.

*c.* Assistance to parents about learning experiences for both children and parents.

*d.* Activities, such as developmental screenings, designed to detect children's physical, mental, emotional, or behavioral problems that may cause learning problems and referrals to appropriate agencies, authorities, or service providers.

*e.* Activities and materials designed to encourage parents' and children's self-esteem and to enhance parenting skills and both parents' and children's appreciation of the benefits of education.

*f.* Information on related community resources, programs, or activities.

*g.* Role modeling and mentoring techniques for families of children who meet one or more of the criteria established for the definition of at-risk children by the child development coordinating council.

3. Family support programs shall be provided by family support program educators who have completed a minimum of thirty clock hours of an approved family support preservice or in-service training program and meet one of the following requirements:

*a.* The family support program educator is licensed in elementary education, early childhood education, early childhood special education, home economics, or consumer and homemaking education, or is licensed or certified in occupational child care services and has demonstrated an ability to work with young children and their parents.

*b.* The family support program educator has achieved child development associate recognition in early childhood education, has completed programming in child development and nursing, and has demonstrated an ability to work with young children and their parents.

*c.* The family support program educator has completed sixty college credit hours and possesses two years of experience in a program working with young children and their parents.

*d.* The family support program educator possesses five years of experience in a program working with young children and their parents.

4. Each district shall maintain a separate account within the district budget for moneys allocated for family support programs. A district may receive moneys from state and federal sources, and may solicit funds from private sources, for deposit into the account.

5. A district shall coordinate a family support program with district special education and vocational education programs and with any related services or programs provided by other state, fed-

eral, or private nonprofit agencies.

2003 Acts, ch 180, §8  
Legislative intent; 92 Acts, ch 1158, §1  
Subsection 1, unnumbered paragraph 1 amended

## CHAPTER 256D

### IOWA EARLY INTERVENTION BLOCK GRANT PROGRAM

Future repeal of chapter; see §256D.9

#### 256D.4 Program allocation.

1. For each fiscal year in the fiscal period beginning July 1, 1999, and ending June 30, 2001, moneys appropriated pursuant to section 256D.5, subsections 1 or 2, shall be allocated to school districts in accordance with the following formula:

*a.* Fifty percent of the allocation shall be based upon the proportion that the kindergarten through grade three enrollment of a district bears to the sum of the kindergarten through grade three enrollments of all school districts in the state as reported for the base year.

*b.* Fifty percent of the allocation shall be based upon the proportion that the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three of a school district bears to the sum of the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three in all school districts in the state for the base year.

2. Moneys appropriated pursuant to section 256D.5, subsection 3, shall be allocated to school districts as follows:

*a.* Allocation of the sum of twenty million dollars shall be based upon the proportion that the kindergarten through grade three enrollment of a district bears to the sum of the kindergarten through grade three enrollments of all school districts in the state as reported for the base year.

*b.* Allocation of the sum of ten million dollars shall be based upon the proportion that the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three of a school district bears to the sum of the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, in grades one through three in all school districts in the state for the base year.

3. For each year in which an appropriation is made to the Iowa early intervention block grant program, the department of education shall notify the department of administrative services of the amount of the allocation to be paid to each school district as provided in subsections 1 and 2. The allocation to each school district shall be made in one payment on or about October 15 of the fiscal year for which the appropriation is made, taking into consideration the relative budget and cash position of the state resources. Moneys received under this section shall not be commingled with state aid payments made under section 257.16 to a school district and shall be accounted for by the local school district separately from state aid payments. Payments made to school districts under this section are miscellaneous income for purposes of chapter 257. A school district shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section. A school district shall certify to the department of education that moneys received under this section were used to supplement, not supplant, moneys otherwise received and used by the school district.

4. For purposes of this section, unless the context otherwise requires, "*kindergarten through grade three enrollment*" means the enrollment as reported in the basic educational data survey for the base year.

2003 Acts, ch 145, §286; 2003 Acts, ch 179, §33  
Terminology change applied  
Subsection 2, unnumbered paragraph 1 amended

#### 256D.5 Appropriations.

There is appropriated from the general fund of the state to the department of education, the following amounts, for the following fiscal years, for the Iowa early intervention block grant program:

1. For the fiscal year beginning July 1, 1999, and ending June 30, 2000, the sum of ten million dollars.

2. For the fiscal year beginning July 1, 2000, and ending June 30, 2001, the sum of twenty million dollars.

3. For each fiscal year of the fiscal period beginning July 1, 2001, and ending June 30, 2004, the sum of thirty million dollars.

2003 Acts, ch 179, §34  
Subsection 3 amended

**256D.9 Future repeal.**

This chapter is repealed effective July 1, 2004.

2003 Acts, ch 180, §9, 71  
Section amended

**CHAPTER 256F**

**CHARTER SCHOOLS**

Chapter applies to the establishment of charter schools effective upon department of education's initiation of implementation under §256F.3  
Code editor to be notified by department upon initiating implementation; 2003 Acts, ch 79, §7, 8

**256F.1 Authorization and purpose.**

1. Charter schools shall be part of the state's program of public education.

2. A charter school may be established by creating a new school within an existing public school or converting an existing public school to charter status.

3. The purpose of a charter school established pursuant to this chapter shall be to accomplish the following:

- a. Improve student learning.
- b. Increase learning opportunities for students.
- c. Encourage the use of different and innovative methods of teaching.
- d. Require the measurement of learning outcomes and create different and innovative forms of measuring outcomes.
- e. Establish new forms of accountability for schools.
- f. Create new professional opportunities for teachers and other educators, including the opportunity to be responsible for the learning program at the school site.

2002 Acts, ch 1124, §1, 16; 2003 Acts, ch 79, §7, 8  
NEW section

**256F.2 Definitions.**

1. "Advisory council" means a council appointed by the school board of directors of a charter school pursuant to section 256F.5, subsection 4.

2. "Attendance center" means a public school building that contains classrooms used for instructional purposes for elementary, middle, or secondary school students.

3. "Charter school" means a state public charter school operated as a pilot program.

4. "Department" means the department of education.

4A. "Pilot program" means a pilot program created under this chapter that creates a new school within an existing public school or converts an existing public school to charter status in accordance with this chapter.

5. "School board" means a board of directors

regularly elected by the registered voters of a school district.

6. "State board" means the state board of education.

2002 Acts, ch 1124, §2, 16; 2003 Acts, ch 79, §7, 8  
NEW section

**256F.3 Pilot program — application.**

1. The state board of education shall apply for a federal grant under Pub. L. No. 107-110, cited as the federal No Child Left Behind Act of 2001 (Title V, Part B, Subpart 1), for purposes of providing financial assistance for the planning, program design, and initial implementation of public charter schools. The department shall initiate a pilot program to test the effectiveness of charter schools and shall implement the applicable provisions of this chapter.

2. To receive approval to establish a charter school in accordance with this chapter, the principal, teachers, or parents or guardians of students at an existing public school shall submit an application to the school board to convert an existing attendance center to a charter school. An attendance center shall not enter into a charter school contract with a school district under this chapter unless the attendance center is located within the school district. The application shall demonstrate the support of at least fifty percent of the teachers employed at the school on the date of the submission of the application and fifty percent of the parents or guardians voting whose children are enrolled at the school, provided that a majority of the parents or guardians eligible to vote participate in the ballot process, according to procedures established by rules of the state board. A parent or guardian voting in accordance with this subsection must be a resident of this state.

3. A school board shall receive and review all applications for converting an existing building or creating a new building for a charter school. Applications received on or before October 1 of a calendar year shall be considered for charter schools to be established at the beginning of the school district's next school year or at a time agreed to by the applicant and the school board. However, a school

board may receive and consider applications after October 1 at its discretion.

4. A school board shall by a majority vote approve or deny an application no later than sixty calendar days after the application is received. An application approved by a school board and subsequently approved by the state board pursuant to subsection 6 shall constitute, at a minimum, an agreement between the school board and the charter school for the operation of the charter school. A school board that denies an application for a conversion to a charter school shall provide notice of denial to the applicant in writing within thirty days after board action. The notice shall specify the exact reasons for denial and provide documentation supporting those reasons.

5. An applicant may appeal school board denial of the applicant's charter school application to the state board in accordance with the procedures set forth in chapter 290. The state board shall affirm, modify, or reverse the school board's decision on the basis of the information provided in the application indicating the ability and willingness of the proposed charter school to meet the requirements of section 256F.1, subsection 3, and section 256F.4.

6. Upon approval of an application for the proposed establishment of a charter school, the school board shall submit an application for approval to establish the charter school to the state board in accordance with section 256F.5. The application shall set forth the manner in which the charter school will provide special instruction, in accordance with section 280.4, to students who are limited English proficient. The application shall set forth the manner in which the charter school will comply with federal and state laws and regulations relating to the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, and chapter 283A. The state board shall approve only those applications that meet the requirements specified in section 256F.1, subsection 3, and sections 256F.4 and 256F.5. The state board may deny an application if the state board deems that approval of the application is not in the best interest of the affected students. The state board shall approve not more than ten charter school applications. The state board shall approve not more than one charter school application per school district. However, if the state board receives ten or fewer applications as of June 30, 2003, and two or more of the applications received by the state board by that date are submitted by one school district, the state board may approve any or all of the applications submitted by the school district. The state board shall adopt rules in accordance with chapter 17A for the implementation of this chapter.

7. If federal rules or regulations relating to the distribution or utilization of federal funds allocated to the department pursuant to this section are adopted that are inconsistent with the provi-

sions of this chapter, the state board shall adopt rules to comply with the requirements of the federal rules or regulations. The state board shall identify inconsistencies between federal and state rules and regulations as provided in this subsection and shall submit recommendations for legislative action to the chairpersons and ranking members of the senate and house standing committees on education at the next meeting of the general assembly.

2002 Acts, ch 1124, §3, 16; 2003 Acts, ch 79, §1, 7, 8  
NEW section

#### **256F.4 General operating requirements.**

1. Within fifteen days after approval of a charter school application submitted in accordance with section 256F.3, subsection 2, a school board shall report to the department the name of the charter school applicant, the proposed charter school location, and its projected enrollment.

2. Although a charter school may elect to comply with one or more provisions of statute or administrative rule, a charter school is exempt from all statutes and rules applicable to a school, a school board, or a school district, except that the charter school shall do all of the following:

a. Meet all applicable federal, state, and local health and safety requirements and laws prohibiting discrimination on the basis of race, creed, color, sex, national origin, religion, ancestry, or disability. A charter school shall be subject to any court-ordered desegregation plan in effect for the school district at the time the school's charter application is approved.

b. Operate as a nonsectarian, nonreligious public school.

c. Be free of tuition and application fees to Iowa resident students between the ages of five and twenty-one years.

d. Be subject to and comply with chapters 216 and 216A relating to civil and human rights.

e. Provide special education services in accordance with chapter 256B.

f. Be subject to the same financial audits, audit procedures, and audit requirements as a school district. The audit shall be consistent with the requirements of sections 11.6, 11.14, 11.19, 256.9, subsection 19, and section 279.29, except to the extent deviations are necessary because of the program at the school. The department, the auditor of state, or the legislative services agency may conduct financial, program, or compliance audits.

g. Be subject to and comply with chapter 284 relating to the student achievement and teacher quality program. A charter school that complies with chapter 284 shall receive state moneys or be eligible to receive state moneys as provided in chapter 284 as if it did not operate under a charter.

h. Be subject to and comply with chapters 20 and 279 relating to contracts with and discharge of teachers and administrators.

i. Be subject to and comply with the provisions

of chapter 285 relating to the transportation of students.

*j.* Meetings of the advisory council are subject to the provisions of chapters 21 and 22.

3. A charter school shall not discriminate in its student admissions policies or practices on the basis of intellectual or athletic ability, measures of achievement or aptitude, or status as a person with a disability. However, a charter school may limit admission to students who are within a particular range of ages or grade levels or on any other basis that would be legal if initiated by a school district. Enrollment priority shall be given to the siblings of students enrolled in a charter school.

4. A charter school shall enroll an eligible resident student who submits a timely application unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, students must be accepted by lot. A charter school may enroll an eligible nonresident student who submits a timely application in accordance with the student admission policy established pursuant to section 256F.5, subsection 1. If the charter school enrolls an eligible nonresident student, the charter school shall notify the school district and the sending district not later than March 1 of the preceding school year. Transportation for the student shall be in accordance with section 282.18, subsection 10. The sending district shall make payments to the charter school in the manner required under section 282.18, subsection 7.

5. A charter school shall provide instruction for at least the number of days required by section 279.10, subsection 1, or shall provide at least the equivalent number of total hours.

6. Notwithstanding subsection 2, a charter school shall meet the requirements of section 256.7, subsection 21.

7. A charter school shall be considered a part of the school district in which it is located for purposes of state school foundation aid pursuant to chapter 257.

8. A charter school may enter into contracts in accordance with chapter 73A.

2002 Acts, ch 1124, §4, 16; 2002 Acts, ch 1175, §81; 2003 Acts, ch 35, §46, 49; 2003 Acts, ch 79, §2, 7, 8

See Code editor's note to §2.9

NEW section

Terminology change applied

#### **256F.5 Application — definition.**

An application to the state board for the approval of a charter school shall include, but shall not be limited to, a description of the following:

1. The method for admission to the charter school.

2. The mission, purpose, innovation, and specialized focus of the charter school.

3. Performance goals and objectives in addition to those required under section 256.7, subsection 21, by which the school's student achievement

shall be judged, the measures to be used to assess progress, and the current baseline status with respect to the goals.

4. The method for appointing or forming an advisory council for the charter school. The membership of an advisory council appointed or formed in accordance with this chapter shall not include more than one member of the school board.

5. Procedures for teacher evaluation and professional development for teachers and administrators.

6. The charter school governance and bylaws.

7. The financial plan for the operation of the school including, at a minimum, a listing of the support services the school district will provide, and the charter school's revenues, budgets, and expenditures.

8. The educational program and curriculum, instructional methodology, and services to be offered to students.

9. The number and qualifications of teachers and administrators to be employed.

10. The organization of the school in terms of ages of students or grades to be taught along with an estimate of the total enrollment of the school.

11. The provision of school facilities.

12. A statement indicating how the charter school will meet the requirements of section 256F.1, subsection 3; section 256F.4, subsection 2, paragraph "a"; and section 256F.4, subsection 3.

13. Assurance of the assumption of liability by the charter school.

14. The types and amounts of insurance coverage to be obtained by the charter school.

15. A plan of operation to be implemented if the charter school revokes or fails to renew its contract.

16. The means, costs, and plan for providing transportation for students attending the charter school.

17. The specific statutes, administrative rules, and school board policies with which the charter school does not intend to comply.

2002 Acts, ch 1124, §5, 16; 2003 Acts, ch 79, §7, 8

NEW section

#### **256F.6 Contract.**

1. An approved charter school application shall constitute an agreement, the terms of which shall, at a minimum, be the terms of a four-year enforceable, renewable contract between the school board and the state board. The contract shall include an operating agreement for the operation of the charter school. The terms of the contract may be revised at any time with the approval of both the state board and the school board, whether or not the stated provisions of the contract are being fulfilled. The charter school shall provide parents and guardians of students enrolled in the charter school with a copy of the charter school application approved pursuant to section 256F.5.

2. The contract shall outline the reasons for revocation or nonrenewal of the charter.

3. The state board of education shall provide by rule for the ongoing review of a school board's compliance with a contract entered into in accordance with this chapter.

2002 Acts, ch 1124, §6, 16; 2003 Acts, ch 79, §7, 8  
NEW section

#### **256F.7 Employment and related matters.**

1. A charter school shall employ or contract with necessary teachers and administrators, as defined in section 272.1, who hold a valid license with an endorsement for the type of service for which the teacher or administrator is employed.

2. The school board, in consultation with the advisory council, shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

3. Employees of a charter school shall be considered employees of the school district.

2002 Acts, ch 1124, §7, 16; 2003 Acts, ch 79, §7, 8  
NEW section

#### **256F.8 Procedures for revocation or non-renewal of contract.**

1. A contract for the establishment of a charter school may be revoked by the state board or the school board that established the charter school if the appropriate board determines that one or more of the following occurred:

a. Failure of the charter school to abide by and meet the provisions set forth in the contract, including educational goals.

b. Failure of the charter school to comply with all applicable law.

c. Failure of the charter school to meet generally accepted public sector accounting principles.

d. The existence of one or more other grounds for revocation as specified in the contract.

2. The decision by a school board to revoke or to fail to take action to renew a charter school contract is subject to appeal under procedures set forth in chapter 290.

3. A school board considering revocation or nonrenewal of a charter school contract shall notify the advisory council, the parents or guardians of the students enrolled in the charter school, and the teachers and administrators employed by the charter school, sixty days prior to revoking or the date by which the contract must be renewed, but not later than the last day of classes in the school year.

4. If the state board determines that a charter school is in substantial violation of the terms of the contract, the state board shall notify the school board and the advisory council of its intention to revoke the contract at least sixty days prior to revoking a contract and the school board shall assume oversight authority, operational authority, or both oversight and operational authority. The notice shall state the grounds for the proposed ac-

tion in writing and in reasonable detail. The school board may request in writing an informal hearing before the state board within fourteen days of receiving notice of revocation of the contract. Upon receiving a timely written request for a hearing, the state board shall give reasonable notice to the school board of the hearing date. The state board shall conduct an informal hearing before taking final action. Final action to revoke a contract shall be taken in a manner least disruptive to students enrolled in the charter school. The state board shall take final action to revoke or approve continuation of a contract by the last day of classes in the school year. If the final action to revoke a contract under this section occurs prior to the last day of classes in the school year, a charter school student may enroll in the resident district.

5. The decision of the state board to revoke a contract under this section is solely within the discretion of the state board and is final.

6. A school board revoking a contract or a school board or advisory council that fails to renew a contract under this chapter is not liable for that action to the charter school, a student enrolled in the charter school or the student's parent or guardian, or any other person.

7. In the case of a revocation or a nonrenewal of the charter, the school board is exempt from the state board's "Barker guidelines", as provided in 1 D.P.I. App. Dec. 145 (1977).

2002 Acts, ch 1124, §8, 16; 2003 Acts, ch 79, §7, 8  
NEW section

#### **256F.9 Procedures after revocation — student enrollment.**

If a charter school contract is revoked in accordance with this chapter, a nonresident student who attended the school, and any siblings of the student, shall be determined to have shown good cause as provided in section 282.18, subsection 16, and may submit an application to another school district according to section 282.18 at any time. Applications and notices required by section 282.18 shall be processed and provided in a prompt manner. The application and notice deadlines in section 282.18 do not apply to a nonresident student application under these circumstances.

2002 Acts, ch 1124, §9, 16; 2003 Acts, ch 79, §7, 8  
NEW section

#### **256F.10 Reports.**

1. A charter school shall report at least annually to the school board, advisory council, and the state board the information required by the school board, advisory council, or the state board. The reports are public records subject to chapter 22.

2. Not later than December 1, 2003, and annually thereafter, the state board shall submit a comprehensive report, with findings and recommendations, to the senate and house standing committees on education. The report shall evaluate the state's charter school programs generally, includ-

ing but not limited to, an evaluation of whether the pilot programs are fulfilling the purposes set forth in section 256F.4, subsection 2. The report also shall contain, for each charter school, a copy of the charter school's mission statement, attendance statistics and dropout rate, aggregate assessment test scores, projections of financial stability, the number and qualifications of teachers and admin-

istrators, and number of and comments on supervisory visits by the department of education.

2002 Acts, ch 1124, §10, 16; 2003 Acts, ch 79, §7, 8  
NEW section

**256F.11 Future repeal.**

This chapter is repealed effective July 1, 2011.

2002 Acts, ch 1124, §11, 16; 2003 Acts, ch 79, §3, 7, 8  
NEW section

CHAPTER 257

FINANCING SCHOOL PROGRAMS

**257.1 State school foundation program — state aid.**

1. *Program established.* A state school foundation program is established for the school year commencing July 1, 1991, and succeeding school years.

2. *State school foundation aid — foundation base.* For a budget year, each school district in the state is entitled to receive foundation aid, in an amount per pupil equal to the difference between the amount per pupil of foundation property tax in the district, and the combined foundation base per pupil or the combined district cost per pupil, whichever is less. However, if the amount of foundation aid received by a school district under this chapter is less than three hundred dollars per pupil, the district is entitled to receive three hundred dollars per pupil unless the receipt of three hundred dollars per pupil plus the per pupil amount raised by the foundation property tax exceeds the combined district cost per pupil of the district for the budget year. In that case, the district is entitled to receive an amount per pupil equal to the difference between the per pupil amount raised by the foundation property tax for the budget year and the combined district cost per pupil for the budget year.

For the budget year commencing July 1, 1999, and for each succeeding budget year the regular program foundation base per pupil is eighty-seven and five-tenths percent of the regular program state cost per pupil. For the budget year commencing July 1, 1991, and for each succeeding budget year the special education support services foundation base is seventy-nine percent of the special education support services state cost per pupil. The combined foundation base is the sum of the regular program foundation base and the special education support services foundation base.

For the budget year commencing July 1, 1999, the department of management shall add the amount of the additional budget adjustment computed in section 257.14, subsection 1, to the combined foundation base.

3. *Computations rounded.* In making computations and payments under this chapter, ex-

cept in the case of computations relating to funding of special education support services, media services, and educational services provided through the area education agencies, the department of management shall round amounts to the nearest whole dollar.

4. *Legislative review.* The provisions of this chapter shall be subject to legislative review at least every five years. The review shall be based upon a school finance formula status report containing the recommendations of a legislative interim committee appointed to conduct a review of the school finance formula, to be prepared with the assistance of the department of education, in association with the departments of management and revenue. The report shall include recommendations for school finance formula changes or revisions based upon demographic changes, enrollment trends, and property tax valuation fluctuations observed during the preceding five-year interval; an analysis of the operation of the school finance formula during the preceding five-year interval; and a summary of issues that have arisen since the previous review and potential approaches for their resolution. The first such report shall be submitted to the general assembly no later than January 1, 2005, with subsequent reports developed and submitted by January 1 at least every fifth year thereafter.

2003 Acts, ch 145, §286  
Terminology change applied

**257.3 Foundation property tax.**

1. *Amount of tax.* Except as provided in subsections 2 and 3, a school district shall cause to be levied each year, for the school general fund, a foundation property tax equal to five dollars and forty cents per thousand dollars of assessed valuation on all taxable property in the district. The county auditor shall spread the foundation levy over all taxable property in the district.

The amount paid to each school district for the tax replacement claim for industrial machinery, equipment and computers under section 427B.19A shall be regarded as property tax. The portion of the payment which is foundation prop-

erty tax shall be determined by applying the foundation property tax rate to the amount computed under section 427B.19, subsection 3, paragraph “a”, as adjusted by paragraph “d”, if any adjustment was made.

Replacement taxes under chapter 437A shall be regarded as property taxes for purposes of this chapter.

2. *Tax for reorganized and dissolved districts.*

a. Notwithstanding subsection 1, a reorganized school district shall cause a foundation property tax of four dollars and forty cents per thousand dollars of assessed valuation to be levied on all taxable property which, in the year preceding a reorganization, was within a school district affected by the reorganization as defined in section 275.1, or in the year preceding a dissolution was a part of a school district that dissolved if the dissolution proposal has been approved by the director of the department of education pursuant to section 275.55.

b. In succeeding school years, the foundation property tax levy on that portion shall be increased to the rate of four dollars and ninety cents per thousand dollars of assessed valuation the first succeeding year, five dollars and fifteen cents per thousand dollars of assessed valuation the second succeeding year, and five dollars and forty cents per thousand dollars of assessed valuation the third succeeding year and each year thereafter.

c. The foundation property tax levy reduction pursuant to this subsection shall be available if either of the following apply:

(1) In the year preceding the reorganization or dissolution, the school district affected by the reorganization or the school district that dissolved had a certified enrollment of fewer than six hundred pupils.

(2) In the year preceding the reorganization or dissolution, the school district affected by the reorganization or the school district that dissolved had a certified enrollment of six hundred pupils or greater, and entered into a reorganization or dissolution with one or more school districts with a certified enrollment of fewer than six hundred pupils. The amount of foundation property tax reduction received by a school district qualifying for the reduction pursuant to this subparagraph shall not exceed the highest reduction amount provided in paragraphs “a” and “b” received by any of the school districts with a certified enrollment of fewer than six hundred pupils involved in the reorganization pursuant to subparagraph (1) of this paragraph “c”.

d. For purposes of this section, a reorganized school district is one which absorbs at least thirty percent of the enrollment of the school district affected by a reorganization or dissolved during a dissolution and in which action to bring about a reorganization or dissolution is initiated by a vote of the board of directors or jointly by the affected

boards of directors to take effect on or after July 1, 2002, and on or before July 1, 2006. Each district which initiated, by a vote of the board of directors or jointly by the affected boards, action to bring about a reorganization or dissolution to take effect on or after July 1, 2002, and on or before July 1, 2006, shall certify the date and the nature of the action taken to the department of education by January 1 of the year in which the reorganization or dissolution takes effect.

3. *Railway corporations.* For purposes of section 257.1, the “*amount per pupil of foundation property tax*” does not include the tax levied under subsection 1 or 2 on the property of a railway corporation, or on its trustee if the corporation has been declared bankrupt or is in bankruptcy proceedings.

2003 Acts, ch 180, §10, 71  
Subsection 2 amended

**257.8 State percent of growth — allowable growth.**

1. *State percent of growth.* The state percent of growth for the budget year beginning July 1, 2003, is two percent. The state percent of growth for the budget year beginning July 1, 2004, is two percent. The state percent of growth for each subsequent budget year shall be established by statute which shall be enacted within thirty days of the submission in the year preceding the base year of the governor’s budget under section 8.21. The establishment of the state percent of growth for a budget year shall be the only subject matter of the bill which enacts the state percent of growth for a budget year.

2. *Allowable growth calculation.* The department of management shall calculate the regular program allowable growth for a budget year by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year and shall calculate the special education support services allowable growth for the budget year by multiplying the state percent of growth for the budget year by the special education support services state cost per pupil for the base year.

3. *Alternate allowable growth — gifted and talented programs.* Notwithstanding the calculation in subsection 2, the department of management shall calculate the regular program allowable growth for the budget year beginning July 1, 1999, by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year, and add to the resulting product thirty-eight dollars. For purposes of determining the amount of a budget adjustment as defined in section 257.14, for a school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to this subsection, thirty-eight dollars shall be subtracted from the school district’s regular program cost per pupil for the budget year beginning July 1, 1999,

prior to determining the amount of the adjustment.

4. *Alternate allowable growth — regular program state cost.* A school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to the provisions of subsection 3, shall calculate allowable growth pursuant to the provisions of subsection 2 for the school budget year beginning July 1, 2000, and succeeding budget years, utilizing a regular program state cost per pupil figure which incorporates the thirty-eight dollar increase in regular program allowable growth calculated for the budget year beginning July 1, 1999.

5. *Combined allowable growth.* The combined allowable growth per pupil for each school district is the sum of the regular program allowable growth per pupil and the special education support services allowable growth per pupil for the budget year, which may be modified as follows:

a. By the school budget review committee under section 257.31.

b. By the department of management under section 257.36.

6. *Alternate allowable growth — definitions.* For budget years beginning July 1, 2000, and subsequent budget years, references to the terms “allowable growth”, “regular program state cost per pupil”, and “regular program district cost per pupil” shall mean those terms as calculated for those school districts that calculated regular program allowable growth for the school budget year beginning July 1, 1999, with the additional thirty-eight dollars.

2003 Acts, ch 1, §1, 2  
Subsection 1 amended

#### **257.11 Supplementary weighting plan.**

1. *Regular curriculum.* Pupils in a regular curriculum attending all their classes in the district in which they reside, taught by teachers employed by that district, and having administrators employed by that district, are assigned a weighting of one.

2. *District-to-district sharing.*

a. In order to provide additional funds for school districts which send their resident pupils to another school district, which jointly employ and share the services of teachers under section 280.15, or which use the services of a teacher employed by another school district, a supplementary weighting plan for determining enrollment is adopted.

b. If the school budget review committee certifies to the department of management that the shared classes or teachers would otherwise not be implemented without the assignment of additional weighting, pupils attending classes in another school district, attending classes taught by a teacher who is employed jointly under section 280.15, or attending classes taught by a teacher who is employed by another school district are as-

signed a weighting of forty-eight hundredths of the percentage of the pupil's school day during which the pupil attends classes in another district, attends classes taught by a teacher who is jointly employed under section 280.15, or attends classes taught by a teacher who is employed by another school district.

c. Pupils attending class for all or a substantial portion of a school day pursuant to a whole grade sharing agreement executed under sections 282.10 through 282.12 shall be eligible for supplementary weighting pursuant to this subsection as follows:

(1) A school district which was participating in a whole grade sharing arrangement during the budget year beginning July 1, 2001, and which adopts a resolution jointly with the other affected boards to study the question of undergoing a reorganization or dissolution to take effect on or before July 1, 2006, shall receive a weighting of one-tenth of the percentage of the pupil's school day during which the pupil attends classes in another district, attends classes taught by a teacher who is jointly employed under section 280.15, or attends classes taught by a teacher who is employed by another school district. A district shall be eligible for supplementary weighting pursuant to this subparagraph for a maximum of two years. Receipt of supplementary weighting for a second year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress toward the objective of reorganization on or before July 1, 2006.

(2) A school district which was not participating in a whole grade sharing arrangement during the budget year beginning July 1, 2000, which executes a whole grade sharing agreement pursuant to sections 282.10 through 282.12 for the budget year beginning July 1, 2002, July 1, 2003, July 1, 2004, or July 1, 2005, and which adopts a resolution jointly with the other affected boards to study the question of undergoing a reorganization or dissolution to take effect on or before July 1, 2006, shall receive a weighting of one-tenth of the percentage of the pupil's school day during which the pupil attends classes in another district, attends classes taught by a teacher who is jointly employed under section 280.15, or attends classes taught by a teacher who is employed by another school district. A district shall be eligible for supplementary weighting pursuant to this subparagraph for a maximum of three years. Receipt of supplementary weighting for a second and third year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress toward the objective of reorganization on or before July 1, 2006.

3. *District-to-community college sharing.*

a. In order to provide additional funds for school districts which send their resident pupils to a community college for classes, a supplementary

weighting plan for determining enrollment is adopted.

*b.* If the school budget review committee certifies to the department of management that the class would not otherwise be implemented without the assignment of additional weighting, pupils attending a community college-offered class or attending a class taught by a community college-employed instructor are assigned a weighting of forty-eight hundredths of the percentage of the pupil's school day during which the pupil attends class in the community college or attends a class taught by a community college-employed instructor. The following requirements shall be met for the purposes of assigning an additional weighting for classes offered through a sharing agreement between a school district and community college. The class must be:

(1) Supplementing, not supplanting, high school courses.

(2) Included in the community college catalog or an amendment or addendum to the catalog.

(3) Open to all registered community college students, not just high school students.

(4) For college credit and the credit must apply toward an associate of arts or associate of science degree, or toward an associate of applied arts or associate of applied science degree, or toward completion of a college diploma program.

(5) Taught by a community college-employed instructor.

(6) Taught utilizing the community college course syllabus.

(7) Of the same quality as a course offered on a community college campus.

4. *At-risk programs and alternative schools.*

*a.* In order to provide additional funding to school districts for programs serving at-risk pupils and alternative school pupils in secondary schools, a supplementary weighting plan for at-risk pupils is adopted. A supplementary weighting of forty-eight ten-thousandths per pupil shall be assigned to the percentage of pupils in a school district enrolled in grades one through six, as reported by the school district on the basic educational data survey for the base year, who are eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, multiplied by the budget enrollment in the school district; and a supplementary weighting of one hundred fifty-six one-hundred-thousandths per pupil shall be assigned to pupils included in the budget enrollment of the school district. Amounts received as supplementary weighting for at-risk pupils shall be utilized by a school district to develop or maintain at-risk pupils' programs, which may include alternative school programs.

*b.* Notwithstanding paragraph "a", a school district which received supplementary weighting for an alternative high school program for the school budget year beginning July 1, 1999, shall

receive an amount of supplementary weighting for the next three school budget years as follows:

(1) For the budget year beginning July 1, 2000, the greater of the amount of supplementary weighting determined pursuant to paragraph "a", or sixty-five percent of the amount received for the budget year beginning July 1, 1999.

(2) For the budget year beginning July 1, 2001, the greater of the amount of supplementary weighting determined pursuant to paragraph "a", or forty percent of the amount received for the budget year beginning July 1, 1999.

(3) For the budget year beginning July 1, 2002, and succeeding budget years, the amount of supplementary weighting determined pursuant to paragraph "a".

If a school district receives an amount pursuant to this paragraph "b" which exceeds the amount the district would otherwise have received pursuant to paragraph "a", the department of management shall annually determine the amount of the excess that would have been state aid and the amount that would have been property tax if the school district had generated that amount pursuant to paragraph "a", and shall include the amounts in the state aid payments and property tax levies of school districts. The department of management shall recalculate the supplementary weighting amount received each year to reflect the amount of the reduction in funding from one budget year to the next pursuant to subparagraphs (1) through (3). It is the intent of the general assembly that when weights are recalculated under this subsection, the total amounts generated by each weight shall be approximately equal.

*c.* If the amount to be received under paragraph "a" or "b" by a school district or a consortium of school districts is less than fifty thousand dollars and the school district or consortium received funds under section 279.51, subsection 1, paragraph "c" or "e", Code 1999, for school-based youth services during the budget year beginning July 1, 1999, such school district or consortium shall receive a total amount under this subsection of fifty thousand dollars for each of the budget years beginning July 1, 2000, and July 1, 2001. The department of management shall adjust the supplementary weighting of a school district or the school district acting as the fiscal agent for a consortium eligible under this paragraph in a manner to assure that the district or the consortium receives the total sum of fifty thousand dollars as guaranteed in this paragraph. If the consortium elects not to continue a school-based youth service program, the funds shall be distributed equally to the school districts in the consortium. This paragraph is repealed effective July 1, 2002, for budget years beginning on or after that date. To the extent possible, the total amount of moneys generated by the enactment of this subsection, including this paragraph, shall be equivalent to the amount generated under this subsection without the inclusion of

this paragraph. The department of management shall adjust the weighting assigned in this subsection to reflect this intent.

5. *Regional academies.*

a. For the school budget year beginning July 1, 2002, and succeeding budget years, in order to provide additional funds for school districts in which a regional academy is located, a supplementary weighting plan for determining enrollment is adopted.

b. A school district which establishes a regional academy shall be eligible to assign its resident pupils attending classes at the academy a weighting of one-tenth of the percentage of the pupil's school day during which the pupil attends classes at the regional academy. For the purposes of this subsection, "regional academy" means an educational institution established by a school district to which multiple schools send pupils in grades nine through twelve, and may include a virtual academy. A regional academy shall include in its curriculum advanced-level courses and may include in its curriculum vocational-technical courses. The maximum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to fifteen additional pupils. The minimum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to ten additional pupils if the academy provides both advanced-level courses and vocational-technical courses. However, if the sum of the funding amount calculated for all districts operating regional academies under this subsection exceeds one million dollars for the school year beginning July 1, 2004, and each succeeding fiscal year, the director of the department of management shall prorate the amount calculated for each district. The proration shall be based upon the amount calculated for each district when compared to the sum of the amount for all districts.

6. *Shared classes delivered over the Iowa communications network.* A pupil attending a class in which students from one or more other school districts are enrolled and which is taught via the Iowa communications network is not deemed to be attending a class in another school district or in a community college for the purposes of this section and the school district is not eligible for supplementary weighting for that class under this section.

7. *Pupils ineligible.* A pupil eligible for the weighting plan provided in section 256B.9 is not eligible for supplementary weighting pursuant to this section. A pupil attending an alternative program or an at-risk pupils' program, including alternative high school programs, is not eligible for supplementary weighting under subsection 2.

8. *School finance appropriations report.* The

department of education shall annually prepare a report regarding school finance provisions or programs receiving a standing appropriation, including supplementary weighting programs. The report shall provide information regarding amounts received or accessed by school districts pursuant to the provisions or programs, whether the amounts received represent an increase or decrease over amounts received during the previous budget year and the percentage increase or decrease, conclusions regarding the adequacy of amounts received by school districts and whether the amounts received are equitable between school districts based upon input from the school districts and analysis by the department, and the rationale for current trends being observed by the department and projections regarding possible trends in the future. The report shall be submitted to the general assembly by January 1 each year, and copies of the report shall be forwarded to the chairpersons and members of the committee on education in the senate and in the house of representatives.

2002 Acts, ch 1047, §3, 4, 20; 2003 Acts, ch 179, §111; 2003 Acts, ch 180, §11

2002 amendments to subsection 3, paragraph b, take effect July 1, 2003; 2002 Acts, ch 1047, §20

Subsection 2, paragraph c, subparagraph (2) amended

Subsection 3, paragraph b, unnumbered paragraph 1 and subparagraph (5) amended

Subsection 5, paragraph b amended

**257.21 Computation of instructional support amount.**

The department of management shall establish the amount of instructional support property tax to be levied and the amount of instructional support income surtax to be imposed by a district in accordance with the decision of the board under section 257.19 for each school year for which the instructional support program is authorized. The department of management shall determine these amounts based upon the most recent figures available for the district's valuation of taxable property, individual state income tax paid, and budget enrollment in the district, and shall certify to the district's county auditor the amount of instructional support property tax, and to the director of revenue the amount of instructional support income surtax to be imposed if an instructional support income surtax is to be imposed.

The instructional support income surtax shall be imposed on the state individual income tax for the calendar year during which the school's budget year begins, or for a taxpayer's fiscal year ending during the second half of that calendar year and after the date the board adopts a resolution to participate in the program or the first half of the succeeding calendar year, and shall be imposed on all individuals residing in the school district on the last day of the applicable tax year. As used in this section, "state individual income tax" means the taxes computed under section 422.5, less the cred-

its allowed in sections 422.11A, 422.11B, 422.12, and 422.12B.

2003 Acts, ch 145, §286  
Limit on total surtax, §298.14  
Terminology change applied

#### **257.22 Statutes applicable.**

The director of revenue shall administer the instructional support income surtax imposed under this chapter, and sections 422.20, 422.22 to 422.31, 422.68, and 422.72 to 422.75 shall apply with respect to administration of the instructional support income surtax.

2003 Acts, ch 145, §286  
Terminology change applied

#### **257.24 Deposit of instructional support income surtax.**

The director of revenue shall deposit all moneys received as instructional support income surtax to the credit of each district from which the moneys are received, in the school district income surtax fund which is established in section 298.14.

The director of revenue shall deposit instructional support income surtax moneys received on or before November 1 of the year following the close of the school budget year for which the surtax is imposed to the credit of each district from which the moneys are received in the school district income surtax fund.

Instructional support income surtax moneys received or refunded after November 1 of the year following the close of the school budget year for which the surtax is imposed shall be deposited in or withdrawn from the general fund of the state and shall be considered part of the cost of administering the instructional support income surtax.

2003 Acts, ch 145, §286  
Terminology change applied

#### **257.25 Instructional support income surtax certification.**

On or before October 20 each year, the director of revenue shall make an accounting of the instructional support income surtax collected under this chapter applicable to tax returns for the last preceding calendar year, or for a taxpayer's fiscal year ending during the second half of that calendar year and after the date the board adopts a resolution to participate in the program, or the first half of the succeeding calendar year, from taxpayers in each school district in the state which has approved the instructional support program, and shall certify to the department of management and the department of education the amount of total instructional support income surtax credited from the taxpayers of each school district.

2003 Acts, ch 145, §286  
Terminology change applied

#### **257.26 Instructional support income surtax distribution.**

The director of revenue\* shall draw warrants in

payment of the amount of instructional support surtax in the manner provided in section 298.14.

2003 Acts, ch 145, §286  
\*\*Director of the department of administrative services\* probably intended; corrective legislation is pending  
Terminology change applied

#### **257.31 Duties of the committee.**

1. The school budget review committee may recommend the revision of any rules, regulations, directives, or forms relating to school district budgeting and accounting, confer with local school boards or their representatives and make recommendations relating to any budgeting or accounting matters, and direct the director of the department of education or the director of the department of management to make studies and investigations of school costs in any school district.

2. The committee shall report to each session of the general assembly, which report shall include any recommended changes in laws relating to school districts, and shall specify the number of hearings held annually, the reasons for the committee's recommendations, information about the amounts of property tax levied by school districts for a cash reserve, and other information the committee deems advisable.

3. The committee shall review the proposed budget and certified budget of each school district, and may make recommendations. The committee may make decisions affecting budgets to the extent provided in this chapter. The costs and computations referred to in this section relate to the budget year unless otherwise expressly stated.

4. Not later than January 1, 1992, the committee shall adopt recommendations relating to the implementation by school districts and area education agencies of procedures pertaining to the preparation of financial reports in conformity with generally accepted accounting principles and submit those recommendations to the state board of education. The state board shall consider the recommendations and adopt rules under section 256.7 specifying procedures and requiring the school districts and area education agencies to conform to generally accepted accounting principles commencing with the school year beginning July 1, 1996.

5. If a district has unusual circumstances, creating an unusual need for additional funds, including but not limited to the following circumstances, the committee may grant supplemental aid to the district from any funds appropriated to the department of education for the use of the school budget review committee for the purposes of this subsection, and such aid shall be miscellaneous income and shall not be included in district cost, or may establish a modified allowable growth for the district by increasing its allowable growth, or both:

- a. Any unusual increase or decrease in enrollment.
- b. Unusual natural disasters.

- c. Unusual initial staffing problems.
  - d. The closing of a nonpublic school, wholly or in part, or the opening or closing of a pilot charter school.
  - e. Substantial reduction in miscellaneous income due to circumstances beyond the control of the district.
  - f. Unusual necessity for additional funds to permit continuance of a course or program which provides substantial benefit to pupils.
  - g. Unusual need for a new course or program which will provide substantial benefit to pupils, if the district establishes the need and the amount of necessary increased cost.
  - h. Unusual need for additional funds for special education or compensatory education programs.
  - i. Year-round or substantially year-round attendance programs which apply toward graduation requirements, including but not limited to trimester or four-quarter programs. Enrollment in such programs shall be adjusted to reflect equivalency to normal school year attendance.
  - j. Unusual need to continue providing a program or other special assistance to non-English speaking pupils after the expiration of the three-year period specified in section 280.4.
  - k. Circumstances caused by unusual demographic characteristics.
  - l. Any unique problems of school districts.
6. The committee shall establish a modified allowable growth for a district by increasing its allowable growth when the district submits evidence that it requires additional funding for removal, management, or abatement of environmental hazards due to a state or federal requirement. Environmental hazards shall include but are not limited to the presence of asbestos, radon, or the presence of any other hazardous material dangerous to health and safety.
- The district shall include a budget for the actual cost of the project that may include the costs of inspection, reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans, recordkeeping requirements, and encapsulation or removal of the hazardous material.
7. The committee may authorize a district to spend a reasonable and specified amount from its unexpended cash balance for either of the following purposes:
- a. Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the district have approved a bond issue as provided by law or the tax levy provided in section 298.2.
  - b. The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275, if the costs are in-

curred within three years of the dissolution or reorganization.

Other expenditures, including but not limited to expenditures for salaries or recurring costs, are not authorized under this subsection. Expenditures authorized under this subsection shall not be included in allowable growth or district cost, and the portion of the unexpended cash balance which is authorized to be spent shall be regarded as if it were miscellaneous income. Any part of the amount not actually spent for the authorized purpose shall revert to its former status as part of the unexpended cash balance.

8. The committee may approve or modify the initial base year district cost of any district which changes accounting procedures.

9. When the committee makes a decision under subsections 3 through 8, it shall make all necessary changes in the district cost, budget, and tax levy. It shall give written notice of its decision, including all such changes, to the school board through the department of education.

10. All decisions by the committee under this chapter shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter. All such policies of general application shall be stated in rules adopted in accordance with chapter 17A. The committee shall take into account the intent of this chapter to equalize educational opportunity, to provide a good education for all the children of Iowa, to provide property tax relief, to decrease the percentage of school costs paid from property taxes, and to provide reasonable control of school costs. The committee shall also take into account the amount of funds available.

11. Failure by any school district to provide information or appear before the committee as requested for the accomplishment of review or hearing is justification for the committee to instruct the director of the department of management to withhold any state aid to that district until the committee's inquiries are satisfied completely.

12. The committee shall review the recommendations of the director of the department of education relating to the special education weighting plan, and shall establish a weighting plan for each school year pursuant to section 256B.9, and report the plan to the director of the department of education.

13. The committee may recommend that two or more school districts jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment, and facilities as specified in section 280.15.

14. As soon as possible following June 30 of the base year, the school budget review committee shall determine for each school district the balance of funds, whether positive or negative, raised for special education instruction programs under the special education weighting plan established

in section 256B.9. The committee shall certify the balance of funds for each school district to the director of the department of management.

*a.* If the amount certified for a school district to the director of the department of management under this subsection for the base year is positive, the director of the department of management shall subtract the amount of the positive balance exceeding ten percent of the additional funds generated for special education, not to include any previous carryover, from the amount of state aid remaining to be paid to the district during the budget year. If the positive amount exceeding the ten percent amount exceeds the amount of state aid that remains to be paid to the district, not including any previous carryover, the school district shall pay the excess on a quarterly basis prior to June 30 of the budget year to the director of the department of management from other funds received by the district. The director of the department of management shall determine the amount of the positive balance that exceeds the ten percent amount that came from local property tax revenues and shall increase the district's total state school aids available under this chapter for the next following budget year by the amount so determined and shall reduce the district's tax levy computed under section 257.4 for the next following budget year by the amount necessary to compensate for the increased state aid.

*b.* If the amount certified for a school district to the director of the department of management under this subsection for the base year is negative, the director of the department of management shall determine the amount of the deficit that would have been state aid and the amount that would have been property taxes for each eligible school district.

There is appropriated from the general fund of the state to the school budget review committee for each fiscal year an amount equal to the state aid portion of five percent of the receipts for special education instruction programs in all districts that has a positive balance determined under paragraph "a" for the base year, or the state aid portion of all of the positive balances determined under paragraph "a" for the base year, whichever is less, to be used for supplemental aid payments to school districts. Except as otherwise provided in this lettered paragraph, supplemental aid paid to a district is equal to the state aid portion of the district's negative balance. The school budget review committee shall direct the director of the department of management to make the payments to school districts under this lettered paragraph.

A school district is only eligible to receive supplemental aid payments during the budget year if the school district certifies to the school budget review committee that for the year following the budget year it will notify the school budget review committee to instruct the director of the department of management to increase the district's al-

lowable growth and will fund the allowable growth increase either by using moneys from its unexpended cash balance to reduce the district's property tax levy or by using cash reserve moneys to equal the amount of the deficit that would have been property taxes and any part of the state aid portion of the deficit not received as supplemental aid under this subsection. The director of the department of management shall make the necessary adjustments to the school district's budget to provide the additional allowable growth and shall make the supplemental aid payments.

If the amount appropriated under this lettered paragraph is insufficient to make the supplemental aid payments under this subsection, the director of the department of management shall prorate the payments on the basis of the amount appropriated.

15. Annually the school budget review committee shall review the amount of property tax levied by each school district for the cash reserve authorized in section 298.10. If in the committee's judgment, the amount of a district's cash reserve levy is unreasonably high, the committee shall instruct the director of the department of management to reduce that district's tax levy computed under section 257.4 for the following budget year by the amount the cash reserve levy is deemed excessive. A reduction in a district's property tax levy for a budget year under this subsection does not affect the district's authorized budget.

16. The committee shall perform the duties assigned to it under sections 257.32 and 260C.18B.

17. *a.* If a district's average transportation costs per pupil exceed the state average transportation costs per pupil determined under paragraph "c" by one hundred fifty percent, the committee may grant transportation assistance aid to the district. Such aid shall be miscellaneous income and shall not be included in district cost.

*b.* To be eligible for transportation assistance aid, a school district shall annually certify its actual cost for all children transported in all school buses not later than July 31 after each school year on forms prescribed by the committee.

*c.* A district's average transportation costs per pupil shall be determined by dividing the district's actual cost for all children transported in all school buses for a school year pursuant to section 285.1, subsection 12, less the amount received for transporting nonpublic school pupils under section 285.1, by the district's actual enrollment for the school year excluding the shared-time enrollment for the school year as defined in section 257.6. The state average transportation costs per pupil shall be determined by dividing the total actual costs for all children transported in all districts for a school year, by the total of all districts' actual enrollments for the school year.

*d.* Funds transferred to the committee in accordance with section 321.34, subsection 22, are appropriated to and may be expended for the pur-

poses of the committee, as described in this section. However, highest priority shall be given to districts that meet the conditions described in this subsection. Notwithstanding any other provision of the Code, unencumbered or unobligated funds transferred to the committee pursuant to section 321.34, subsection 22, remaining on June 30 of the fiscal year for which the funds were transferred, shall not revert but shall be available for expenditure for the purposes of this subsection in subsequent fiscal years.

2003 Acts, ch 79, §4, 7, 8  
 Subsection 5, paragraph d amended

**257.32 Area education budget review.**

1. An area education agency budget review procedure is established for the school budget review committee created in section 257.30. The school budget review committee, in addition to its duties under section 257.31, shall meet and hold hearings each year to review unusual circumstances of area education agencies, either upon the committee's motion or upon the request of an area education agency. The committee may grant supplemental aid to the area education agency from funds appropriated to the department of education for area education agency budget review purposes, or an amount may be added to the area education agency special education support services allowable growth for districts in an area or an additional amount may be added to district cost for media services or educational services for all districts in an area for the budget year either on a temporary or permanent basis, or both.

Unusual circumstances shall include but are not limited to the following:

- a. An unusual increase or decrease in enrollment of children requiring special education or unusual need for additional moneys for special education support services.
- b. Unusual need for additional moneys for media services.
- c. Unusual need for additional moneys for educational services.
- d. Unusual costs for building repair, building maintenance, or removal of environmental hazards.
- e. Participation by the area education agency in telecommunications, electronic, and technological development with school districts, and related staff development programs.

2. When the school budget review committee makes a decision under subsection 1, it shall provide written notice of its decision, including all changes, to the board of directors of the area education agency, and to the department of management and the department of education.

3. All decisions by the school budget review committee under this section shall be made in ac-

cordance with reasonable and uniform policies which shall be consistent with this chapter.

4. Failure by an area education agency to provide information or appear before the school budget review committee as requested for the accomplishment of review or hearing constitutes justification for the committee to instruct the department of administrative services to withhold payments for the area education agency until the committee's inquiries are satisfied completely.

2003 Acts, ch 145, §286  
 Terminology change applied

**257.35 Area education agency payments.**

1. The department of management shall deduct the amounts calculated for special education support services, media services, and educational services for each school district from the state aid due to the district pursuant to this chapter and shall pay the amounts to the respective area education agencies on a monthly basis from September 15 through June 15 during each school year. The department of management shall notify each school district of the amount of state aid deducted for these purposes and the balance of state aid shall be paid to the district. If a district does not qualify for state aid under this chapter in an amount sufficient to cover its amount due to the area education agency as calculated by the department of management, the school district shall pay the deficiency to the area education agency from other moneys received by the district, on a quarterly basis during each school year.

2. Notwithstanding subsection 1, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2002, and each succeeding fiscal year, shall be reduced by the department of management by seven million five hundred thousand dollars. The reduction for each area education agency shall be equal to the reduction that the agency received in the fiscal year beginning July 1, 2001.

3. Notwithstanding subsection 1, and in addition to the reduction applicable pursuant to subsection 2, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2003, and ending June 30, 2004, shall be reduced by the department of management by ten million dollars. The department shall calculate a reduction such that each area education agency shall receive a reduction proportionate to the amount that it would otherwise have received under this section if the reduction imposed pursuant to this subsection did not apply.

2003 Acts, ch 178, §40, 41, 43  
 Subsection 2 amended  
 NEW subsection 3

**257.37 Funding media and educational services.**

Media services and educational services provided through the area education agencies shall be funded, to the extent provided, by an addition to the combined district cost of each school district, determined as follows:

1. For the budget year beginning July 1, 1991, and succeeding budget years, the total amount funded in each area for media services shall be computed as provided in this subsection. For the budget year beginning July 1, 1991, the total amount funded in each area for media services in the base year, including the cost for media resource material which shall only be used for the purchase or replacement of material required in section 273.6, subsection 1, paragraphs "a", "b", and "c", shall be divided by the enrollment served in the base year to provide an area media services cost per pupil in the base year, and the department of management shall compute the state media services cost per pupil in the base year which is equal to the average of the area media services costs per pupil in the base year. For the budget year beginning July 1, 1991, and succeeding budget years, the department of management shall compute the allowable growth for media services in the budget year by multiplying the state media services cost per pupil in the base year times the state percent of growth for the budget year, and the total amount funded in each area for media services cost in the budget year equals the area media services cost per pupil in the base year plus the allowable growth for media services in the budget year times the enrollment served in the budget year. Funds shall be paid to area education agencies as provided in section 257.35.

2. Thirty percent of the budget of an area for media services shall be expended for media resource material which shall only be used for the purchase or replacement of material required in section 273.6, subsection 1. Funds shall be paid to area education agencies as provided in section 257.35.

3. For the budget year beginning July 1, 1991, and succeeding budget years, the total amount funded in each area for educational services shall be computed as provided in this subsection. For the budget year beginning July 1, 1991, the total amount funded in each area for educational services in the base year shall be divided by the enrollment served in the area in the base year to provide an area educational services cost per pupil in the base year, and the department of management shall compute the state educational services cost per pupil in the base year, which is equal to the average of the area educational services costs per pupil in the base year. For the budget year beginning July 1, 1991, and succeeding budget years, the de-

partment of management shall compute the allowable growth for educational services by multiplying the state educational services cost per pupil in the base year times the state percent of growth for the budget year, and the total amount funded in each area for educational services for the budget year equals the area educational services cost per pupil for the base year plus the allowable growth for educational services in the budget year times the enrollment served in the area in the budget year. Funds shall be paid to area education agencies as provided in section 257.35.

4. "Enrollment served" means the basic enrollment plus the number of nonpublic school pupils served with media services or educational services, as applicable, except that if a nonpublic school pupil or a pupil attending another district under a whole-grade sharing agreement or open enrollment receives services through an area other than the area of the pupil's residence, the pupil shall be deemed to be served by the area of the pupil's residence, which shall by contractual arrangement reimburse the area through which the pupil actually receives services. Each school district shall include in the third Friday in September enrollment report the number of nonpublic school pupils within each school district for media and educational services served by the area.

5. If an area education agency does not serve nonpublic school pupils in a manner comparable to services provided public school pupils for media and educational services, as determined by the state board of education, the state board shall instruct the department of management to reduce the funds for media services and educational services one time by an amount to compensate for such reduced services. The media services budget shall be reduced by an amount equal to the product of the cost per pupil in basic enrollment for the budget year for media services times the difference between the enrollment served and the basic enrollment recorded for the area. The educational services budget shall be reduced by an amount equal to the product of the cost per pupil in basic enrollment for the budget year for educational services times the difference between the enrollment served and the basic enrollment recorded for the area.

This subsection applies only to media and educational services which cannot be diverted for religious purposes.

Notwithstanding this subsection, an area education agency shall distribute to nonpublic schools media materials purchased wholly or partially with federal funds in a manner comparable to the distribution of such media materials to public schools as determined by the director of the department of education.

6. For the budget year beginning July 1, 2002,

and each succeeding budget year, notwithstanding the requirements of this section for determining the budgets and funding of media services and education services, an area education agency may, within the limits of the total of the funds provided for the budget years pursuant to section 257.35, expend for special education support services an

amount that exceeds the payment for special education support services pursuant to section 257.35 in order to maintain the level of required special education support services in the area education agency.

2003 Acts, ch 178, §42, 43  
Subsection 6 amended

## CHAPTER 257B

### SCHOOL FUNDS

#### **257B.1B Interest for Iowa schools fund — transfer of interest.**

An interest for Iowa schools fund is established in the office of treasurer of state. The department of administrative services shall deposit interest earned on the permanent school fund in the interest for Iowa schools fund. The treasurer shall transfer moneys in the interest for Iowa schools fund on a quarterly basis as follows:

1. Fifty-five percent of the moneys deposited in the fund to the department of education for allocation to assist school districts in developing reading recovery programs. From the moneys allocated in this subsection, one hundred thousand dollars shall be distributed to the reading recovery center, and the remaining balance shall be distributed to the area education agencies in the proportion that the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751 – 1785, in the basic enrollment of grades one through six in the area served by an agency, bears to the sum of the number of children who are eligible for free or reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751 – 1785, in the basic enrollments of grades one through six in all of the areas served by area education agencies in the state for the budget year.

2. Forty-five percent of the moneys deposited in the fund to the credit of the international center endowment fund of the international center for gifted and talented education established in section 263.8A.

2003 Acts, ch 145, §286  
Terminology change applied

#### **257B.11 School fund accounts — audit of losses.**

The director of the department of administrative services shall keep the permanent school fund accounts in books provided for that purpose, separate and distinct from the revenue books. The auditor of state shall audit losses to the permanent school or university fund caused by defalcation, mismanagement, or fraud. The auditor of state shall adopt rules pursuant to chapter 17A as nec-

essary to ascertain the losses.

2003 Acts, ch 145, §286  
Terminology change applied

#### **257B.18 Exemption of county.**

All claims for exemption from liability on account of losses shall be examined into and adjusted by the director of the department of administrative services, upon proof submitted to the director in writing in behalf of the county within three months after the county auditor shall be advised by the director of the director's readiness to receive the proof. In the absence of evidence, or if that submitted is insufficient, the loss may be charged against the county and be conclusive, but if found sufficient, the director of the department of administrative services shall present the facts in the report to the next general assembly.

2003 Acts, ch 145, §286  
Terminology change applied

#### **257B.35 Sheriff's deed to state.**

When lands have been bid in by the county for the state under foreclosure of permanent school fund mortgages and the time for redemption has expired, a sheriff's deed shall be issued to the state for the use and benefit of the permanent school fund. The county auditor shall file the deed for record in the office of the county recorder who shall record the deed without fee and return it when recorded to the county auditor who shall then forward it to the secretary of state. The secretary of state shall record the deed and then file it with the director of the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

#### **257B.37 Proceeds on resale.**

When a resale is made, the county auditor shall notify the director of the department of administrative services, who shall thereupon charge the county with the full amount of the resale, except that when the lands are sold for more than the unpaid portion of the principal, the excess shall be applied to reimburse the county for the costs of foreclosure and the interest paid by the county to the state by reason of default of payment of same by the makers of the notes, previous to the time

when the right of redemption has expired, not to exceed three years.

2003 Acts, ch 145, §286  
Terminology change applied

**257B.39 Report as to sales — interest.**

County auditors shall report, on or before January 1 of each year, to the director of the department of administrative services the amount of the sales and resales made during the previous year, of the sixteenth section, five-hundred-thousand-acre grant, and escheat estates, and the director of the department of administrative services shall charge them to the counties with interest from the date of the sale or resale to January 1, at the rate of three percent per annum.

2003 Acts, ch 145, §286  
Terminology change applied

**257B.40 Interest charged to counties.**

The director of the department of administra-

tive services shall also, on the first day of January, charge to each county having permanent school funds under its control, interest thereon at the rate of three percent per annum for the preceding year, or such part thereof as such funds shall have been in the control of the county, which shall be taken as the whole amount of interest due from such county. All interest collected above the three percent charged by the state shall be transferred to the general county fund.

2003 Acts, ch 145, §286  
Terminology change applied

**257B.42 Report as to rents.**

By January 1 of each year, county auditors shall report to the director of the department of administrative services the amount of rents collected during the preceding year on unsold school lands and the director shall include the amount reported in the semiannual apportionment of interest.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 257C

### ADVANCE FUNDING AUTHORITY

**257C.6 General powers.**

The board has all of the general powers needed to carry out its purposes and duties and exercise its specific powers, including but not limited to the power to:

1. Issue its negotiable bonds as provided in this chapter in order to finance its programs.
2. Have perpetual succession as a public authority.
3. Sue and be sued in its own name.
4. Make and execute agreements, contracts, and other instruments, with any public or private entity.
5. Hire and compensate legal counsel, notwithstanding chapter 13.
6. Invest or deposit moneys of the authority, subject to any agreement with bondholders, in any manner determined by the authority, notwithstanding chapters 12B and 12C.
7. Procure insurance and other credit enhancement arrangements including but not limited to municipal bond insurance and letters of credit.
8. Fix and collect fees and charges for its services.
9. Accept appropriations, gifts, grants, loans, or other aid from public or private entities.
10. Adopt rules consistent with this chapter, and subject to chapter 17A.
11. The authority is exempt from chapter 8A, subchapter III.

2003 Acts, ch 145, §226  
Subsection 11 amended

**257C.9 Moneys of the authority.**

1. Moneys of the authority, except as otherwise provided in this chapter, shall be paid to the authority and shall be deposited in a bank or other financial institution designated by the authority. The moneys shall be withdrawn on the order of the person authorized by the authority. Deposits shall be secured in the manner determined by the authority. The auditor of state or the auditor's legally authorized representatives may periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers relating to its financial standing, and the authority is not required to pay a fee for the examination.

2. The authority may contract with the holders of its bonds as to the custody, collection, security, investment, and payment of moneys of the authority, of moneys held in trust or otherwise for the payment of bonds, and to carry out the contract. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of the moneys may be secured in the same manner as moneys of the authority, and banks and trust companies may give security for the deposits.

3. Subject to a contract with bondholders, and to the approval of the director of the department of administrative services, the authority shall prescribe a system of accounts.

4. The authority shall submit to the governor, the auditor of state, the department of manage-

ment, and the department of administrative services, within thirty days of its receipt, a copy of the report of every external examination of the books and accounts of the authority other than copies of

the reports of examinations made by the auditor of state.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 258

### VOCATIONAL EDUCATION

#### **258.17 Community-based workplace learning program — workstart.**

1. A community-based workplace learning program, called “*workstart*”, is established as a voluntary collaborative educational program between business and Iowa’s secondary and postsecondary education system designed to provide the means by which students can be better prepared to enter the workforce. The program is to provide all participating high school students with academic skills and appropriate competency-based job-specific skills needed to enter high performance workplace employment through a jointly planned and supervised instructional and work-site-based training program that is articulated with postsecondary advanced programs of preparation, United States department of labor-approved apprenticeship programs, and other appropriate job training programs. Schools and school districts are encouraged to work with current employers of students attending instruction in the schools or school districts in order to articulate educational programming with the work experiences of the students. The workstart program is designed to prepare students for employment in occupations which not only require high skill levels but which also offer students opportunities within those occupations for career and personal advancement.

2. Each school or school district that desires to establish a workstart program shall appoint a local employment and training council, the members of which shall serve at the pleasure of the board of directors of the district or the authorities in charge of the nonpublic school. The majority of the council members shall be local secondary and postsecondary educators. Other council members shall include, but are not limited to, members of the business community and chamber of commerce, appropriate labor representatives, parents, and representatives from any local municipal, county, state, or federal job placement or training agencies. The council shall identify and assess all of the following:

*a.* The types of high performance workplace employment opportunities for individuals who live in the community.

*b.* The skills, knowledge, and attitudes required by employers for placement in entry level and advanced positions.

*c.* The private and institutional resources necessary and available to provide the appropriate high school training and advanced educational offerings for persons seeking to acquire job skills for the positions.

The council, in identifying and assessing high performance workplace employment opportunities, shall consult with local and regional job placement organizations and take into consideration possible job placement trends and opportunities that may become available to program participants. The council shall consult with the vocational regional planning board or consortia to determine what educational resources are available within the merged area and to ascertain the occupational needs of local students. The council shall summarize those jobs, skills, and resources identified and assessed and develop a proposed plan for utilization of available resources to permit the acquisition of those skills in a workstart program. In addition to any agreements with local businesses, the proposed plan for a workstart program shall include an articulated, sequential plan that coordinates and complements the curricula and training available in a secondary education setting with the curricula and training available at the community or private college or other postsecondary training program level. The council shall forward the proposed plan for a workstart program to the board of directors of the school district, or the authorities in charge of the nonpublic school, for review, modification, and approval.

3. Each workstart program shall consist of two phases, each of which shall be supervised by an appropriately licensed education practitioner: the preparation phase and the workplace phase.

*a.* The preparation phase of a workstart program is a school-based program that provides students with basic and advanced academic skills that will be necessary to perform in a vocational service area chosen by the student. The preparation phase shall also include instruction in skills that are necessary to succeed in high performance workplace employment. The preparation phase of a workstart program shall be directed by education practitioners possessing the appropriate licensing and endorsements for the vocational service area.

*b.* The workplace phase of a workstart program shall consist of an intensive workplace-

specific training program that may be conducted at a worksite or both at a worksite and in the school setting. The workplace phase of a workstart program shall be coordinated by an education practitioner possessing the appropriate license and endorsements for the vocational service area, and may be directed at the worksite by persons employed in the occupational training area which has been selected by the student.

Both the preparation and workplace phases shall be articulated with United States department of labor-approved apprenticeship programs and other postsecondary educational and training offerings that permit participating students to obtain advanced training and education that may be necessary upon graduation from the workstart secondary education program or to obtain an advancement in an occupational field chosen by the student during the student's participation in a workstart secondary education program.

4. Each workstart program shall include a written agreement by the school or school district with one or more businesses from the surrounding community to provide workplace-specific training and learning programs which are related to the skills needed to succeed in those occupational areas. The proposed plan for implementation of the workstart program shall include a copy of the written agreement between the school or school district and the business or businesses and a busi-

ness support component, which shall consist of financial or in-kind support, or both financial and in-kind support, from the businesses that have entered into the agreement with the school or school district.

5. The state board of education shall adopt rules pursuant to chapter 17A to provide for the implementation of this section.

6. The department of education shall adopt guidelines for the establishment of workstart programs. Guidelines may include, but are not limited to, acceptable levels of business financial participation in a workstart program, maximum hour and workload guidelines for education practitioners working in or supervising a workstart program, and maximum and minimum class size guidelines for the preparation and workplace phases of a workstart program.

7. A school or local school district that implements a workstart program shall annually conduct a survey which counts the number of students who participate in, or graduate from, the program that are actually employed in an occupational area for which they received training. The school or school district shall disseminate the results of the surveys to the local employment and training councils for the school or school district and the department of education.

2003 Acts, ch 180, §12  
Subsection 4 amended

## CHAPTER 260C

### COMMUNITY COLLEGES

#### **260C.14 Authority of directors.**

The board of directors of each community college shall:

1. Determine the curriculum to be offered in such school or college subject to approval of the director and ensure that all vocational offerings are competency-based, provide any minimum competencies required by the department of education, comply with any applicable requirements in chapter 258, and are articulated with local school district vocational education programs. If an existing private educational or vocational institution within the merged area has facilities and curriculum of adequate size and quality which would duplicate the functions of the area school, the board of directors shall discuss with the institution the possibility of entering into contracts to have the existing institution offer facilities and curriculum to students of the merged area. The board of directors shall consider any proposals submitted by the private institution for providing such facilities and curriculum. The board of directors may enter into such contracts. In approving curriculum, the director shall ascertain that all courses and pro-

grams submitted for approval are needed and that the curriculum being offered by an area school does not duplicate programs provided by existing public or private facilities in the area. In determining whether duplication would actually exist, the director shall consider the needs of the area and consider whether the proposed programs are competitive as to size, quality, tuition, purposes, and area coverage with existing public and private educational or vocational institutions within the merged area. If the board of directors of the merged area chooses not to enter into contracts with private institutions under this subsection, the board shall submit a list of reasons why contracts to avoid duplication were not entered into and an economic impact statement relating to the board's decision.

2. Have authority to determine tuition rates for instruction. Tuition for residents of Iowa shall not exceed the lowest tuition rate per semester, or the equivalent, charged by an institution of higher education under the state board of regents for a full-time resident student. However, except for students enrolled under chapter 261C, if a local

school district pays tuition for a resident pupil of high school age, the limitation on tuition for residents of Iowa shall not apply, the amount of tuition shall be determined by the board of directors of the community college with the consent of the local school board, and the pupil shall not be included in the full-time equivalent enrollment of the community college for the purpose of computing general aid to the community college. Tuition for nonresidents of Iowa shall not be less than the marginal cost of instruction of a student attending the college. A lower tuition for nonresidents may be permitted under a reciprocal tuition agreement between a merged area and an educational institution in another state, if the agreement is approved by the state board. The board may designate that a portion of the tuition moneys collected from students be used for student aid purposes.

3. Have the powers and duties with respect to community colleges, not otherwise provided in this chapter, which are prescribed for boards of directors of local school districts by chapter 279 except that the board of directors is not required to prohibit the use of tobacco and the use or possession of alcoholic liquor or beer by any student of legal age under the provisions of section 279.9.

4. Have the power to enter into contracts and take other necessary action to insure a sufficient curriculum and efficient operation and management of the college and maintain and protect the physical plant, equipment, and other property of the college.

5. Establish policy and make rules, not inconsistent with law and administrative rules, regulations, and policies of the state board, for its own government and that of the administrative, teaching, and other personnel, and the students of the college, and aid in the enforcement of such laws, rules, and regulations.

6. Have authority to sell a student-constructed building and the property on which the student-constructed building is located or any article resulting from any vocational program or course offered at a community college by any procedure which may be adopted by the board. Governmental agencies and governmental subdivisions of the state within the merged areas shall be given preference in the purchase of such articles. All revenue received from the sale of any article shall be credited to the funds of the board of the merged area.

7. With the consent of the inventor, and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors, and officials of any community college of the merged area, or take assignment of such letters patent or copyright and make all necessary expenditures in regard thereto. Letters patent or copyright on inventions when so secured shall be the property of the board of the merged area and the royalties and earnings thereon shall be credited to the funds of the board.

8. Set the salary of the area superintendent. In setting the salary, the board shall consider the salaries of administrators of educational institutions in the merged area and the enrollment of the community college.

9. At the request of an employee through contractual agreement the board may arrange for the purchase of group or individual annuity contracts for any of its employees, which annuity contracts are issued by a nonprofit corporation issuing retirement annuities exclusively for educational institutions and their employees or are purchased from any company the employee chooses that is authorized to do business in this state or through an Iowa-licensed salesperson that the employee selects, on a group or individual basis, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits under section 403(b) of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums. If an existing tax-sheltered annuity contract is to be replaced by a new contract, the agent or representative of the company shall submit a letter of intent by registered mail to the company being replaced, to the insurance commissioner of the state of Iowa, and to the agent's or representative's own company at least thirty days prior to any action. This letter of intent shall contain the policy number and description of the contract being replaced and a description of the replacement contract. As used in this section, unless the context otherwise requires, "*annuity contract*" includes any custodial account which meets the requirements of section 403(b)(7) of the Internal Revenue Code, as defined in section 422.3.

10. Make necessary rules to provide for the policing, control, and regulation of traffic and parking of vehicles and bicycles on the property of the community college. The rules may provide for the use of institutional roads, driveways, and grounds; registration of vehicles and bicycles; the designation of parking areas; the erection and maintenance of signs designating prohibitions or restrictions; the installation and maintenance of parking control devices except parking meters; and assessment, enforcement, and collection of reasonable penalties for the violation of the rules.

Rules made under this subsection may be enforced under procedures adopted by the board of directors. Penalties may be imposed upon students, faculty, and staff for violation of the rules, including, but not limited to, a reasonable monetary penalty which may be deducted from student deposits and faculty or staff salaries or other funds in possession of the community college or added to student tuition bills. The rules made under this

subsection may also be enforced by the impoundment of vehicles and bicycles parked in violation of the rules, and a reasonable fee may be charged for the cost of impoundment and storage prior to the release of the vehicle or bicycle to the owner. Each community college shall establish procedures for the determination of controversies in connection with the imposition of penalties. The procedures shall require giving notice of the violation and the penalty prescribed and providing the opportunity for an administrative hearing.

11. Be authorized to issue to employees of community colleges school credit cards to use for payment of authorized expenditures incurred in the performance of work-related duties.

12. During the second week of August of each year, publish by one insertion in at least one newspaper published in the merged area a summarized statement verified by affidavit of the secretary of the board showing the receipts and disbursements of all funds of the community college for the preceding fiscal year. The statement of disbursements shall show the names of the persons, firms, or corporations, and the total amount paid to each during the fiscal year. The board is not required to make the publications and notices required under sections 279.35 and 279.36.

13. Adopt policies and procedures for the use of telecommunications as an instructional tool at the community college. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

14. In its discretion, adopt rules relating to the classification of students enrolled in the community college who are residents of Iowa's sister states as residents or nonresidents for tuition and fee purposes.

15. By July 1, 1991, develop a policy which requires oral communication competence of persons who provide instruction to students attending institutions under the control of the board. The policy shall include a student evaluation mechanism which requires student evaluation of persons providing instruction on at least an annual basis.

16. By July 1, 1991, develop a policy relating to the teaching proficiency of teaching assistants which provides a teaching proficiency standard, instructional assistance to, and evaluation of persons who provide instruction to students at the higher education institutions under the control of the board.

17. Provide for eligible alternative retirement benefits systems which shall be limited to the following:

*a.* An alternative retirement benefits system which is issued by or through a nonprofit corporation issuing retirement annuities exclusively to educational institutions and their employees for

persons newly employed after July 1, 1990, and for persons employed by the community college who are members of the Iowa public employees' retirement system on July 1, 1994, and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system.

*b.* An alternative retirement benefits system which is issued by or through an insurance company authorized to issue annuity contracts in this state, for persons newly employed on or after July 1, 1997, who are already members of the alternative retirement benefits system and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system.

*c.* An alternative retirement benefits system offered through the community college, at the discretion of the board of directors of the community college, pursuant to this lettered paragraph which is issued by or through an insurance company authorized to issue annuity contracts in this state, for persons newly employed by that community college on or after July 1, 1998, who are not members of the alternative retirement benefits system and who elect coverage under that system pursuant to section 97B.42, in lieu of coverage under the Iowa public employees' retirement system. The board of directors of a community college may limit the number of providers of alternative retirement benefits systems offered pursuant to this lettered paragraph to no more than six. The selection by the board of directors of a community college of a provider of an alternative retirement benefits system pursuant to this lettered paragraph shall not constitute an endorsement of that provider by the community college.

However, the employer's annual contribution in dollars under an eligible alternative retirement benefits system described in this subsection shall not exceed the annual contribution in dollars which the employer would contribute if the employee had elected to remain an active member pursuant to the Iowa public employees' retirement system, as set forth in section 97B.11. For purposes of this subsection, "*alternative retirement benefits system*" means an employer-sponsored primary pension plan requiring mandatory employer contributions that meets the requirements of section 401(a), 403(a), or 403(b) of the Internal Revenue Code.

18. Develop and implement a written policy, which is disseminated during student registration or orientation, addressing the following four areas relating to sexual abuse:

*a.* Counseling.

*b.* Campus security.

*c.* Education, including prevention, protection, and the rights and duties of students and employees of the community college.

*d.* Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law

enforcement authorities.

19. Provide, within a reasonable time, information as requested by the departments of management and education.

20. Adopt a policy to offer not less than the following options to a student who is a member of the Iowa national guard or reserve forces of the United States and who is ordered to active state service or federal service or duty:

*a.* Withdraw from the student's entire registration and receive a full refund of tuition and mandatory fees.

*b.* Make arrangements with the student's instructors for course grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the student's registration shall remain intact and tuition and mandatory fees shall be assessed for the courses in full.

*c.* Make arrangements with only some of the student's instructors for course grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the registration for those courses shall remain intact and tuition and mandatory fees shall be assessed for those courses. Any course for which arrangements cannot be made for grades or incompletes shall be considered dropped and the tuition and mandatory fees for the course refunded.

2003 Acts, ch 108, §46; 2003 Acts, ch 179, §112  
Subsection 1 amended  
NEW subsection 20

#### **260C.18A Workforce training and economic development funds.**

1. *a.* A workforce training and economic development fund is created for each community college. Moneys shall be deposited and expended from a fund as provided under this section.

*b.* Moneys in the funds shall consist of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the department of economic development from federal sources or private sources for placement in the funds. Notwithstanding section 8.33, moneys in the funds at the end of each fiscal year shall not revert to any other fund but shall remain in the funds for expenditure in subsequent fiscal years.

2. On July 1 of each year for the fiscal year beginning July 1, 2003, and for every fiscal year thereafter, moneys from the grow Iowa values fund created in section 15G.108 are appropriated to the department of economic development for deposit in the workforce training and economic development funds in amounts determined pursuant to subsection 3. Moneys deposited in the funds and disbursed to community colleges for a fiscal year shall be expended for the following purposes, provided seventy percent of the moneys shall be used on projects in the areas of advanced

manufacturing, information technology and insurance, and life sciences which include the areas of biotechnology, health care technology, and nursing care technology:

*a.* Projects in which an agreement between a community college and an employer located within the community college's merged area meet all of the requirements of the accelerated career education program under chapter 260G.

*b.* Projects in which an agreement between a community college and a business meet all the requirements of the Iowa jobs training Act under chapter 260F.

*c.* For the development and implementation of career academies designed to provide new career preparation opportunities for high school students that are formally linked with postsecondary career and technical education programs. For purposes of this section, "career academy" means a program of study that combines a minimum of two years of secondary education with an associate degree, or the equivalent, career preparatory program in a nonduplicative, sequential course of study that is standards based, integrates academic and technical instruction, utilizes work-based and worksite learning where appropriate and available, utilizes an individual career planning process with parent involvement, and leads to an associate degree or postsecondary diploma or certificate in a career field that prepares an individual for entry and advancement in a high-skill and reward career field and further education. The department of economic development, in conjunction with the state board of education and the division of community colleges and workforce preparation of the department of education, shall adopt administrative rules for the development and implementation of such career academies pursuant to section 256.11, subsection 5, paragraph "h", section 260C.1, and Title II of Pub. L. No. 105-332, Carl D. Perkins Vocational and Technical Education Act of 1998.

*d.* Programs and courses that provide vocational and technical training, and programs for in-service training and retraining under section 260C.1, subsections 2 and 3.

*e.* Job retention projects under section 260F.9.

3. Of the moneys appropriated in this section, for the fiscal period beginning July 1, 2003, and ending June 30, 2006, the following amounts shall be designated for the purposes of funding job retention projects under section 260F.9:

*a.* One million dollars for the fiscal year beginning July 1, 2003.

*b.* One million dollars for the fiscal year beginning July 1, 2004.

*c.* One million dollars for the fiscal year beginning July 1, 2005.

4. The maximum cumulative total amount of moneys that may be deposited in all the workforce

training and economic development funds for distribution to community colleges in a fiscal year shall be determined as follows:

- a. Five million dollars for the fiscal year beginning July 1, 2003.
- b. Five million dollars for the fiscal year beginning July 1, 2004.
- c. Five million dollars for the fiscal year beginning July 1, 2005.
- d. Ten million dollars for the fiscal year beginning July 1, 2006.
- e. For the fiscal year beginning July 1, 2007, and each succeeding fiscal year, the grow Iowa values board shall make a determination if sufficient moneys exist in the grow Iowa values fund to distribute to community colleges.

5. The department of economic development shall allocate the moneys appropriated pursuant to this section to the community college workforce training and economic development funds utilizing the same distribution formula used for the allocation of state general aid to the community colleges.

6. Each community college shall do all of the following:

- a. Adopt a two-year workforce training and economic development fund plan outlining the community college's proposed use of moneys appropriated under subsection 2.
- b. Update the two-year plan annually.
- c. Prepare an annual progress report on the two-year plan's implementation.
- d. Annually submit the two-year plan and progress report to the department of economic development in a manner prescribed by rules adopted by the department pursuant to chapter 17A and annually file a copy of the plan and progress report with the grow Iowa values board. For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, a community college shall not have moneys deposited in the workforce training and economic development fund of that community college unless the grow Iowa values board approves the annual progress report of the community college.

7. Any individual project using over one million dollars of moneys from a workforce training and economic development fund shall require prior approval from the grow Iowa values board.

2003 Acts, 1st Ex, ch 2, §76, 209  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93  
NEW section

#### **260C.18B Community college budget review.**

1. A community college budget review procedure is established for the school budget review committee created in section 257.30. The school budget review committee, in addition to its duties under chapter 257, shall meet and hold hearings each year under this chapter to review unusual

circumstances of community colleges, either upon the committee's motion or upon the request of a community college. The committee may grant supplemental state aid to the community college from funds appropriated to the department of education for community college budget review purposes.

Unusual circumstances shall include but not be limited to the following:

- a. An unusual increase or decrease in enrollment or contact hours.
- b. Natural disasters.
- c. Unusual staffing problems.
- d. Unusual necessity for additional funds to permit continuance of a course or program in an instructional cost center which provides substantial benefit to students.
- e. Unusual need for a new course or program in an instructional cost center which will provide substantial benefit to students, if the community college establishes the need and the amount of necessary increased cost.

f. Unique problems of community colleges to include vandalism, civil disobedience, and other costs incurred by community colleges.

2. When the school budget review committee makes a decision under subsection 1, it shall provide written notice of its decision, including the amount of supplemental state aid approved, to the board of directors of the community college and to the department of education.

3. All decisions by the school budget review committee under this chapter shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter.

4. Failure by a community college to provide information or appear before the school budget review committee as requested for the accomplishment of review or hearing constitutes justification for the committee to instruct the department of administrative services to withhold supplemental state aid to that community college until the committee's inquiries are satisfied completely.

2003 Acts, ch 145, §286  
Terminology change applied

#### **260C.19B Purchase of bio-based hydraulic fluids, greases, and other industrial lubricants.**

Hydraulic fluids, greases, and other industrial lubricants purchased by or used under the direction of the board of directors to provide services to a merged area shall be purchased in compliance with the preference requirements for purchasing bio-based hydraulic fluids, greases, and other industrial lubricants as provided pursuant to section 8A.316.

2003 Acts, ch 145, §227  
Section amended

#### **260C.24 Payment of appropriations.**

Payment of appropriations for distribution under this chapter, or of appropriations made in lieu

of such appropriations, shall be made by the department of administrative services in monthly installments due on or about the fifteenth of each month of a budget year, and installments shall be as nearly equal as possible, as determined by the department of administrative services, taking into consideration the relative budget and cash position of the state resources.

2003 Acts, ch 145, §286  
Terminology change applied

**260C.47 Accreditation of community college programs.**

1. The state board of education shall establish an accreditation process for community college programs by July 1, 1997. The process shall be jointly developed and agreed upon by the department of education and the community colleges. The state accreditation process shall be integrated with the accreditation process of the north central association of colleges and schools, including the evaluation cycle, the self-study process, and the criteria for evaluation, which shall incorporate the standards for community colleges developed under section 260C.48; and shall identify and make provision for the needs of the state that are not met by the association's accreditation process. For the academic year commencing July 1, 1998, and in succeeding school years, the department of education shall use a two-component process for the continued accreditation of community college programs. Beginning July 1, 2006, the state accreditation process shall incorporate the standards developed pursuant to section 260C.48, subsection 4.

*a.* The first component consists of submission of required data by the community colleges and annual monitoring by the department of education of all community colleges for compliance with state program evaluation requirements adopted by the state board.

*b.* The second component consists of the use of an accreditation team appointed by the director of the department of education, to conduct an evaluation, including an on-site visit of each community college, with a comprehensive evaluation to occur during the same year as the evaluation by the north central association of colleges and schools, and an interim evaluation midway between comprehensive evaluations. The number and composition of the accreditation team shall be determined by the director, but the team shall include members of the department of education staff and community college staff members from community colleges other than the community college that conducts the programs being evaluated for accreditation. Beginning July 1, 2006, the accreditation team shall monitor the quality faculty plan implemented by each community college pursuant to section 260C.36.

*c.* Rules adopted by the state board shall include provisions for coordination of the accreditation process under this section with activities of

accreditation associations, which are designed to avoid duplication in the accreditation process.

2. Prior to a visit to a community college, members of the accreditation team shall have access to the program audit report filed with the department for that community college. After a visit to a community college, the accreditation team shall determine whether the accreditation standards for a program have been met and shall make a report to the director and the state board, together with a recommendation as to whether the program of the community college should remain accredited. The accreditation team shall report strengths and weaknesses, if any, for each program standard and shall advise the community college of available resources and technical assistance to further enhance strengths and improve areas of weakness. A community college may respond to the accreditation team's report.

3. The state board shall determine whether a program of a community college shall remain accredited. If the state board determines that a program of a community college does not meet accreditation standards, the director of the department of education, in cooperation with the board of directors of the community college, shall establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the program standards, and shall establish a deadline date for correction of the deficiencies. The deadline for correction of deficiencies under a plan shall be no later than June 30 of the year following the on-site visit of the accreditation team. The plan is subject to approval of the state board. Plans shall include components which address meeting program deficiencies, sharing or merger options, discontinuance of specific programs or courses of study, and any other options proposed by the state board or the accreditation team to allow the college to meet the program standards.

4. During the time specified in the plan for its implementation, the community college program remains accredited. The accreditation team shall revisit the community college and shall determine whether the deficiencies in the standards for the program have been corrected and shall make a report and recommendation to the director and the state board. The state board shall review the report and recommendation, may request additional information, and shall determine whether the deficiencies in the program have been corrected.

5. If the deficiencies have not been corrected in a program of a community college, the community college board shall take one of the following actions within sixty days from removal of accreditation:

*a.* Merge the deficient program or programs with a program or programs from another accredited community college.

*b.* Contract with another educational institution for purposes of program delivery at the community college.

c. Discontinue the program or programs which have been identified as deficient.

6. The director of the department of education shall give a community college which has a program which fails to meet accreditation standards at least one year's notice prior to removal of accreditation of the program. The notice shall be given by certified mail or restricted certified mail addressed to the superintendent of the community college and shall specify the reasons for removal of accreditation of the program. The notice shall also be sent by ordinary mail to each member of the board of directors of the community college. Any good faith error or failure to comply with the notice requirements shall not affect the validity of any action by the director. If, during the year, the community college remedies the reasons for removal of accreditation of the program and satisfies the director that the community college will comply with the accreditation standards for that program in the future, the director shall continue the accreditation of the program of the community college and shall transmit notice of the action to the community college by certified mail or restricted certified mail.

7. The action of the director to remove a community college's accreditation of the program may be appealed to the state board. At the hearing, the community college may be represented by counsel and may present evidence. The state board may provide for the hearing to be recorded or reported. If requested by the community college at least ten days before the hearing, the state board shall provide for the hearing to be recorded or reported at the expense of the community college, using any reasonable method specified by the community college. Within ten days after the hearing, the state board shall render a written decision, and shall affirm, modify, or vacate the action or proposed action to remove the college's accreditation of the program. Action by the state board is final agency action for purposes of chapter 17A.

2002 Acts, ch 1047, §6, 7, 20  
2002 amendments to subsection 1 are effective July 1, 2003; 2002 Acts, ch 1047, §20  
Subsection 1, unnumbered paragraph 1 and paragraph b amended

#### **260C.48 Standards for accrediting community college programs.**

1. The state board shall develop standards and rules for the accreditation of community college programs. Except as provided in this subsection and subsection 4, standards developed shall be general in nature so as to apply to more than one specific program of instruction. With regard to community college-employed instructors, the standards adopted shall at a minimum require that full-time community college instructors meet the following requirements:

a. Instructors in the subject area of career and technical education shall be registered, certified,

or licensed in the occupational area in which the state requires registration, certification, or licensure, and shall hold the appropriate registration, certificate, or license for the occupational area in which the instructor is teaching, and shall meet either of the following qualifications:

(1) A baccalaureate or graduate degree in the area or a related area of study or occupational area in which the instructor is teaching classes.

(2) Special training and at least six thousand hours of recent and relevant work experience in the occupational area or related occupational area in which the instructor teaches classes if the instructor possesses less than a baccalaureate degree.

b. Instructors in the subject area of arts and sciences shall meet either of the following qualifications:

(1) Possess a master's degree from a regionally accredited graduate school, and has successfully completed a minimum of twelve credit hours of graduate level courses in each field of instruction in which the instructor is teaching classes.

(2) Has two or more years of successful experience in a professional field or area in which the instructor is teaching classes and in which post-baccalaureate recognition or professional licensure is necessary for practice, including but not limited to the fields or areas of accounting, engineering, law, law enforcement, and medicine.

2. Standards developed shall include a provision that the standard academic workload for an instructor in arts and science courses shall be fifteen credit hours per school term, and the maximum academic workload for any instructor shall be sixteen credit hours per school term, for classes taught during the normal school day. In addition thereto, any faculty member may teach a course or courses at times other than the regular school week, involving total class instruction time equivalent to not more than a three-credit-hour course. The total workload for such instructors shall not exceed the equivalent of eighteen credit hours per school term.

3. Standards developed shall include provisions requiring equal access in recruitment, enrollment, and placement activities for students with special education needs. The provisions shall include a requirement that students with special education needs shall receive instruction in the least restrictive environment with access to the full range of program offerings at a college, through, but not limited to, adaptation of curriculum, instruction, equipment, facilities, career guidance, and counseling services.

4. Commencing July 1, 2006, standards relating to quality assurance of faculty and ongoing quality professional development shall be the accreditation standards of the north central association of colleges and schools and the faculty standards required under specific programs offered by

the community college that are accredited by other accrediting agencies.

2002 Acts, ch 1047, §8, 9, 20  
 2002 amendments to this section take effect July 1, 2003; 2002 Acts, ch 1047, §20  
 Subsection 1 amended  
 NEW subsection 4

**260C.66 Reports to general assembly.**

The board of directors of each community college shall determine, in consultation with the legislative services agency, the financial information to be included in line item budget information for projects funded by the issuance of bonds or notes under this chapter and shall submit the line item budget information to the general assembly as requested. The board of directors of each community college shall submit quarterly reports to the general assembly concerning the projects funded by

the issuance of bonds or notes under this chapter as follows:

1. Identification of both undercharges and overcharges for line items of projects.
2. Identification of contracts in which any line item for a project exceeds the adopted budget for that line item by ten percent or more.

3. Identification of complaints received by an institution regarding the construction of a project.

If the board of directors of a community college approves a change in the amount of the line item of a budget for a project, the change shall be transmitted to the appropriations committees of the house of representatives and senate, while the general assembly is in session, and to the legislative council, when the general assembly is not in session, for review.

2003 Acts, ch 35, §45, 49  
 Terminology change applied

**CHAPTER 260E**

**INDUSTRIAL NEW JOBS TRAINING**

**260E.3 Agreement.**

1. A community college may enter into an agreement to establish a project. If an agreement is entered into, the community college and the employer shall notify the department of revenue as soon as possible. An agreement shall provide for program costs, including deferred costs, which may be paid from one or a combination of the following sources:

a. Incremental property taxes to be received or derived from an employer's business property where new jobs are created as a result of the project.

b. New jobs credit from withholding to be received or derived from new employment resulting from the project.

c. Tuition, student fees, or special charges fixed by the board of directors to defray program costs in whole or in part.

d. Guarantee of payments to be received under paragraph "a", "b", or "c".

2. Payment of program costs shall not be deferred for a period longer than ten years from the date of commencement of the project.

3. Costs of on-the-job training for employees shall not exceed fifty percent of the annual gross payroll costs for up to one year of the new jobs. For purposes of this subsection, "gross payroll" can be the gross wages, salaries, and benefits for the jobs in training in the project.

4. An agreement shall include a provision which fixes the minimum amount of incremental property taxes, new jobs credit from withholding, or tuition and fee payments which shall be paid for program costs.

5. Any payments required to be made by an

employer are a lien upon the employer's business property until paid and have equal precedence with ordinary taxes and shall not be divested by a judicial sale. Property subject to the lien may be sold for sums due and delinquent at a tax sale, with the same forfeitures, penalties, and consequences as for the nonpayment of ordinary taxes. The purchaser at tax sale obtains the property subject to the remaining payments.

2003 Acts, ch 145, §286  
 Terminology change applied

**260E.5 New jobs credit from withholding.**

If an agreement provides that all or part of program costs are to be met by receipt of new jobs credit from withholding, it shall be done as follows:

1. New jobs credit from withholding shall be based upon the wages paid to the employees in the new jobs.

2. An amount equal to one and one-half percent of the gross wages paid by the employer to each employee participating in a project shall be credited from the payment made by an employer pursuant to section 422.16. If the amount of the withholding by the employer is less than one and one-half percent of the gross wages paid to the employees covered by the agreement, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall remit the amount of the credit quarterly in the same manner as withholding payments are reported to the department of revenue, to the community college to be allocated to and when collected paid into a special fund of the community college to pay the principal of and interest on certificates issued by the community college to fi-

nance or refinance, in whole or in part, the project. When the principal and interest on the certificates have been paid, the employer credits shall cease and any money received after the certificates have been paid shall be remitted to the treasurer of state to be deposited in the general fund of the state.

3. The new jobs credit from withholding and the special fund into which it is paid, may be irrevocably pledged by a community college for the payment of the principal of and interest on the certificate issued by a community college to finance or refinance, in whole or in part, the project.

4. The employer shall certify to the department of revenue that the credit in withholding is

in accordance with an agreement and shall provide other information the department may require.

5. A community college shall certify to the department of revenue the amount of new jobs credit from withholding an employer has remitted to the special fund and shall provide other information the department may require.

6. An employee participating in a project will receive full credit for the amount withheld as provided in section 422.16.

2003 Acts, ch 145, §286  
See also §15.331 and 15A.9  
Terminology change applied

## CHAPTER 260F

### JOBS TRAINING

#### **260F.9 Job retention program.**

1. The department of economic development shall administer the job retention program. The department shall adopt rules pursuant to chapter 17A necessary for the administration of this section. By January 15 of each year, the department shall submit a written report to the general assembly and the governor regarding the activities of the job retention program during the previous calendar year.

2. A community college and the department may enter into an agreement to establish a job retention project. A job retention project agreement shall include, but not be limited to, the following:

- a. The date of the agreement.
- b. The anticipated number of employees to be trained.
- c. The estimated cost of training.
- d. A statement regarding the number of employees employed by the participating business on the date of the agreement which must equal at least the lesser of one thousand employees or four percent or more of the county's resident labor force based on the most recent annual labor force statistics from the department of workforce development.

e. A commitment that the participating business shall invest at least fifteen million dollars to retool the workplace and upgrade the facilities of

the participating business.

f. A commitment that the participating business shall not move the business operation out of this state or close the business operation for at least ten years following the date of the agreement.

g. Other criteria established by the department of economic development.

3. A job retention project agreement entered into pursuant to this section must be approved by the board of trustees of the applicable community college, the department of economic development, and the participating business.

2003 Acts, 1st Ex, ch 2, §77, 209  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93  
NEW section

#### **260F.10 Reporting.**

A community college entering into an agreement pursuant to this chapter shall submit an annual written report by the end of each calendar year with the grow Iowa values board created in section 15G.102. The report shall provide information regarding how the agreement affects the achievement of the goals and performance measures provided in section 15G.107.

2003 Acts, 1st Ex, ch 2, §78, 209  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93  
NEW section

## CHAPTER 260G

### ACCELERATED CAREER EDUCATION PROGRAM

#### **260G.3 Program agreements.**

1. A community college may enter into an

agreement with an employer in the community college's merged area to establish an accelerated

career education program. The program shall be developed by an employer, a community college, and any employee of an employer who represents a program job. If a bargaining agreement is in place, a representative of the employee bargaining unit shall also take part in the development of the program.

2. An agreement may include reasonable and necessary provisions to implement the accelerated career education program. If an agreement that utilizes program job credits is entered into, the community college and the employer shall notify the department of revenue as soon as possible. The community college shall also file a copy of the agreement with the department of economic development as required in section 260G.4B. The agreement shall provide for program costs, including deferred costs, which may be paid from any of the following sources:

a. Program job credits which the employer receives based on the number of program job positions agreed to by the employer to be available under the agreement.

b. Cash or in-kind contributions by the employer toward the program cost. At a minimum, the employer contribution shall be twenty percent of the program costs.

c. Tuition, student fees, or special charges fixed by the board of directors to defray program costs.

d. Guarantee by the employer of payments to be received under paragraphs "a" and "b".

e. Moneys from a workforce training and economic development fund created in section 260C.18A, based on the number of program job positions agreed to by the employer to be available under the agreement, the amount of which shall be calculated in the same manner as the program job credits provided for in section 260G.4A.

3. An agreement shall include a provision which specifies the type and amount of funding sources which shall be used to pay for program costs.

4. An agreement shall describe program services and schedules for implementation.

5. The term of an agreement shall not exceed five years from the date of the agreement. However, the agreement may be renewed.

6. As part of the agreement, the employer shall agree to interview graduating participants for full-time positions with the employer and to provide future hiring preferences to graduates of the accelerated career education program provided for in the agreement.

7. As part of an agreement, if an employer has more than four sponsored participants in the program, the employer shall agree to offer a program job position of full-time employment to at least twenty-five percent of those participants who successfully complete the program.

8. An agreement shall provide for a wage level

of no less than two hundred percent of the federal poverty level for a family of two as defined by the most recently revised poverty income guidelines as published by the United States department of health and human services at the time the agreement is entered into. The wage level shall be re-certified for each year provided in the agreement on the anniversary of the effective date of the agreement.

9. An agreement shall allow an employer to decline to satisfy any provisions in the agreement relating to subsections 6 and 7 if an employer experiences an economic downturn. For purposes of this subsection, "economic downturn" may include a layoff of existing employees, reduced employment levels, increased inventories, or reduced sales, if specified in the agreement.

10. Participants shall agree to interview with the employer following completion of the accelerated career education program.

11. An agreement shall provide for employer default procedures.

2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §79, 209  
For future repeal of 2003 amendments to subsection 2 effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93  
Terminology change applied  
Subsection 2 amended

#### **260G.4A Program job credits from withholding.**

In order to develop and retain program jobs within the state, an agreement entered into under section 260G.3 may include a provision for program job credits based on program jobs identified in the agreement. If a program provides that part of the program costs are to be met by receipt of program job credits, the method to be used shall be as follows:

1. Program job credits shall be based upon the program job positions identified and agreed to in the agreement.

2. Eligibility for program job credits shall be based on certification of program job positions and program job wages by the employer at the time established in the agreement. An amount up to ten percent of the gross program job wage as certified by the employer in the agreement shall be credited from the total payment made by an employer pursuant to section 422.16. The employer shall receive a credit against all withholding taxes due by the employer regardless of whether or not the withholding from the employer of current program job wages is less than ten percent. The employer shall remit the amount of the credit quarterly in the same manner as withholding payments are reported to the department of revenue, to the community college to be allocated to and when collected paid into a special fund of the community college to pay, in part, the program costs. When the program costs have been paid, the employer credits shall cease and any moneys received after the program costs have been paid shall be re-

mitted to the treasurer of state to be deposited in the general fund of the state.

3. The employer shall certify to the department of revenue that the program job credit is in accordance with the agreement and shall provide other information the department may require.

4. A community college shall certify to the department of revenue that the amount of the program job credit is in accordance with an agreement and shall provide other information the department may require.

5. Employees from an employer participating in an agreement shall receive full credit for the amount withheld as provided in section 422.16.

6. Pursuant to an agreement or a statement of intent to enter into an agreement dated on or after July 1, 2000, program job credits may be allocated retroactively to program costs incurred on or after July 1, 2000.

2003 Acts, ch 145, §286  
Terminology change applied

#### **260G.4B Maximum statewide program job credit.**

1. The total amount of program job credits from all employers which shall be allocated for all accelerated career education programs in the state in any one fiscal year shall not exceed the sum of three million dollars in the fiscal year beginning July 1, 2000, three million dollars in the fiscal year beginning July 1, 2001, three million dollars in the fiscal year beginning July 1, 2002, four million dollars in the fiscal year beginning July 1, 2003, and six million dollars in the fiscal year beginning July 1, 2004, and every fiscal year thereafter. Any increase in program job credits above the six-million-dollar limitation per fiscal year shall be developed, based on recommendations in a study which shall be conducted by the department of economic development of the needs and performance of approved programs in the fiscal years beginning July 1, 2000, and July 1, 2001. The study's findings and recommendations shall be submitted to the general assembly by the department by December 31, 2002. The study shall include but not be limited to an examination of the quality of the programs, the number of program participant placements, the wages and benefits in program jobs, the level of employer contributions, the size of participating employers, and employer locations. A community college shall file a copy of each agreement with the department of economic development. The department shall maintain an annual record of the proposed program job credits under each agreement for each fiscal year. Upon receiving a copy of an agreement, the department shall allocate any available amount of program job

credits to the community college according to the agreement sufficient for the fiscal year and for the term of the agreement. When the total available program job credits are allocated for a fiscal year, the department shall notify all community colleges that the maximum amount has been allocated and that further program job credits will not be available for the remainder of the fiscal year. Once program job credits have been allocated to a community college, the full allocation shall be received by the community college throughout the fiscal year and for the term of the agreement even if the statewide program job credit maximum amount is subsequently allocated and used.

2. For the fiscal years beginning July 1, 2000, and July 1, 2001, the department of economic development shall allocate eighty thousand dollars of the first one million two hundred thousand dollars of program job credits authorized and available for that fiscal year to each community college. This allocation shall be used by each community college to provide funding for approved programs. For the fiscal year beginning July 1, 2002, and for every fiscal year thereafter, the department of economic development shall divide equally among the community colleges thirty percent of the program job credits available for that fiscal year for allocation to each community college to be used to provide funding for approved programs. If any portion of the allocation to a community college under this subsection has not been committed by April 1 of the fiscal year for which the allocation is made, the uncommitted portion is available for use by other community colleges. Once a community college has committed its allocation for any fiscal year under this subsection, the community college may receive additional program job credit allocations from those program job credits authorized and still available for that fiscal year.

2003 Acts, ch 179, §35  
Subsection 1 amended

**260G.8 and 260G.9** Reserved.

#### **260G.10 Reporting.**

A community college entering into an agreement pursuant to this chapter shall submit an annual written report by the end of each calendar year with the grow Iowa values board created in section 15G.102. The report shall provide information regarding how the agreement affects the achievement of the goals and performance measures provided in section 15G.107.

2003 Acts, 1st Ex, ch 2, §80, 209  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93  
NEW section

## CHAPTER 261

## COLLEGE STUDENT AID COMMISSION

**261.4 Funds — compensation and expenses of commission.**

The director of the department of administrative services shall keep an accounting of all funds received and expended by the commission. The members of the commission, except those members who are employees of the state, shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses. All per diem and expense moneys paid to nonlegislative members shall be paid from funds appropriated to the commission. Legislative members of the commission shall receive payment pursuant to section 2.10 and section 2.12.

2003 Acts, ch 145, §286  
Terminology change applied

**261.9 Definitions.**

When used in this division, unless the context otherwise requires:

1. “*Accredited private institution*” means an institution of higher learning located in Iowa which is operated privately and not controlled or administered by any state agency or any subdivision of the state, except for county hospitals as provided in paragraph “c” of this subsection, and which meets at least one of the criteria in paragraphs “a” through “c” and all of the criteria in paragraphs “d” through “g”:

a. Is accredited by the north central association of colleges and secondary schools accrediting agency based on their requirements.

b. Is certified by the north central association of colleges and secondary schools accrediting agency as a candidate for accreditation by that agency.

c. Is a school of nursing accredited by the national league for nursing and approved by the board of nursing, including such a school operated, controlled, and administered by a county public hospital.

d. Promotes equal opportunity and affirmative action efforts in the recruitment, appointment, assignment, and advancement of personnel at the institution. In carrying out this responsibility the institution shall do all of the following:

(1) Designate a position as the affirmative action coordinator.

(2) Adopt affirmative action standards.

(3) Gather data necessary to maintain an ongoing assessment of affirmative action efforts.

(4) Monitor accomplishments with respect to affirmative action remedies identified in affirmative action plans.

(5) Conduct studies of preemployment and postemployment processes in order to evaluate

employment practices and develop improved methods of dealing with all employment issues related to equal employment opportunity and affirmative action.

(6) Establish an equal employment committee to assist in addressing affirmative action needs, including recruitment.

(7) Address equal opportunity and affirmative action training needs by:

(a) Providing appropriate training for managers and supervisors.

(b) Insuring that training is available for all staff members whose duties relate to personnel administration.

(c) Investigating means for training in the area of career development.

(8) Require development of equal employment opportunity reports, including the initiation of the processes necessary for the completion of reports required by the federal equal employment opportunity commission.

(9) Address equal opportunity and affirmative action policies with respect to employee benefits and leaves of absence.

(10) File annual reports with the college aid commission of activities under this paragraph.

e. Adopts a policy that prohibits unlawful possession, use, or distribution of controlled substances by students and employees on property owned or leased by the institution or in conjunction with activities sponsored by the institution. Each institution shall provide information about the policy to all students and employees. The policy shall include a clear statement of sanctions for violation of the policy and information about available drug or alcohol counseling and rehabilitation programs. In carrying out this policy, an institution shall provide substance abuse prevention programs for students and employees.

f. Develops and implements a written policy, which is disseminated during student registration or orientation, addressing the following four areas relating to sexual abuse:

(1) Counseling.

(2) Campus security.

(3) Education, including prevention, protection, and the rights and duties of students and employees of the institution.

(4) Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

g. Adopts a policy to offer not less than the following options to a student who is a member of the Iowa national guard or reserve forces of the United States and who is ordered to active state service or federal service or duty:

(1) Withdraw from the student's entire registration and receive a full refund of tuition and mandatory fees.

(2) Make arrangements with the student's instructors for course grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the student's registration shall remain intact and tuition and mandatory fees shall be assessed for the courses in full.

(3) Make arrangements with only some of the student's instructors for grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the registration for those courses shall remain intact and tuition and mandatory fees shall be assessed for those courses. Any course for which arrangements cannot be made for grades or incompletes shall be considered dropped and the tuition and mandatory fees for the course refunded.

2. "*Commission*" means the college student aid commission.

3. "*Financial need*" means the difference between the student's financial resources available, including those available from the student's parents as determined by a completed parents' confidential statement, and the student's anticipated expenses while attending the accredited private institution. Financial need shall be redetermined at least annually.

4. "*Full-time resident student*" means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least twelve semester hours or the trimester equivalent of twelve semester hours. "*Course of study*" does not include correspondence courses.

5. "*Part-time resident student*" means an individual resident of Iowa who is enrolled at an accredited private institution in a course of study including at least three semester hours or the trimester or quarter equivalent of three semester hours. "*Course of study*" does not include correspondence courses.

6. "*Qualified student*" means a resident student who has established financial need and who is making satisfactory progress toward graduation.

7. "*Tuition grant*" means an award by the state of Iowa to a qualified student under this division.

2003 Acts, ch 179, §113, 114  
 Subsection 1, unnumbered paragraph 1 amended  
 Subsection 1, NEW paragraph g  
 Subsections 3 and 4 renumbered to alphabetize

### **261.22 Accelerated career education grants.**

1. An accelerated career education grant program is established to be administered by the college student aid commission. An individual is eligible for the grant program if the individual is a resident of this state who is enrolled at a commu-

nity college as a participant in an accelerated career education program in accordance with the provisions of chapter 260G. The college student aid commission shall adopt rules pursuant to chapter 17A for determining financial need and to administer this section and shall develop and implement a method for allocating moneys based upon the need for skills and occupations for which an applied technical education is required.

2. To be eligible to receive a grant under this section, an applicant shall, in accordance with the rules of the commission, do the following:

a. Complete and file an application for an accelerated career education grant. The individual shall be responsible for the prompt submission of any information required by the commission.

b. File a new application and submit information as required by the commission annually on the basis of which the applicant's eligibility for the renewed grant will be evaluated and determined.

3. If a student receives financial aid from any source other than the program established under this section, the full amount of such financial aid shall be considered part of the student's financial resources available in determining the amount of the student's financial need for the period of the financial aid. Grant moneys received by a student in accordance with this section shall be used to pay the student's cost of attendance, which includes community college tuition and fees, materials, textbooks and supplies, transportation, room and board, dependent care during the time the person is in class, and the purchase or rental of a computer.

4. The amount of the grant shall not exceed a student's annual financial need or two thousand dollars, whichever is less. The grants shall be awarded on an annual basis. Applicants who meet the application deadline shall be ranked by the commission in order of need. The commission shall award grants to applicants in order of need beginning with applicants with the greatest need, insofar as funds permit. If a student receiving grant moneys discontinues attendance before the end of any term, the entire amount of any refund due that student, up to the amount of any payments made under the grant, shall be paid by the institution to the state for deposit in the accelerated career education grant fund.

5. An accelerated career education grant fund is created in the state treasury as a separate fund under the control of the commission. Moneys in the fund shall be used for accelerated career education grants. The fund shall consist of any moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the commission from the federal government or private sources for placement in the fund. Notwithstanding section 8.33, any balance in the fund on June 30 of each fiscal year shall not revert to the general fund of the state, but shall be available for

the purposes of this section in subsequent fiscal years.

6. By December 15 of each year, the commission shall submit a report to the general assembly, the department of management, and the legislative services agency including, but not limited to, all of the following data:

*a.* The total funding of the grant program for the previous fiscal year itemized by type of funding including state, federal, or other funding. The information shall also be provided according to each community college.

*b.* The expenditures under the grant program and related information of the grant program including, but not limited to, all of the following:

(1) The number of participants in the accelerated career education program receiving moneys under the grant program.

(2) The number of participants in the accelerated career education program receiving moneys under the grant program who remain in the state upon completion of a program agreement.

(3) The number of participants in the accelerated career education program receiving moneys under the grant program who successfully complete a program agreement and the number who fail to successfully complete a program agreement.

*c.* Any other information requested by the general assembly.

2003 Acts, ch 35, §45, 49  
Terminology change applied

### **261.23 Registered nurse recruitment program.**

1. A registered nurse recruitment program is established to be administered by the college student aid commission. The program shall consist of a forgivable loan program and a tuition scholarship program for students and a loan repayment program for registered nurses. The commission shall regularly adjust the registered nurse service requirement under each aspect of the program to provide, to the extent possible, an equal financial benefit for each period of service required. From funds appropriated for purposes of the program by the general assembly, the commission shall pay a fee to schools of nursing, accredited by the board of nursing, for the administration of the program. A portion of the fee shall be based upon the number of registered nurses recruited under subsection 4.

2. A forgivable loan may be awarded to a resident of Iowa who is enrolled at an accredited school of nursing, which is located in this state, on a full-time or part-time basis in a course of study leading to a collegiate or associate degree of nursing, a diploma in nursing, or a graduate or equivalent degree in nursing, if the student agrees to practice in this state for a period of time to be determined by the commission at the time the loan is awarded. Forgivable loans to eligible students

shall not become due until after the student completes a licensing examination prescribed by the board of nursing. Interest on the loans shall begin to accrue the day following the student's graduation date. If the student completes the period of practice established by the commission and agreed to by the student, the loan amount shall be forgiven. The loan amount shall not be forgiven if the student fails to complete the required time period of practice in this state or fails to satisfactorily continue in the school of nursing.

3. A student enrolled at an accredited school of nursing, which is located in this state, on a full-time or part-time basis in a course of study leading to a collegiate or associate degree of nursing, a diploma in nursing, or a graduate or equivalent degree in nursing, shall be eligible for a tuition scholarship for the student's study at the school of nursing. The scholarship shall be for an amount not to exceed the resident tuition rate established for institutions of higher learning under the control of the state board of regents. A student who receives a tuition scholarship shall not be eligible for the loan repayment program provided for by this section. A student who receives a tuition scholarship shall agree to practice in a community in this state for a period of time to be determined by the commission at the time the scholarship is awarded. The student shall repay the scholarship to the commission if the student fails to practice in a community in this state for the required period of time.

4. A registered nurse shall be eligible for the registered nurse loan repayment program if the registered nurse has received from an accredited school of nursing located in this state a collegiate or associate degree of nursing, a diploma in nursing, or a graduate or equivalent degree in nursing and agrees to practice in an eligible community in this state that has agreed to provide additional funds for the registered nurse's loan repayment. The contract for the loan repayment shall stipulate the time period the registered nurse shall practice in an eligible community in this state. In addition, the contract shall stipulate that the registered nurse repay any funds paid on the registered nurse's loan by the commission if the registered nurse fails to practice in an eligible community in this state for the required period of time. For purposes of this subsection, "*eligible community*" means a community that agrees to match state funds provided on at least a dollar-for-dollar basis for the loan repayment of a registered nurse who practices in the community.

5. A registered nurse recruitment revolving fund is created in the state treasury as a separate fund under the control of the commission. The commission shall deposit payments made by registered nurse recruitment program recipients and the proceeds from the sale of registered nurse forgivable loans into the registered nurse recruitment revolving fund. Moneys credited to the fund

shall be used to supplement moneys appropriated for the registered nurse recruitment program. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

6. The commission shall adopt rules pursuant to chapter 17A to administer this section.

2003 Acts, ch 108, §47  
Subsection 4 amended

**261.25 Appropriations — standing limited — minority student and faculty information.**

1. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of forty-six million four hundred seventeen thousand nine hundred sixty-four dollars for tuition grants.

2. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of four hundred seventy-seven thousand one hundred three dollars for scholarships.

3. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million three hundred seventy-five thousand six hundred fifty-seven dollars for vocational-technical tuition grants.

4. This section shall not be construed to be a limitation on any of the amounts which may be appropriated by the general assembly for any program enumerated in this section.

5. For each fiscal year, the institutions of higher education that enroll recipients of Iowa tuition grants shall transmit to the Iowa college student aid commission information about the numbers of minority students enrolled and minority faculty members employed at the institution, and existing or proposed plans for the recruitment and retention of minority students and faculty as well as existing or proposed plans to serve nontraditional students. The Iowa college student aid commission shall compile and report the first fall academic semester or quarter enrollment and employment information and plans for the next fiscal year to the chairpersons and ranking members of the house and senate education committees, members of the joint education appropriations subcommittee, the governor, and the legislative services agency by March 1 of each year.

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 182, §13  
Terminology change applied  
Subsection 1 amended

**261.37 Duties.**

The duties of the commission under this division shall be as follows:

1. To review the Iowa guaranteed loan program.

2. To review and make disposition of all applications for the guarantee of student loans.

3. Collect an insurance premium of not more than the amount authorized by the federal Higher

Education Act of 1965. The premium shall be collected by the lender upon the disbursement of the loan and shall be remitted promptly to the commission.

4. To enter into all necessary agreements with the United States secretary of education as required for the purpose of receiving full benefit of the state program incentives offered pursuant to the Higher Education Act of 1965.

5. To adopt rules pursuant to chapter 17A to implement the provisions of this division including establishing standards for educational institutions, lenders, and individuals to become eligible institutions, lenders, and borrowers. Notwithstanding any contrary provisions in chapter 537, the rules and standards established shall be consistent with the requirements provided in the Higher Education Act of 1965.

6. To reimburse eligible lenders for the amount authorized by the federal Higher Education Act of 1965 on defaulted loans guaranteed by the commission upon receipt of written notice of the default accompanied by evidence that the lender has exercised the required degree of diligence in efforts to collect the loan.

7. To establish an effective system for the collection of delinquent loans, including the adoption of an agreement with the department of administrative services to set off against a defaulter's income tax refund or rebate the amount that is due because of a default on a guaranteed or parental loan made under this division. The commission shall adopt rules under chapter 17A necessary to assist the department of administrative services in the implementation of the student loan setoff program as established under section 8A.504.

8. To develop and disseminate informational and educational materials to lenders, postsecondary institutions and borrowers. The commission shall provide applicants, as deemed necessary by the commission, with information about the past default rates of borrowers, enrollment, and placement statistics by postsecondary institution.

9. To develop all forms necessary to the proper administration of the guaranteed student loan program and provide supplies of such forms to participating lenders and postsecondary institutions.

10. To report annually to the governor and the general assembly on the status of the guaranteed student loan program.

11. To implement all possible assistance to eligible lenders for the purpose of easing the workload entailed in participation in the guaranteed student loan program.

2003 Acts, ch 145, §228  
Subsection 7 amended

**261.85 Appropriation.**

There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million seven hundred fifty thousand

dollars for the work-study program.

From moneys appropriated in this section, one million five hundred thousand dollars shall be allocated to institutions of higher education under the state board of regents and community colleges and the remaining dollars appropriated in this section shall be allocated by the commission on the basis of need as determined by the portion of the federal formula for distribution of work-study funds that relates to the current need of institutions.

Work-study program funding eliminated for fiscal year beginning July 1, 2003, and ending June 30, 2004; 2003 Acts, ch 182, §2  
Section not amended; footnote added

### **261.86 National guard educational assistance program.**

1. A national guard educational assistance program is established to be administered by the college student aid commission for members of the Iowa national guard who are enrolled as undergraduate students in a community college, an institution of higher learning under the state board of regents, or an accredited private institution. The college student aid commission shall adopt rules pursuant to chapter 17A to administer this section. An individual is eligible for the national guard educational assistance program if the individual meets all of the following conditions:

*a.* Is a resident of the state and a member of an Iowa army or air national guard unit while receiving educational assistance pursuant to this section.

*b.* Satisfactorily completed required initial active duty training.

*c.* Maintains satisfactory performance of duty upon return from initial active duty training, including attending a minimum ninety percent of scheduled drill dates and attending annual training.

*d.* Is enrolled as an undergraduate student in a community college as defined in section 260C.2, an institution of higher learning under the control of the board of regents, or an accredited private institution as defined in section 261.9, and is maintaining satisfactory academic progress.

*e.* Provides proper notice of national guard status to the community college or institution at the time of registration for the term in which tuition benefits are sought.

*f.* Submits an application to the adjutant general of Iowa, on forms prescribed by the adjutant general, who shall determine eligibility and whose decision is final.

2. Educational assistance paid pursuant to this section shall not exceed the resident tuition rate established for institutions of higher learning under the control of the state board of regents. If the amount appropriated in a fiscal year for purposes of this section is insufficient to provide educational assistance to all national guard members who apply for the program and who are deter-

mined by the adjutant general to be eligible for the program, the adjutant general shall, in coordination with the commission, determine the distribution of educational assistance. However, educational assistance paid pursuant to this section shall not be less than fifty percent of the resident tuition rate established for institutions of higher learning under the control of the state board of regents or fifty percent of the tuition rate at the institution attended by the national guard member, whichever is lower. Neither eligibility nor educational assistance determinations shall be based upon a national guard member's unit, the location at which drills are attended, or whether the eligible individual is a member of the Iowa army or air national guard.

3. An eligible member of the national guard, attending an institution as provided in subsection 1, paragraph "d", as a full-time student, shall not receive educational assistance under this section for more than eight semesters, or if attending as a part-time student for not more than sixteen semesters, of undergraduate study, or the trimester or quarter equivalent. A national guard member who has met the educational requirements for a baccalaureate degree is ineligible for educational assistance under this section.

4. The eligibility of applicants and amounts of educational assistance to be paid shall be certified by the adjutant general of Iowa to the college student aid commission, and all amounts that are or become due to a community college, accredited private institution, or institution of higher learning under the control of the state board of regents under this section shall be paid to the college or institution by the college student aid commission upon receipt of certification by the president or governing board of the educational institution as to accuracy of charges made, and as to the attendance and academic progress of the individual at the educational institution. The college student aid commission shall maintain an annual record of the number of participants and the dollar value of the educational assistance provided.

5. For purposes of this section, unless otherwise required, "educational assistance" means the same as "cost of attendance" as defined in Title IV, part B, of the federal Higher Education Act of 1965 as amended.

6. Notwithstanding section 8.33, until one year after the date the president of the United States or the Congress of the United States declares a cessation of hostilities ending operation Iraqi freedom, funds appropriated for purposes of this section which remain unencumbered or unobligated at the close of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for purposes of this section.

2003 Acts, ch 182, §14, 22  
Subsection 6 takes effect May 30, 2003, and applies retroactively to July 1, 2002; 2003 Acts, ch 182, §22  
NEW subsection 6

## CHAPTER 261A

### HIGHER EDUCATION LOAN AUTHORITY (PRIVATE INSTITUTIONS)

#### **261A.6 Membership of authority.**

1. The authority consists of five members to be appointed by the governor subject to confirmation by the senate. The powers of the authority are vested in and exercised by the members of the authority. Each member of the authority shall be a resident of the state and not more than three members shall be members of the same political party.

2. The members of the authority shall be appointed by the governor for terms of six years beginning and ending as provided in section 69.19. A member of the authority is eligible for reappointment. The governor shall fill a vacancy for the remainder of the unexpired term. A member of the authority may be removed by the governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless the notice and hearing are waived by the member in writing.

3. The members of the authority shall annually elect one of the members as chairperson and one as vice chairperson. The members of the authority may appoint an executive director, an assistant executive director, and other officers as the members of the authority determine. The officers shall not be members of the authority, shall serve at the pleasure of the authority, and shall receive compensation as fixed by the authority.

4. The executive director or assistant executive director or other person designated by resolution of the authority shall keep a record of the proceedings of the authority and shall be custodian of all books, documents, and papers filed with the authority, the minute book or journal of the authority, and its official seal. The executive director, assistant executive director, or other person may cause copies to be made of minutes and other records and documents of the authority and may give certificates under the official seal of the authority that the copies are true copies, and persons dealing with the authority may rely upon the certificates.

5. Three members of the authority constitute a quorum. The affirmative vote of a majority of the members of the authority is necessary for any action taken by the authority. The majority shall not include a member who has a conflict of interest and a statement by a member of a conflict of interest is conclusive for this purpose. A vacancy in the membership of the authority does not impair the right of a quorum to exercise the rights and perform the duties of the authority. An action taken by the authority under this chapter may be authorized by resolution at a regular or special meet-

ing, and each resolution shall take effect immediately and need not be published or posted, except as provided in section 261A.25. Meetings of the authority shall be held at the call of the chairperson or at the request of two members.

6. The members of the authority shall not receive compensation for the performance of their duties as members but each member shall be paid necessary expenses while engaged in the performance of duties of the authority.

7. The members of the authority shall give bond as required for public officers in chapter 64.

8. The members of the authority are subject to and are officials within the meaning of chapter 68B.

9. Notwithstanding chapter 68B or any other laws to the contrary, it is not a conflict of interest or violation of a law for a trustee, director, officer, or employee of a participating institution or for a person having a favorable reputation for skill, knowledge, and experience in state and municipal finance or for a person having a favorable reputation for skill, knowledge, and experience in the higher education loan finance field to serve as a member of the authority. However, in each case to which this chapter is applicable, the trustee, director, officer, or employee of the participating institution shall abstain from discussion, deliberation, action, and vote by the authority in respect to an undertaking pursuant to this chapter in which the participating institution of higher education has an interest; and the person having a favorable reputation for skill, knowledge, and experience in state and municipal finance shall abstain from discussion, deliberation, action, and vote by the authority in respect to a sale, purchase, or ownership of obligations of the authority in which an investment banking firm or insurance company or bank of which the person is a partner, officer, or employee has or may have a current or future interest; and the person having a favorable reputation for skill, knowledge, and experience in the higher education loan finance field shall abstain from discussion, deliberation, action, and vote by the authority in respect to an action of the authority in which a partnership, firm, joint venture, sole proprietorship, or corporation of which the person is an owner, venturer, participant, partner, officer, or employee has or may have a current or future interest.

10. All employees of the authority are exempt from chapter 8A, subchapter IV, and chapter 97B.

2003 Acts, ch 145, §229  
Confirmation, see §2.32  
Subsection 10 amended

## CHAPTER 262

### BOARD OF REGENTS

#### 262.9 Powers and duties.

The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until a successor is elected and qualified.
2. Elect a president of each of the institutions of higher learning; a superintendent of each of the other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation. Sections 279.12 through 279.19 and section 279.27 apply to employees of the Iowa braille and sight saving school and the state school for the deaf, who are licensed pursuant to chapter 272. In following those sections in chapter 279, the references to boards of directors of school districts shall be interpreted to apply to the board of regents.
3. Make rules for admission to and for the government of said institutions, not inconsistent with law.
4. Manage and control the property, both real and personal, belonging to the institutions. The board shall purchase or require the purchase of, when the price is reasonably competitive and the quality as intended, soybean-based inks. All inks purchased that are used internally or are contracted for by the board shall be soybean-based to the extent formulations for such inks are available.
  - a. The department of natural resources shall review the procurement specifications currently used by the board to eliminate, wherever possible, discrimination against the procurement of products manufactured with soybean-based inks.
  - b. The department of natural resources shall assist the board in locating suppliers of recycled content products and soybean-based inks and collecting data on recycled content and soybean-based ink purchases.
  - c. The board, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.
  - d. The department of natural resources shall cooperate with the board in all phases of implementing this section.
5. The board shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from non-renewable resources. For the purposes of this subsection, "packing material" means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.
6. Purchase and use recycled printing and writing paper, with the exception of specialized paper when no recyclable product is available, in accordance with the schedule established in section 8A.315; establish a wastepaper recycling program for all institutions governed by the board in accordance with recommendations made by the department of natural resources and the requirements of section 8A.329; shall, in accordance with the requirements of section 8A.311, require product content statements and compliance with requirements regarding procurement specifications; and shall comply with the requirements for the purchase of lubricating oils and industrial oils as established pursuant to section 8A.316.
7. With the approval of the executive council, acquire real estate for the proper uses of said institutions, and dispose of real estate belonging to said institutions when not necessary for their purposes. A disposal of such real estate shall be made upon such terms, conditions and consideration as the board may recommend and subject to the approval of the executive council. If real estate subject to sale hereunder has been purchased or acquired from appropriated funds, the proceeds of such sale shall be deposited with the treasurer of state and credited to the general fund of the state. There is hereby appropriated from the general fund of the state a sum equal to the proceeds so deposited and credited to the general fund of the state to the state board of regents which, with the prior approval of the executive council, may be used to purchase other real estate and buildings, and for the construction and alteration of buildings and other capital improvements. All transfers shall be by state patent in the manner provided by law.
8. Accept and administer trusts and may authorize nonprofit foundations acting solely for the support of institutions governed by the board to accept and administer trusts deemed by the board to be beneficial. Notwithstanding the provisions of section 633.63, the board and such nonprofit foundations may act as trustee in such instances.
9. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the Iowa state university of science and technology, nor the permanent funds of the university of Iowa derived under Acts of Congress, be diminished.
10. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.
11. With consent of the inventor and in the discretion of the board, secure letters patent or copy-

right on inventions of students, instructors and officials, or take assignment of such letters patent or copyright and may make all necessary expenditures in regard thereto. The letters patent or copyright on inventions when so secured shall be the property of the state, and the royalties and earnings thereon shall be credited to the funds of the institution in which such patent or copyright originated.

12. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it.

13. Grant leaves of absence with full or partial compensation to staff members to undertake approved programs of study, research, or other professional activity which in the judgment of the board will contribute to the improvement of the institutions. Any staff member granted such leave shall agree either to return to the institution granting such leave for a period of not less than two years or to repay to the state of Iowa such compensation as the staff member shall have received during such leave.

14. Lease properties and facilities, either as lessor or lessee, for the proper use and benefit of said institutions upon such terms, conditions, and considerations as the board deems advantageous, including leases with provisions for ultimate ownership by the state of Iowa, and to pay the rentals from funds appropriated to the institution for operating expenses thereof or from such other funds as may be available therefor.

15. In its discretion employ or retain attorneys or counselors when acting as a public employer for the purpose of carrying out collective bargaining and related responsibilities provided for under chapter 20. This subsection shall supersede the provisions of section 13.7.

The state board of regents may make payment to an attorney or counselor for services rendered prior to July 1, 1978, to the state board of regents in connection with its responsibilities as a public employer pursuant to chapter 20.

16. In its discretion, adopt rules relating to the classification of students enrolled in institutions of higher education under the board who are residents of Iowa's sister states as residents or nonresidents for fee purposes.

17. In issuing bonds or notes under this chapter, chapter 262A, chapter 263A, or other provision of law, select and fix the compensation for, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the board's judgment are necessary to carry out the board's intention. Prior to the initial selection, the board shall establish a procedure which provides for a fair and open selection process including, but not limited to, the opportunity to present written proposals and personal interviews. The board shall maintain a list of firms which have requested to be notified of requests for

proposal. The selection criteria shall take into consideration, but are not limited to, compensation, expenses, experience with similar issues, scheduling, ability to provide the services of individuals with specific knowledge in the relevant subject matter and length of engagement. The board may waive the requirements for a competitive selection procedure for any specific employment upon adoption of a resolution of the board stating why the waiver is in the public interest and shall provide the executive council with written notice of the granting of any such waiver.

18. Not less than thirty days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, send written notification of the amount of the proposed increase including a copy of the proposed tuition increase docket memorandum prepared for its consideration to the presiding officers of the student government organization of the affected institutions. The final decision on an increase in tuition or mandatory fees charged to all students at an institution for a fiscal year shall be made no later than the regular meeting held in November of the preceding fiscal year and shall be reflected in a final docket memorandum that states the estimated total cost of attending each of the institutions of higher education under the board's control. The regular meeting held in November shall be held in Ames, Cedar Falls, or Iowa City and shall not be held during the period in which classes have been suspended for Thanksgiving vacation.

19. Adopt policies and procedures for the use of telecommunications as an instructional tool at its institutions. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

20. Establish a hall of fame for distinguished graduates at the Iowa braille and sight saving school and at the Iowa school for the deaf.

21. Assist a nonprofit organization located in Sioux City in the creation of a tristate graduate center, comparable to the quad cities graduate center, located in the quad cities in Iowa. The purpose of the Sioux City graduate center shall be to create graduate education opportunities for students living in northwest Iowa.

22. Direct the administration of the Iowa minority academic grants for economic success program as established in section 261.101 for the institutions under its control.

23. Develop a policy and adopt rules relating to the establishment of tuition rates which provide a predictable basis for assessing and anticipating changes in tuition rates.

24. Develop a policy requiring oral communication competence of persons who provide instruction to students attending institutions under

the control of the board. The policy shall include a student evaluation mechanism which requires student evaluation of persons providing instruction on at least an annual basis. However, the board shall establish criteria by which an institution may discontinue annual evaluations of a specific person providing instruction. The criteria shall include receipt by the institution of two consecutive positive annual evaluations from the majority of students evaluating the person.

25. Develop a policy relating to the teaching proficiency of teaching assistants which provides a teaching proficiency standard, instructional assistance to, and evaluation of persons who provide instruction to students at the higher education institutions under the control of the board.

26. Explore, in conjunction with the department of education, the need for coordination between school districts, area education agencies, state board of regents institutions, and community colleges for purposes of delivery of courses, use of telecommunications, transportation, and other similar issues. Coordination may include, but is not limited to, coordination of calendars, programs, schedules, or telecommunications emissions. The state board shall develop recommendations as necessary, which shall be submitted in a report to the general assembly on a timely basis.

27. Develop and implement a written policy, which is disseminated during registration or orientation, addressing the following four areas relating to sexual abuse:

- a. Counseling.
- b. Campus security.
- c. Education, including prevention, protection, and the rights and duties of students and employees of the institution.
- d. Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

28. Authorize the institutions of higher learning under the board to charge an interest rate, not to exceed the prime rate plus six percent, on delinquent bills. However, the board shall prohibit the institutions from charging interest on late tuition payments and room and board payments if financial aid payments to students enrolled in the institutions are delayed by the lending institution.

29. Direct the institutions of higher education under its control to adopt a policy to offer not less than the following options to a student who is a member of the Iowa national guard or reserve forces of the United States and who is ordered to active state service or federal service or duty:

a. Withdraw from the student's entire registration and receive a full refund of tuition and mandatory fees.

b. Make arrangements with the student's instructors for course grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the student's registration shall remain intact and tuition

and mandatory fees shall be assessed for the courses in full.

c. Make arrangements with only some of the student's instructors for grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the registration for those courses shall remain intact and tuition and mandatory fees shall be assessed for those courses. Any course for which arrangements cannot be made for grades or incompletes shall be considered dropped and the tuition and mandatory fees for the course refunded.

30. Develop a policy, not later than August 1, 2003, that each institution of higher education under the control of the board shall approve, institute, and enforce, which prohibits students, faculty, and staff from harassing or intimidating a student or any other person on institution property who is wearing the uniform of, or a distinctive part of the uniform of, the armed forces of the United States. A policy developed in accordance with this subsection shall not prohibit an individual from wearing such a uniform on institution property if the individual is authorized to wear the uniform under the laws of a state or the United States. The policy shall provide for appropriate sanctions.

31. By January 15 of each year, submit a report to the governor, through the director of technology in the office of the governor, and the general assembly containing information from the previous calendar year regarding all of the following:

a. Patents secured or applied for by each university under the control of the board delineated by university and by faculty members and staff members responsible for the research or activity that resulted in the patent. In the initial report filed by January 15, 2004, the board shall include an inventory of patent portfolios with details concerning which patents are creating financial benefit and the amount of financial benefit and which patents are not creating financial benefit and the amount invested in those patents.

b. Research grants secured by each university under the control of the board from both public and private sources delineated by university and by faculty members and staff members. The board shall also include the same information for grant applications that are denied.

c. The number of faculty members and staff members at each university under the control of the board involved in a start-up company.

d. The number of grant applications for research received by each university under the control of the board for start-up companies, the number of applications approved, and the number of applications denied.

e. The number of agreements entered into by faculty members and staff members at each university under the control of the board with foundations affiliated with the universities relating to business start-ups.

f. An accounting of the financial gain received

by each university under the control of the board relating to patents sold, royalties received, licensing fees, and any other remuneration received by the university related to technology transfer.

g. The number of professional employees at each university under the control of the board who assist in the transfer of technology and research to commercial application.

2003 Acts, ch 145, §230; 2003 Acts, ch 179, §115; 2003 Acts, ch 180, §13; 2003 Acts, 1st Ex, ch 1, §94, 133

For future repeal effective June 30, 2010, of subsection 31 due to repeal of 2003 provisions establishing technology transfer advisors, see 2003 Acts, 1st Ex, ch 1, §114

Subsection 6 amended  
NEW subsections 29 – 31

### 262.22 Director's report.

The director of the department of administrative services shall include in the director's report to the governor the amount paid for services and expenses of officers and employees of the board of regents and to whom paid.

2003 Acts, ch 145, §286  
Terminology change applied

### 262.25A Purchase of automobiles.

1. Institutions under the control of the state board of regents shall purchase only new automobiles which have at least the fuel economy required for purchase of new automobiles by the director of the department of administrative services under section 8A.362, subsection 4. This subsection does not apply to automobiles purchased for law enforcement purposes.

2. A motor vehicle purchased by the institutions shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

3. Of all new passenger vehicles and light pickup trucks purchased by or under the direction of the state board of regents, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

a. A flexible fuel which is either of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of processed soybean oil and diesel fuel. At least twenty percent of the fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of

renewable fuels and coproducts pursuant to section 159A.3.

b. Compressed or liquefied natural gas.

c. Propane gas.

d. Solar energy.

e. Electricity.

The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

2003 Acts, ch 145, §231  
Subsection 1 amended

### 262.25B Purchase of bio-based hydraulic fluids, greases, and other industrial lubricants.

The state board of regents and institutions under the control of the board purchasing hydraulic fluids, greases, and other industrial lubricants shall give preference to purchasing bio-based hydraulic fluids, greases, and other industrial lubricants as provided in section 8A.316.

2003 Acts, ch 145, §232  
Section amended

### 262.29 Expenses — filing and audit.

All claims for the actual necessary expenses of the board and of its committees, offices, agencies, and employees shall be filed with and allowed by the director of the department of administrative services in the same manner as may now or hereafter be required in the case of claims for similar expenses by state officers.

2003 Acts, ch 145, §286  
Terminology change applied

### 262.54 Computer sales.

Sales, by an institution under the control of the board of regents, of computer equipment, computer software, and computer supplies to students and faculty at the institution are retail sales under chapter 422, division IV.

For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §159, 205

Section not amended; footnote added

### 262.64A Reports to general assembly.

The state board of regents shall determine, in consultation with the legislative services agency, the financial information to be included in line item budget information for projects funded by the issuance of bonds or notes under this chapter and shall submit the line item budget information to the general assembly as requested. The state board of regents shall submit quarterly reports to the general assembly concerning the projects funded by the issuance of bonds or notes under this chapter as follows:

1. Identification of both undercharges and overcharges for line items of projects.

2. Identification of contracts in which any line item for a project exceeds the adopted budget for that line item by ten percent or more.

3. Identification of complaints received by an

institution regarding the construction of a project.

If the state board of regents approves a change in the amount of the line item of a budget for a project, the change shall be transmitted to the appropriations committees of the house of representa-

tives and senate, while the general assembly is in session, and to the legislative council, when the general assembly is not in session, for review.

2003 Acts, ch 35, §45, 49  
Terminology change applied

## CHAPTER 262A

### UNIVERSITY BUILDINGS, FACILITIES, AND SERVICES — REVENUE BONDS

#### 262A.13 Reports to general assembly.

The state board of regents shall determine, in consultation with the legislative services agency, the financial information to be included in line item budget information for projects funded by the issuance of bonds or notes under this chapter and shall submit the line item budget information to the general assembly as requested. The state board of regents shall submit quarterly reports to the general assembly concerning the projects funded by the issuance of bonds or notes under this chapter as follows:

1. Identification of both undercharges and overcharges for line items of projects.

2. Identification of contracts in which any line item for a project exceeds the adopted budget for that line item by ten percent or more.

3. Identification of complaints received by an institution regarding the construction of a project.

If the state board of regents approves a change in the amount of the line item of a budget for a project, the change shall be transmitted to the appropriations committees of the house of representatives and senate, while the general assembly is in session, and to the legislative council, when the general assembly is not in session, for review.

2003 Acts, ch 35, §45, 49  
Terminology change applied

## CHAPTER 262B

### COMMERCIALIZATION OF UNIVERSITY-BASED RESEARCH

#### 262B.1 Title.

This chapter shall be known and may be cited as the “*Commercialization of Research for Iowa Act*”.

2003 Acts, 1st Ex, ch 1, §95, 133  
For future repeal of 2003 amendments to this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
Section amended

#### 262B.2 Legislative intent.

It is the intent of the general assembly that the three universities under the control of the state board of regents have as part of their mission the use of their universities’ expertise to expand and stimulate economic growth across the state. This activity may be accomplished through a wide variety of partnerships, public and private joint ventures, and cooperative endeavors, primarily in the area of high technology, and may result in investments by the private sector for commercialization of the technology. It is imperative that the investments and job creation be in Iowa, but need not be in the proximity of the universities. The purpose is to expand and stimulate Iowa’s economy, increase the wealth of Iowans, and increase the population of Iowa, which may be accomplished through research conducted within the state that will competitively position Iowa on an economic basis with other states and create high-wage, high-growth employers and jobs. It is also the in-

tent of the general assembly that real or virtual research parks will be established and maintained by the universities in close enough proximity to the ventures that cooperation between the academic, research, and commercialization phases will be encouraged. It is the intent of the general assembly that satellites of the research parks will expand and stimulate economic growth in other areas of the state.

2003 Acts, 1st Ex, ch 1, §96, 133  
For future repeal of 2003 amendments to this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
Section stricken and rewritten

#### 262B.3 Duties and responsibilities.

1. The state board of regents, as part of its mission and strategic plan, shall establish mechanisms for the purpose of carrying out the intent of this chapter. In addition to other board initiatives, the board shall work with the department of economic development, other state agencies, and the private sector to facilitate the commercialization of research.

2. Activities to implement this chapter may include:

a. Developing strategies to market university research for commercialization in Iowa.

b. Matching university resources with the needs of existing Iowa firms or start-up opportunities.

c. Evaluating university research for commercialization potential, where relevant.

d. Developing a plan to improve private sector access to the university licenses and patent information and the transfer of technology from the university to the private sector.

e. Disseminating information on research activities of the university.

f. Identifying research needs of existing Iowa businesses and recommending ways in which the universities can meet these needs.

g. Linking research and instruction activities to economic development.

h. Reviewing and monitoring activities related to technology transfer.

i. Coordinating activities to facilitate a focus on research in the state's targeted industry clusters.

j. Surveying of similar activities in other states and at other universities.

k. Establishing a single point of contact to facilitate commercialization of research.

2003 Acts, 1st Ex, ch 1, §97, 133

For future repeal of 2003 amendments to this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114

Section amended

**262B.4 Duties of the consortium.** Repealed by 2003 Acts, 1st Ex, ch 1, § 100, 133.

For rescinding of repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114

#### **262B.5 Reporting.**

The state board of regents with input from the Iowa department of economic development shall report annually to the governor and the general assembly concerning the activities conducted pursuant to this chapter.

2003 Acts, 1st Ex, ch 1, §98, 133

For future repeal of 2003 amendments to this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114

Section amended

**262B.6 through 262B.10** Reserved.

**262B.11 University-based research utilization program.**

1. The department of economic development shall establish and administer a university-based research utilization program for purposes of encouraging the utilization of university-based research, primarily in the area of high technology, in new or existing businesses. The program shall include the three universities under the control of the state board of regents and all accredited private universities located in the state.

2. A new or existing business that utilizes a technology developed by an employee at a university under the control of the state board of regents may apply to the department of economic development for approval to participate in the university-based research utilization program. The department shall approve an applicant if the applicant

meets all of the following criteria:

a. The applicant utilizes a technology developed by an employee at a university under the control of the state board of regents, provided that the technology has received a patent after July 1, 2003. If the applicant has been in existence more than one year prior to applying, the applicant shall organize a separate company to utilize the technology. For purposes of this section, the separate company shall be considered the applicant and, if approved, the approved business.

b. The applicant develops a five-year business plan approved by the department. The plan shall include information concerning the applicant's Iowa employment goals and projected impact on the Iowa economy. The department shall only approve plans showing sufficient potential impact on Iowa employment and economic development.

c. The applicant meets a minimum-size business standard determined by the department.

d. The applicant provides annual reports to the department that include employment statistics for the applicant and the total taxable wages paid to Iowa employees and reported to the department of revenue pursuant to section 422.16.

3. A business approved under the program and the university employee responsible for the development of the technology utilized by the approved business shall be eligible for a tax credit. The credit shall be allowed against the taxes imposed in chapter 422, divisions II and III. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. A tax credit shall not be claimed under this subsection unless a tax credit certificate issued by the department of economic development is attached to the taxpayer's tax return for the tax year for which the tax credit is claimed. The amount of a tax credit allowed under this subsection shall equal the amount listed on a tax credit certificate issued by the department of economic development pursuant to subsection 4. A tax credit certificate shall not be transferable. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the taxpayer's tax liability for the following five years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

4. For the five tax years following the tax year in which a business is approved under the program, the department of revenue shall provide the department of economic development with information required by the department of economic development from each tax return filed by the approved business. Upon receiving the tax return-

related information, the department of economic development shall do all of the following:

a. Review the information provided by the department of revenue pursuant to this subsection and the annual report submitted by the applicant pursuant to subsection 2, paragraph “d”. If the department determines that the business activities of the applicant are not providing the benefits to Iowa employment and economic development projected in the applicant’s approved five-year business plan, the department shall not issue tax credit certificates for that year to the applicant or university employee and shall determine any related university share to be equal to zero for that year.

b. Effective for the fiscal year beginning July 1, 2004, and for subsequent fiscal years, issue a tax credit certificate to the approved business and the university employee responsible for the development of the technology utilized by the approved business in an amount determined pursuant to subsection 5. A tax credit certificate shall contain the taxpayer’s name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue.

c. (1) Determine the university share which is equal to the value of thirty percent of the tax liability of the approved business for purposes of making an appropriation pursuant to section 262B.12, to the university where the technology utilized by the approved business was developed. A university share shall not exceed two hundred twenty-five thousand dollars per year per technology utilized. For each technology utilized, the aggregate university share over a five-year period shall not exceed six hundred thousand dollars.

(2) The department shall maintain records for each university during each fiscal year regarding the university share each university is entitled to receive through the appropriation in section 262B.12. A university shall be entitled to receive the total university share for that particular university during the previous fiscal year.

d. For the fiscal year beginning July 1, 2004, not more than two million dollars worth of certificates shall be issued pursuant to paragraph “b”. For the fiscal year beginning July 1, 2005, and every fiscal year thereafter, not more than ten million dollars worth of certificates shall be issued pursuant to paragraph “b”.

5. The tax credit certificates issued by the department for each of the five years following the

tax year in which the business is approved under the program shall be for the following amounts:

a. For the approved business, the value of the tax credit certificate shall equal thirty percent of the tax liability of the approved business. The value of a certificate issued to an approved business shall not exceed two hundred twenty-five thousand dollars. The total aggregate value of certificates issued over a five-year period to an approved business shall not exceed six hundred thousand dollars.

b. For the university employee responsible for the development of the technology utilized by the approved business, the value of the tax credit certificate shall equal ten percent of the tax liability of the approved business. If more than one employee is responsible for the development of the technology, the value equal to ten percent of the tax liability of the approved business shall be divided equally and individual tax credit certificates shall be issued to each employee responsible for the development of the technology. Each year, the total value of a certificate or certificates issued for a utilized technology shall not exceed seventy-five thousand dollars. For each technology utilized, the total aggregate value of certificates issued over a five-year period to the university employee responsible for the development of the technology shall not exceed two hundred thousand dollars.

6. The department of economic development shall notify the department of revenue when a tax credit certificate is issued pursuant to subsection 4. The notification shall include the name and tax identification number appearing on any tax credit certificate.

2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 1, §111, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section  
Terminology change applied

**262B.12 Appropriation.**

On July 1 of each year there is appropriated from the general fund of the state to each university under the control of the state board of regents, an amount equal to the amount determined by the department of economic development pursuant to section 262B.11, subsection 4, paragraph “c”, subparagraph (2).

2003 Acts, 1st Ex, ch 2, §82, 209  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93  
NEW section

**CHAPTER 263A**

**MEDICAL AND HOSPITAL BUILDINGS  
AT UNIVERSITY OF IOWA**

**263A.11 Reports to general assembly.**

The state board of regents shall determine, in

consultation with the legislative services agency, the financial information to be included in line

item budget information for projects funded by the issuance of bonds or notes under this chapter and shall submit the line item budget information to the general assembly as requested. The state board of regents shall submit quarterly reports to the general assembly concerning the projects funded by the issuance of bonds or notes under this chapter as follows:

1. Identification of both undercharges and overcharges for line items of projects.
2. Identification of contracts in which any line item for a project exceeds the adopted budget for that line item by ten percent or more.
3. Identification of complaints received by an institution regarding the construction of a project.

If the state board of regents approves a change in the amount of the line item of a budget for a project, the change shall be transmitted to the appropriations committees of the house of representatives and senate, while the general assembly is in session, and to the legislative council, when the general assembly is not in session, for review.

2003 Acts, ch 35, §45, 49  
Terminology change applied

### **263A.13 Hospital reports to general assembly.**

The university of Iowa hospitals and clinics shall compile and transmit to the general assembly the following information by December 15 of each fiscal year:

1. Revenue from all income sources, by source, including but not limited to state appropriations, other state funds, tuition income, patient charges, payments from political subdivisions, interest income, and gifts, and grants from public and private sources.
2. Expenditures by program and revenue source.
3. Net revenue over spending from hospital operations, including the method used to calculate the results.

The legislative services agency shall develop forms for collecting the information required in this subparagraph.

2003 Acts, ch 35, §45, 49  
See also §255.24 and 255.24A  
Terminology change applied

## CHAPTER 266

### IOWA STATE UNIVERSITY OF SCIENCE AND TECHNOLOGY

**266.8 Hazardous waste research program.** Repealed by 2003 Acts, ch 179, § 143.

**266.24 through 266.26** Repealed by 2003 Acts, ch 179, § 143.

### **266.39D Livestock producers assistance program.**

Iowa state university shall establish and administer a livestock producers assistance program to provide on-site assistance to persons involved in livestock production in order to increase the efficiency, productivity, and profitability of their operations. The program, to every extent practicable, shall be supported by nonstate moneys. The university shall submit a report to the legislative services agency by November 1 of each year, if the university expects that state moneys may be required to support the program during the subsequent state fiscal year. The report shall include all expected sources of revenues and the amounts expected to be contributed by these sources for the subsequent state fiscal year.

2003 Acts, ch 35, §45, 49  
Terminology change applied

### **266.39F Sale of dairy breeding research farm.**

1. Immediately after May 2, 2002, Iowa state university of science and technology shall develop

a plan to sell, at market value, the one thousand one hundred-acre tract of land within the city limits of Ankeny, commonly referred to as the Iowa state university dairy breeding research farm. The plan shall include the sale of substantial portions of the tract as soon as practical, and the sale of all of the tract within a commercially reasonable time. Prior to implementing the plan, the university shall submit the plan to the state board of regents for review and approval. The sale shall be handled in a manner that is the most financially beneficial to the university. Appraisals conducted by the university of the value of any portion of the tract shall be made available to the public immediately following the sale of that portion of the tract.

2. The proceeds from the sale of the property as provided in subsection 1 are appropriated and shall be retained by Iowa state university of science and technology for use in establishing a new dairy research and dairy teaching facility or for the university's plant sciences institute.

The provisions of section 262.9, subsection 7, and section 262.10, shall not apply to the sale of any portion of land to be sold in accordance with this section or to the use of the proceeds from the sale of the land.

3. By December 15 annually, the state board of regents shall submit a report of the activities and costs of the sale of any property in accordance with subsection 1, including but not limited to the use

of any proceeds from the sale of the property and the environmental cleanup costs for any proposed sale in accordance with this section, to the general assembly in accordance with section 7A.11A, and to the legislative services agency, until such time as the sale of the property is complete and the proceeds have been expended by the university, at which time the state board of regents shall submit

a final report on the sale of the property and use of the proceeds to the general assembly in accordance with section 7A.11A and to the legislative services agency.

2003 Acts, ch 35, §45, 49  
 Legislative findings and purpose; 2002 Acts, ch 1143, §1  
 Terminology change applied

## CHAPTER 270

### SCHOOL FOR THE DEAF

#### 270.5 Certification to director of the department of administrative services.

The superintendent shall, on the first days of June and December of each year, certify to the director of the department of administrative services the amounts due from counties pursuant to sections 270.4 and 270.6, and the director of the department of administrative services shall credit the amounts due to the general fund of the state, and charge the amount to the proper county.

2003 Acts, ch 145, §286  
 Terminology change applied

#### 270.6 Certification to auditor — collection.

The superintendent shall, at the time of sending certificate to the director of the department of administrative services, send a duplicate copy to the auditor of the county of the pupil's residence, who shall, when ordered by the board of supervisors, proceed to collect the same by action if necessary, in the name of the county, and when so collected, shall pay the same into the county treasury.

2003 Acts, ch 145, §286  
 Terminology change applied

#### 270.7 Payment by county.

The county auditor shall, upon receipt of the certificate, pass it to the credit of the state, and issue a notice to the county treasurer authorizing the county treasurer to transfer the amount to the general state revenue, which shall be filed by the treasurer as authority for making the transfer, and the county treasurer shall include the amount in the next remittance of state taxes to the treasurer of state, designating the fund to which it belongs.

If a county fails to pay these bills within sixty days from the date of certificate from the superintendent, the director of the department of administrative services shall charge the delinquent county a penalty of three-fourths of one percent per month on and after sixty days from the date of certificate until paid. The penalties shall be credited to the general fund of the state.

2003 Acts, ch 145, §286  
 Method for payment for prescription drug costs for fiscal period beginning July 1, 2000, and ending June 30, 2004; 2000 Acts, ch 1223, §16; 2001 Acts, ch 181, §11; 2002 Acts, ch 1171, §84; 2003 Acts, ch 182, §12  
 Terminology change applied

## CHAPTER 272

### EDUCATIONAL EXAMINERS BOARD

#### 272.1 Definitions.

1. "Administrator" means a person who is licensed to coordinate, supervise, or direct an educational program or the activities of other practitioners.

2. "Board" means the board of educational examiners.

3. "Certificate" means limited recognition to perform instruction and instruction-related duties in school, other than those duties for which practitioners are licensed. A certificate is nonexclusive recognition and does not confer the exclusive authority of a license.

4. "Department" means the state department of education.

5. "License" means the authority that is given

to allow a person to legally serve as a practitioner, a school, an institution, or a course of study to legally offer professional development programs, other than those programs offered by practitioner preparation schools, institutions, courses of study, or area education agencies. A license is the exclusive authority to perform these functions.

6. "Para-educator" means a person who is certified to assist a teacher in the performance of instructional tasks to support and assist classroom instruction and related school activities.

7. "Practitioner" means an administrator, teacher, or other licensed professional who does not hold or receive a license from a professional licensing board other than the board of educational examiners and who provides educational assis-

tance to students.

8. “*Practitioner preparation program*” means a program approved by the state board of education which prepares a person to obtain a license as a practitioner.

9. “*Principal*” means a licensed member of a school’s instructional staff who serves as an instructional leader, coordinates the process and substance of educational and instructional programs, coordinates the budget of the school, provides formative evaluation for all practitioners and other persons in the school, recommends or has effective authority to appoint, assign, promote, or transfer personnel in a school building, implements the local school board’s policy in a manner consistent with professional practice and ethics, and assists in the development and supervision of a school’s student activities program.

10. “*Professional development program*” means a course or program which is offered by a person or agency for the purpose of providing continuing education for the renewal or upgrading of a practitioner’s license.

11. “*School*” means a school under section 280.2, an area education agency, and a school operated by a state agency for special purposes.

12. “*School service personnel*” means those persons holding a practitioner’s license who provide support services for a student enrolled in school or to practitioners employed in a school.

13. “*Student*” means a person who is enrolled in a course of study at a school or practitioner preparation program, or who is receiving direct or indirect assistance from a practitioner.

14. “*Superintendent*” means an administrator who promotes, demotes, transfers, assigns, or evaluates practitioners or other personnel, and carries out the policies of a governing board in a manner consistent with professional practice and ethics.

15. “*Teacher*” means a licensed member of a school’s instructional staff who diagnoses, prescribes, evaluates, and directs student learning in a manner which is consistent with professional practice and school objectives, shares responsibility for the development of an instructional program and any coordinating activities, evaluates or assesses student progress before and after instruction, and who uses the student evaluation or assessment information to promote additional student learning.

2002 Acts, ch 1047, §10, 20  
2002 amendment to subsection 11 takes effect July 1, 2003; 2002 Acts,  
ch 1047, §20  
Subsection 11 amended

### **272.2 Board of examiners created.**

The board of educational examiners is created to exercise the exclusive authority to:

1. *a.* License practitioners who do not hold or receive a license from another professional licens-

ing board. Licensing authority includes the authority to establish criteria for the licenses; establish issuance and renewal requirements; create application and renewal forms; create licenses that authorize different instructional functions or specialties; develop a code of professional rights and responsibilities, practices, and ethics, which shall, among other things, address the failure of a practitioner to fulfill contractual obligations under section 279.13; and develop any other classifications, distinctions, and procedures which may be necessary to exercise licensing duties. In addressing the failure of a practitioner to fulfill contractual obligations, the board shall consider factors beyond the practitioner’s control.

*b.* Notwithstanding section 272.28, subsection 1, a teacher shall be licensed in accordance with rules adopted pursuant to chapter 272, Code 2001, if the teacher successfully completes a beginning teacher mentoring program approved pursuant to chapter 256E, Code 2001, on or before June 30, 2002, or is employed by a school district that does not offer a beginning teacher mentoring and induction program approved in accordance with this chapter during the school year beginning July 1, 2001.

2. Establish, collect, and refund fees for a license.

3. Enter into reciprocity agreements with other equivalent state boards or a national certification board to provide for licensing of applicants from other states or nations.

4. Enforce rules adopted by the board through revocation or suspension of a license, or by other disciplinary action against a practitioner or professional development program licensed by the board of educational examiners. The board shall designate who may or shall initiate a licensee disciplinary investigation and a licensee disciplinary proceeding, and who shall prosecute a disciplinary proceeding and under what conditions, and shall state the procedures for review by the board of findings of fact if a majority of the board does not hear the disciplinary proceeding. However, in a case alleging failure of a practitioner to fulfill contractual obligations, the person who files a complaint with the board, or the complainant’s designee, shall represent the complainant in a disciplinary hearing conducted in accordance with this chapter.

5. Apply for and receive federal or other funds on behalf of the state for purposes related to its duties.

6. Evaluate and conduct studies of board standards.

7. Hire an executive director, legal counsel, and other personnel and control the personnel administration of persons employed by the board.

8. Hear appeals regarding application, renewal, suspension, or revocation of a license. Board

action is final agency action for purposes of chapter 17A.

9. Establish standards for the determination of whether an applicant is qualified to perform the duties required for a given license.

10. Issue statements of professional recognition to school service personnel who are licensed by another professional licensing board.

11. Make recommendations to the state board of education concerning standards for the approval of professional development programs.

12. Establish, under chapter 17A, rules necessary to carry out board duties, and establish a budget request.

13. Adopt rules to provide for nontraditional preparation options for licensing persons who hold a bachelor's degree from an accredited college or university, who do not meet other requirements for licensure.

14. Adopt rules to determine whether an applicant is qualified to perform the duties for which a license is sought. The rules shall include all of the following:

*a.* The board may deny a license to or revoke the license of a person upon the board's finding by a preponderance of evidence that either the person has been convicted of a crime or that there has been a founded report of child abuse against the person. Rules adopted in accordance with this paragraph shall provide that in determining whether a person should be denied a license or that a practitioner's license should be revoked, the board shall consider the nature and seriousness of the founded abuse or crime in relation to the position sought, the time elapsed since the crime was committed, the degree of rehabilitation which has taken place since the incidence of founded abuse or the commission of the crime, the likelihood that the person will commit the same abuse or crime again, and the number of founded abuses committed by or criminal convictions of the person involved.

*b.* Notwithstanding paragraph "a", the rules shall require the board to disqualify an applicant for a license or to revoke the license of a person for any of the following reasons:

(1) The person entered a plea of guilty to, or has been found guilty of, any of the following offenses established pursuant to Iowa law or offenses of a similar nature established under the laws of any other state or of the United States, or any other country, whether or not a sentence is imposed:

(a) Any of the following forcible felonies included in section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping.

(b) Any of the following sexual abuse offenses, as provided in chapter 709, involving a child:

(i) First, second, or third degree sexual abuse committed on or with a person who is under the age of eighteen years.

(ii) Lascivious acts with a child.

(iii) Detention in a brothel.

(iv) Assault with intent to commit sexual abuse.

(v) Indecent contact with a child.

(vi) Sexual exploitation by a counselor.

(vii) Lascivious conduct with a minor.

(viii) Sexual exploitation by a school employee.

(c) Incest involving a child under section 726.2.

(d) Dissemination and exhibition of obscene material to minors under section 728.2.

(e) Telephone dissemination of obscene material to minors under section 728.15.

(2) The applicant is less than twenty-one years of age except as provided in section 272.31, subsection 1, paragraph "e". However, a student enrolled in a practitioner preparation program who meets board requirements for a temporary, limited-purpose license who is seeking to teach as part of a practicum or internship may be less than twenty-one years of age.

(3) The applicant's application is fraudulent.

(4) The applicant's license or certification from another state is suspended or revoked.

(5) The applicant fails to meet board standards for application for an initial or renewed license.

*c.* Qualifications or criteria for the granting or revocation of a license or the determination of an individual's professional standing shall not include membership or nonmembership in any teachers' organization.

*d.* An applicant for a license or certificate under this chapter shall demonstrate that the requirements of the license or certificate have been met and the burden of proof shall be on the applicant.

15. Adopt rules that require specificity in written complaints that are filed by individuals who have personal knowledge of an alleged violation and which are accepted by the board, provide that the jurisdictional requirements as set by the board in administrative rule are met on the face of the complaint before initiating an investigation of allegations, provide that any investigation be limited to the allegations contained on the face of the complaint, provide for an adequate interval between the receipt of a complaint and public notice of the complaint, permit parties to a complaint to mutually agree to a resolution of the complaint filed with the board, allow the respondent the right to review any investigative report upon a finding of probable cause for further action by the board, require that the conduct providing the basis for the complaint occurred within three years of discovery of the event by the complainant unless good cause can be shown for an extension of this limitation, and require complaints to be resolved within one hundred eighty days unless good cause can be shown for an extension of this limitation.

16. Adopt criteria for administrative endorse-

ments that allow a person to achieve the endorsement authorizing the person to serve as an elementary or secondary principal without regard to the grade level at which the person accrued teaching experience.

2003 Acts, ch 108, §48; 2003 Acts, ch 180, §14, 15  
Former subsection 16 stricken effective June 30, 2003, per its own terms; see §272.2, subsection 16, paragraph c, Code 2003  
Subsection 14, paragraph a amended  
Subsection 14, paragraph b, subparagraph (1), subparagraph subdivision (b), NEW subparagraph subdivision part (viii)  
Former subsection 16 stricken  
NEW subsection 16

### 272.3 Membership.

The board of educational examiners consists of eleven members. Two must be members of the general public and the remaining nine must be licensed practitioners. One of the public members shall also be the director of the department of education, or the director's designee. The other public member shall be a person who does not hold a practitioner's license, but has a demonstrated interest in education. The nine practitioners shall be selected from the following areas and specialties of the teaching profession:

1. Elementary teachers.
2. Secondary teachers.
3. Special education or other similar teachers.
4. Counselors or other special purpose practitioners.
5. Administrators.
6. School service personnel.

A majority of the licensed practitioner members shall be nonadministrative practitioners. Four of the members shall be administrators. Membership of the board shall comply with the requirements of sections 69.16 and 69.16A. A quorum of the board shall consist of six members. The director of the department of education shall serve as the chairperson of the board. Members, except for the director of the department of education, shall be appointed by the governor and the appointments are subject to confirmation by the senate.

2002 Acts, ch 1047, §11, 20  
Confirmation, see §2.32  
Subsection 5 stricken and former subsections 6 and 7 renumbered as 5 and 6

### 272.10 Fees.

It is the intent of the general assembly that licensing fees established by the board of educational examiners be sufficient to finance the activities of the board under this chapter.

Licensing fees are payable to the treasurer of state and shall be deposited with the executive director of the board. The executive director shall deposit the fees with the treasurer of state and the fees shall be credited to the general fund of the state. The executive director shall keep an accurate and detailed account of fees received and paid to the treasurer of state.

Use of funds received from increase in fees after July 1, 1997, for purposes related to board of educational examiners duties for fiscal years begin-

ning July 1, 2000, July 1, 2001, and July 1, 2002; 2000 Acts, ch 1223, §7; 2001 Acts, ch 181, §7; 2002 Acts, ch 1171, §80; 2003 Acts, ch 182, §7  
Section not amended; footnote revised

### 272.11 Expenditures and refunds.

Expenditures and refunds made by the board under this chapter shall be certified by the executive director of the board to the director of the department of administrative services, and if found correct, the director of the department of administrative services shall approve the expenditures and refunds and draw warrants upon the treasurer of state from the funds appropriated for that purpose.

2003 Acts, ch 145, §286  
Terminology change applied

### 272.15 School reporting requirement.

The board of directors of a school district or area education agency, the superintendent of a school district or the chief administrator of an area education agency, and the authorities in charge of a nonpublic school shall report to the board the non-renewal or termination, for reasons of alleged or actual misconduct, of a person's contract executed under sections 279.12, 279.13, 279.15 through 279.21, 279.23, and 279.24, and the resignation of a person who holds a license, certificate, or authorization issued by the board as a result of or following an incident or allegation of misconduct that, if proven, would constitute a violation of the rules adopted by the board to implement section 272.2, subsection 14, paragraph "b", subparagraph (1), when the board or reporting official has a good faith belief that the incident occurred or the allegation is true. Information reported to the board in accordance with this section is privileged and confidential, and except as provided in section 272.13, is not subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and is not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. The board shall review the information reported to determine whether a complaint should be initiated. In making that determination, the board shall consider the factors enumerated in section 272.2, subsection 14, paragraph "a". For purposes of this section, unless the context otherwise requires, "misconduct" means an action disqualifying an applicant for a license or causing the license of a person to be revoked or suspended in accordance with the rules adopted by the board to implement section 272.2, subsection 14, paragraph "b", subparagraph (1).

2003 Acts, ch 180, §16  
NEW section

272.16 through 272.19 Reserved.

### **272.25 Rules for practitioner preparation programs.**

Not later than January 1, 1991, the state board of education shall adopt rules pursuant to chapter 17A to implement the following for approved practitioner preparation programs:

1. A requirement that each student admitted to an approved practitioner preparation program must participate in field experiences that include both observation and participation in teaching activities in a variety of school settings. These field experiences shall comprise a total of at least fifty hours in duration, at least ten hours of which shall occur prior to a student's acceptance in an approved practitioner preparation program. The student teaching experience shall be a minimum of twelve weeks in duration during the student's final year of the practitioner preparation program.

2. A requirement that faculty members in professional education maintain an ongoing involvement in activities in elementary, middle, or secondary schools. The activities shall include at least forty hours of team teaching during a period not exceeding five years in duration at the elementary, middle, or secondary level.

3. A requirement that the program include instruction in skills and strategies to be used in classroom management of individuals, and of small and large groups, under varying conditions; skills for communicating and working constructively with pupils, teachers, administrators, and parents; and skills for understanding the role of the board of education and the functions of other education agencies in the state. The requirement shall be based upon recommendations of the department of education after consultation with teacher education faculty members in colleges and universities.

4. A requirement that prescribes minimum experiences and responsibilities to be accomplished during the student teaching experience by the student teacher and by the cooperating teacher based upon recommendations of the department of education after consultation with teacher education faculty members in colleges and universities. The student teaching experience shall include opportunities for the student teacher to become knowledgeable about the Iowa teaching standards, including a mock evaluation performed by the cooperating teacher. The mock evaluation shall not be used as an assessment tool by the practitioner preparation program. The student teaching experience shall consist of interactive experiences involving the college or university personnel, the student teacher, the cooperating teacher, and administrative personnel from the cooperating teacher's school district.

5. A requirement that each approved practi-

tioner preparation or professional development institution annually offer a workshop of at least one day in duration for prospective cooperating teachers. The workshop shall define the objectives of the student teaching experience, review the responsibilities of the cooperating teacher, and provide the cooperating teacher other information and assistance the institution deems necessary.

6. A requirement that practitioner preparation students receive instruction in the use of electronic technology for classroom and instructional purposes.

7. A requirement that approved practitioner preparation institutions annually solicit the views of the education community regarding the institution's practitioner preparation programs.

8. A requirement that an approved practitioner preparation institution submit evidence that the college or department of education is communicating with other colleges or departments in the institution so that practitioner preparation students may integrate teaching methodology with subject matter areas of specialization.

9. A requirement that an approved practitioner preparation program submit evidence that the evaluation of the performance of a student teacher is a cooperative process that involves both the faculty member supervising the student teacher and the cooperating teacher. The rules shall require that each institution develop a written evaluation procedure for use by the cooperating teacher and a form for evaluating student teachers, and require that a copy of the completed form be included in the student teacher's permanent record.

2003 Acts, ch 180, §17  
Subsection 4 amended

### **272.28 Mentoring and induction requirement.**

1. Effective July 1, 2003, requirements for teacher licensure beyond an initial license shall include successful completion of a beginning teacher mentoring and induction program approved by the state board of education.

2. A teacher from an accredited nonpublic school or another state or country is exempt from the requirement of subsection 1 if the teacher can document three years of successful teaching experience and meet or exceed the requirements contained in rules adopted under this chapter for endorsement and licensure.

2003 Acts, ch 180, §18  
Section amended

### **272.33 Evaluator license.** Repealed by 2001 Acts, ch 161, § 21; 2002 Acts, ch 1152, § 21.

2002 repeal of section effective July 1, 2003; 2002 Acts, ch 1152, §21  
With respect to proposed amendment to section contained in 2002 Acts, ch 1047, §12, 20, effective July 1, 2003, see Code editor's note to §2.9

## CHAPTER 272C

### CONTINUING EDUCATION AND REGULATION — PROFESSIONAL AND OCCUPATIONAL

#### **272C.3 Authority of licensing boards.**

1. Notwithstanding any other provision of this chapter, each licensing board shall have the powers to:

*a.* Administer and enforce the laws and administrative rules provided for in this chapter and any other statute to which the licensing board is subject;

*b.* Adopt and enforce administrative rules which provide for the partial re-examination of the professional licensing examinations given by each licensing board;

*c.* Review or investigate, or both, upon written complaint or upon its own motion pursuant to other evidence received by the board, alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline;

*d.* Determine in any case whether an investigation, or further investigation, or a disciplinary proceeding is warranted. Notwithstanding the provisions of chapter 17A, a determination by a licensing board that an investigation is not warranted or that an investigation should be closed without initiating a disciplinary proceeding is not subject to judicial review pursuant to section 17A.19;

*e.* Initiate and prosecute disciplinary proceedings;

*f.* Impose licensee discipline;

*g.* Petition the district court for enforcement of its authority with respect to licensees or with respect to other persons violating the laws which the board is charged with administering;

*h.* Register or establish and register peer review committees;

*i.* Refer to a registered peer review committee for investigation, review, and report to the board, any complaint or other evidence of an act or omission which the board reasonably believes to constitute cause for licensee discipline. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction;

*j.* Determine and administer the renewal of licenses for periods not exceeding three years.

*k.* Establish a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability, and who self-report the impairment to the committee, or who are referred by the board to the committee. The board shall adopt rules for the establishment and administration of the committee, including but

not limited to establishment of the criteria for eligibility for referral to the committee and the grounds for disciplinary action for noncompliance with committee decisions. Information in the possession of the board or the licensee review committee, under this paragraph, shall be subject to the confidentiality requirements of section 272C.6. Referral of a licensee by the board to a licensee review committee shall not relieve the board of any duties of the board and shall not divest the board of any authority or jurisdiction otherwise provided. A licensee who violates section 272C.10 or the rules of the board while under review by the licensee review committee shall be referred to the board for appropriate action.

2. Each licensing board may impose one or more of the following as licensee discipline:

*a.* Revoke a license, or suspend a license either until further order of the board or for a specified period, upon any of the grounds specified in section 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter 151, 155, 507B, or 522B, as applicable, or upon any other grounds specifically provided for in this chapter for revocation of the license of a licensee subject to the jurisdiction of that board, or upon failure of the licensee to comply with a decision of the board imposing licensee discipline;

*b.* Revoke, or suspend either until further order of the board or for a specified period, the privilege of a licensee to engage in one or more specified procedures, methods, or acts incident to the practice of the profession, if pursuant to hearing or stipulated or agreed settlement the board finds that because of a lack of education or experience, or because of negligence, or careless acts or omissions, or because of one or more intentional acts or omissions, the licensee has demonstrated a lack of qualifications which are necessary to assure the residents of this state a high standard of professional and occupational care;

*c.* Impose a period of probation under specified conditions, whether or not in conjunction with other sanctions;

*d.* Require additional professional education or training, or re-examination, or any combination, as a condition precedent to the reinstatement of a license or of any privilege incident thereto, or as a condition precedent to the termination of any suspension;

*e.* Impose civil penalties by rule, if the rule specifies which offenses or acts are subject to civil penalties. The amount of civil penalty shall be in the discretion of the board, but shall not exceed

one thousand dollars. Failure to comply with the imposition of a civil penalty may be grounds for further license discipline;

*f.* Issue a citation and warning respecting licensee behavior which is subject to the imposition of other sanctions by the board.

3. The powers conferred by this section upon a licensing board shall be in addition to powers specified elsewhere in the Code. The powers of any other person specified elsewhere in the Code shall not limit the powers of a licensing board conferred by this section, nor shall the powers of such other person be deemed limited by the provisions of this section.

4. Nothing contained in this section shall be construed to prohibit informal stipulation and settlement by a board and a licensee of any matter involving licensee discipline. However, licensee discipline shall not be agreed to or imposed except pursuant to a written decision which specifies the sanction and which is entered by the board and filed.

All health care boards shall file written decisions which specify the sanction entered by the board with the Iowa department of public health which shall be available to the public upon request. All nonhealth-care boards shall have on file the written and specified decisions and sanctions entered by the board and shall be available to the public upon request.

2003 Acts, ch 78, §6

Civil penalty for real estate brokers and salespersons; §543B.48

Subsection 1, paragraph k amended

### 272C.7 Executive secretary and personnel.

1. As an alternative to authority contained elsewhere in this chapter, a licensing board may employ within the limits of available funds an executive secretary, one or more inspectors, and such clerical personnel as may be necessary for the administration of the duties of the board. Employees of the board shall be employed subject to chapter 8A, subchapter IV. The qualifications of the executive secretary shall be determined by the board.

2. All employees of a licensing board shall be reimbursed subject to the rules of the director of the department of administrative services for their expenses incurred in the performance of official duties. All reimbursements shall constitute costs of sustaining the board.

3. Licensees appointed to serve on a hearing panel pursuant to section 272C.6, subsection 2, shall be compensated at the rate specified in section 7E.6 for each day of actual duty, and shall be reimbursed for actual expenses reasonably incurred in the performance of duties.

4. Salaries, per diem, and expenses incurred in the performance of official duties of the board or its employees shall be paid from funds appropriated by the general assembly.

2003 Acts, ch 145, §233, 286

Terminology change applied

Subsection 1 amended

## CHAPTER 273

### AREA EDUCATION AGENCIES

#### 273.8 Area education agency board of directors.

1. *Board of directors.* The board of directors of an area education agency shall consist of not less than five nor more than nine members, each a resident of and elected in the manner provided in this section from a director district that is approximately equal in population to the other director districts in the area education agency. Each director shall serve a three-year term which commences at the organization meeting.

2. *Election of directors.* Except as otherwise provided in subsection 3, the board of directors of an area education agency shall be elected by a vote of the members of the boards of directors of the local school districts located within the director district. The procedure for conducting the elections shall be as follows:

*a.* Notice of the election shall be published by the area education agency administrator not later than July 15 in at least one newspaper of general circulation in the director district. The cost of publication shall be paid by the area education agency.

*b.* A candidate for election to the area educa-

tion agency board shall file a statement of candidacy with the area education agency secretary not later than August 15, on forms prescribed by the department of education. The statement of candidacy shall include the candidate's name, address, and school district. The list of candidates shall be sent by the secretary of the area education agency in ballot form by certified mail to the presidents of the boards of directors of all school districts within the director district not later than September 1. In order for the ballot to be counted, the ballot must be received in the secretary's office by the end of the normal business day on September 30 or be clearly postmarked by an officially authorized postal service not later than September 29 and received by the secretary not later than noon on the first Monday following September 30.

*c.* The board of each separate school district that is located entirely or partially inside an area education agency director district shall cast a vote for director of the area education agency board based upon the ratio that the population of the school district, or portion of the school district, in the director district bears to the total population

in the director district. The population of each school district or portion shall be determined by the department of education. The member of the area education agency board to be elected may be a member of a local school district board of directors and shall be an elector and a resident of the director district, but shall not be a school district employee.

d. Vacancies, as defined in section 277.29, in the membership of the area education agency board shall be filled for the unexpired portion of the term at a director district convention called and conducted in the manner provided in subsection 3.

3. *Director district convention.* If no candidate files with the area education agency secretary by the deadline specified in subsection 2, or a vacancy occurs, or if otherwise required as provided in section 273.23, subsection 3, a director district convention, attended by members of the boards of directors of the local school districts located within the director district, shall be called to elect a board member for that director district. The convention location shall be determined by the area education agency administrator. Notice of the time, date, and place of a director district convention shall be published by the area education agency administrator in at least one newspaper of general circulation in the director district at least thirty days prior to the day of the convention. The cost of publication shall be paid by the area education agency. A candidate for election to the area education agency board shall file a statement of candidacy with the area education agency secretary at least ten days prior to the date of the director district convention on forms prescribed by the department of education, or nominations may be made at the convention by a delegate from a board of directors of a school district located within the director district. A statement of candidacy shall include the candidate's name, address, and school district. Delegates to director district conventions shall not be bound by a school board or any school board member to pledge their votes to any candidate prior to the date of the convention.

4. *Organization.* The board of directors of each area education agency shall meet and organize at the first regular meeting in October of each year at a suitable place designated by the president. Directors whose terms commence at the organization meeting shall qualify by taking the oath of office required by section 277.28 at or before the organization meeting.

The provisions of section 260C.12 relating to organization, officers, appointment of secretary and treasurer, and meetings of the merged area board apply to the area education agency board.

5. *Quorum.* A majority of the members of the board of directors of the area education agency shall constitute a quorum.

6. *Change in directors.* The board of an area education agency may change the number of direc-

tors on the board and shall make corresponding changes in the boundaries of director districts. Changes shall be completed not later than July 1 of a fiscal year for the director district conventions to be held the following September.

7. *Boundary line changes.* To the extent possible the board shall provide that changes in the boundary lines of director districts of area education agencies shall not lengthen or diminish the term of office of a director of an area education agency board. Initial terms of office shall be set by the board so that as nearly as possible the terms of one-third of the members expire annually.

8. *Census changes.* The board of the area education agency shall redraw boundary lines of director districts in the area education agency after each census to compensate for changes in population if changes in population have taken place.

Where feasible, boundary lines of director districts shall coincide with the boundary lines of school districts and the boundary lines of election precincts established pursuant to sections 49.3 to 49.6.

2003 Acts, ch 180, §19, 20  
Subsection 2 stricken and rewritten  
NEW subsection 3 and former subsections 3 – 7 renumbered as 4 – 8

### **273.21 Voluntary reorganization.**

1. Two or more area education agencies may voluntarily reorganize under this subchapter if the area education agencies are contiguous, a majority of the members of each of the affected boards approve the reorganization, and the reorganization plan submitted to the state board pursuant to subsection 3 is approved by the state board.

2. If twenty percent or more of the school districts within an affected area education agency file a petition by December 1 with the affected area education agency board to consider reorganization, the affected board shall consider the request and vote on the petition. If a majority of the affected board members vote to study the reorganization of the affected area education agency, the affected board shall immediately begin the study to consider reorganization effective by July 1 of the next year.

3. The affected boards contemplating a voluntary reorganization shall do the following:

a. Develop detailed studies of the facilities, property, services, staffing necessities, equipment, programs, and other capabilities available in each of the affected area education agencies for the purpose of providing for the reorganization of the area education agencies in order to effect more economical operation and the attainment of higher standards of educational services for the schools.

b. Survey the school districts within the affected area education agencies to determine the districts' current and future programs and services, professional development, and technology needs.

c. Consult with the officials of school districts within the affected area and other citizens and periodically hold public hearings during the development of a plan for reorganization, as well as a public hearing on the final plan to be submitted to the department.

d. Consult with the director of the department of education in the development of surveys and plans. The director of the department of education shall provide assistance and advice to the affected area education agency boards as requested.

e. Develop a reorganization plan that demonstrates improved efficiency and effectiveness of programs to meet accreditation standards, includes a preliminary budget for reorganized areas, documents public comment from the public hearings held pursuant to paragraph "c", and provides for a board of directors, and the number of members that the board shall consist of, in accordance with section 273.8.

f. Set forth the assets and liabilities of the affected area education agencies, which shall become the responsibility of the board of directors of the newly formed area education agency on the effective date of the reorganization.

g. Transmit the completed plan to the state board by July 15. Plans received by the state board after July 15 shall be considered for area education agency reorganization taking effect no sooner than July 1 after the next succeeding fiscal year.

4. The state board shall review the reorganization plan and shall, prior to September 30, either approve the plan as submitted, approve the plan contingent upon compliance with the state board's recommendations, or disapprove the plan. A contingently approved plan shall be resubmitted with modifications to the department not later than October 30. An approved plan shall take effect on July 1 of the fiscal year following the date of approval by the state board.

2003 Acts, ch 180, §21 – 23  
 Subsection 2 amended  
 Subsection 3, paragraph g amended  
 Subsection 4 amended

### **273.22 Contracts of new area education agency.**

1. The terms of employment of the administrator and staff of affected area education agencies for the school year beginning with the effective date of the formation of the new area education agency shall not be affected by the formation of the new area education agency, except in accordance with the provisions of sections 279.15 through 279.18, and 279.24, and the authority and responsibility to offer new contracts or to continue, modify, or terminate existing contracts pursuant to sections 279.12, 279.13, 279.15 through 279.21, 279.23, and 279.24 for the school year beginning with the effective date of the reorganization shall be transferred from the boards of the existing area education agencies to the board of the new area education agency following approval of the reorga-

nization plan by the state board as provided in section 273.21, subsection 4.

2. The collective bargaining agreement of the area education agency with the largest basic enrollment, as defined in section 257.6, for the year prior to the year the reorganization is effective, shall serve as the base agreement in the new area education agency and the employees of the other area education agencies involved in the formation of the new area education agency shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the contracts for the following years without further action by the public employment relations board. If only one collective bargaining agreement is in effect among the area education agencies that are party to the reorganization, that agreement shall serve as the base agreement, and the employees of the other agencies involved in the formation of the new area education agency shall automatically be accreted to the bargaining unit of that collective bargaining agreement for purposes of negotiating the contracts for the following years without further action by the public employment relations board. The board of the newly formed area education agency, using the base agreement as its existing contract, shall bargain with the combined employees of the affected agencies for the school year that begins on the effective date of the reorganization. The bargaining shall be completed by the dates specified in section 20.17 prior to the school year in which the reorganization becomes effective or within one hundred eighty days after the organization of the new board, whichever is later. If a bargaining agreement was already concluded by the board and employees of the affected agency with the contract serving as the base agreement for the school year beginning with the effective date of the reorganization, that agreement shall be void. However, if the base agreement contains multiyear provisions affecting school years subsequent to the effective year of the reorganization, the base agreement shall remain in effect as specified in the agreement.

The provisions of the base agreement shall apply to the offering of new contracts or continuation, modification, or termination of existing contracts as provided in subsection 1.

3. The terms of a contract between the board of directors of a school district and the board of directors of an affected area education agency shall be carried out by the school board and the board of directors of the newly formed area education agency except as provided in this section.

4. The board of directors of a school district that is under a contract with an affected area education agency may petition the boards of directors of the affected area education agencies for release from the contract. If the petition receives a majority of the votes cast by the members of the boards of the affected area education agencies, the petition is approved and the contract shall be termi-

nated on the effective date of the area education agency reorganization.

5. Not later than fifteen days after the state board notifies an area education agency of its approval of the area education agency's reorganization plan or dissolution proposal, the area education agency shall notify, by certified mail, the school districts located within the area education agency boundaries, the school districts and area education agencies that are contiguous to its boundaries, and any other school district under contract with the area education agency, of the state board's approval of the plan or proposal, and shall provide the department of education with a copy of any notice sent in accordance with this subsection. A petition to join an area education agency or for release from a contract with an area education agency, in accordance with subsections 4, 6, and 7, shall be filed not later than forty-five days after the state board approves a reorganization plan or dissolution proposal in accordance with this chapter.

6. Within forty-five days of the state board's approval, the board of directors of a school district that is contiguous to a newly reorganized area education agency may petition the board of directors of their current area education agency and the newly reorganized area education agency to join the newly reorganized area education agency. If the initial, or new board if established in time under section 273.23, subsection 3, and the board of the contiguous area education agency approve the petition, the reorganization, including any school district whose petition to join the newly reorganized area education agency has been approved, shall take effect in accordance with the dates established under section 273.21, subsection 4. Both the initial, or new, and the contiguous area education agency boards must act within forty-five days of the deadline, as set forth in this subsection, for the filing of the school district's petition. A school district may appeal to the state board the decision of an area education agency board to deny the school district's petition.

7. Within forty-five days of the state board's approval, the board of directors of a school district that is within a newly reorganized area education agency and whose school district is contiguous to another area education agency not included in the newly reorganized area education agency may petition the board of directors of the newly reorganized area education agency and the contiguous area education agency to join that area education agency. If the initial, or new board if established in time under section 273.23, subsection 3, and the board of the contiguous area education agency approve the petition, the reorganization, excluding any school district whose petition to join an area education agency contiguous to the newly reorganized area education agency has been approved, shall take effect in accordance with the dates established under section 273.21, subsection 4. Both

the initial, or new, and the contiguous area education agency boards must act within forty-five days of the deadline, as set forth in this subsection, for the filing of the school district's petition. A school district may appeal to the state board the decision of an area education agency board to deny the school district's petition.

2003 Acts, ch 180, §24 – 26  
NEW subsection 5 and former subsections 5 and 6 amended and renumbered as 6 and 7  
Former subsection 7 stricken

### **273.23 Initial board.**

1. A petition filed under section 273.21 shall state the number of directors on the initial board which shall be either seven or nine directors. The petition shall specify the number of directors to be retained from each area, and those numbers shall be proportionate to the populations of the agencies. If the proportionate balance of directors among the affected agencies specified in the plan is affected by school districts petitioning to be excluded from the reorganization, or if the proposal specified in the plan does not comply with the requirement for proportionate representation, the state board shall modify the proposal. However, all area education agencies affected shall retain at least one member.

2. Prior to the organization meeting of the board of directors of the newly formed area education agency, the boards of the former area education agencies shall designate directors to be retained as members to serve on the initial board of the newly formed area education agency. A vacancy occurs if an insufficient number of former board members reside within the newly formed area education agency's boundaries or if an insufficient number of former board members are willing to serve on the board of the newly formed area education agency. Vacancies, as defined in section 277.29, in the membership of the newly formed area education agency board shall be filled for the unexpired portion of the term at a director district convention called and conducted in the manner provided in section 273.8 for director district conventions.

3. Not later than January 15 of the calendar year in which the reorganization takes effect, the initial board shall call a director district convention under the provisions of section 273.8, subsection 3, for the purpose of electing a board for the reorganized area education agency. The new board shall have control of the employment of all personnel for the newly formed area education agency for the ensuing school year. Following the organization of the new board, the board shall have authority to establish policy, enter into contracts, and complete such planning and take such action as is essential for the efficient management of the newly formed area education agency.

4. The initial board of the newly formed district shall appoint an acting administrator and an acting board secretary. The appointment of the

acting administrator shall not be subject to the continuing contract provisions of sections 279.20, 279.23, and 279.24.

5. The initial board, or new board if established in time under subsection 3, of the newly formed agency shall prepare an annual budget estimating income and expenditures for programs and services as provided in sections 273.1 through 273.9 and chapter 256B within the limits of funds provided under section 256B.9 and chapter 257. The board shall give notice of a public hearing on the proposed budget by publication in an official county newspaper in each county in the territory of the area education agency in which the principal place of business of a school district that is a part of the area education agency is located. The notice shall specify the date, which shall not be later than March 1, the time, and the location of the public hearing. The proposed budget as approved by the board shall be submitted to the state board, on forms provided by the department, no later than March 15 for approval. The state board shall review the proposed budget of the newly formed area education agency and shall, before April 1, either grant approval or return the budget without approval with comments of the state board included. An unapproved budget shall be resubmitted to the state board for final approval not later than April 15. The state board shall give final approval only to budgets submitted by area education agencies accredited by the state board or that have been given conditional accreditation by the state board.

6. For the school year beginning on the effective date of an area education agency reorganization as provided in this subchapter, the media services cost per pupil as determined under section 257.37 for all districts in a newly formed area education agency for the budget year shall be the highest amount of media services cost per pupil for any of the affected area education agencies.

7. For the school year beginning on the effective date of an area education agency reorganization as provided in this subchapter, the educational services cost per pupil as determined under section 257.37 for all districts in a newly formed area education agency for the budget year shall be the highest amount of educational services cost per pupil for any of the affected area education agencies.

8. For the school year beginning on the effective date of an area education agency reorganization as provided in this subchapter, the special education support services cost per pupil shall be based upon the combined base year budgets for special education support services of the area education agencies that reorganized to form the newly formed area education agency, divided by the total of the weighted enrollment for special education support services in the reorganized area education agency for the base year plus the allowable growth amount per pupil for special education support

services for the budget year as calculated in section 257.8.

9. Within one year of the effective date of the reorganization, a newly formed area education agency shall meet the accreditation requirements set forth in section 273.10, and the standards set forth in section 273.11. The newly formed area education agency shall be considered accredited for purposes of budget approval by the state board pursuant to section 273.3. The state board shall inform the newly formed area education agency of the accreditation on-site visit schedule.

10. The special education support cost per pupil, the media cost per pupil, and the educational services cost per pupil for a school district petitioning into an area education agency shall be the special education support cost per pupil, media cost per pupil, and educational services cost per pupil of the area education agency into which it petitions if the petition is approved.

11. Unless the reorganization of an area education agency takes effect less than two years before the taking of the next federal decennial census, a newly formed area education agency shall, within one year of the effective date of the reorganization, redraw the boundary lines of director districts in the area education agency if a petition filed by a school district to join the newly formed area education agency, or for release from the newly formed area education agency, in accordance with section 273.22, subsections 4, 6, and 7, was approved. Until the boundaries are redrawn, the boundaries for the newly formed area education agency shall be as provided in the reorganization plan approved by the state board in accordance with section 273.21.

2003 Acts, ch 180, §27, 28  
Subsections 2, 3, 5, and 11 amended

### **273.27 Hearing — vote — state board approval.**

1. Within ten days following the filing of the dissolution proposal with the affected area education agency board, the affected board shall fix a date for a hearing on the proposal which shall not be more than sixty days after the dissolution petition was filed with the affected board. The affected board shall publish notice of the date, time, and location of the hearing at least ten days prior to the date of the hearing by one publication in a newspaper in general circulation in the area. The notice shall include the contents of the dissolution proposal. Representatives of school districts in the area served may present evidence and arguments at the hearing. The president of the affected board shall preside at the hearing. The affected board shall review testimony from the hearing and shall adopt or amend and adopt the dissolution proposal.

The affected board shall notify by certified mail the boards of directors of all school districts in the affected area education agency and the contiguous

area education agencies to which the districts of the affected area education agency will be attached and the director of the department of education of the contents of the dissolution proposal adopted by the affected board.

2. Within thirty days of the hearing, the affected board shall call a director district convention in accordance with section 273.8, subsection 3, which shall include the boards of directors in the area served by the area education agencies to which an area of the affected area education agency will be attached under the dissolution proposal, for the purpose of voting on the dissolution proposal.

3. If the dissolution proposal is approved by a majority of all directors voting on the proposal, the proposal shall be forwarded to the state board by November 1. The state board shall review the dissolution plan proposal and shall, prior to January 1, either grant approval for the proposal or return the proposal with recommendations. An unapproved proposal may be resubmitted with modifications to the state board not later than February 1. A proposal shall take effect on July 1 of the fiscal year following the date of approval by the state board.

2003 Acts, ch 180, §29  
Subsection 2 amended

## CHAPTER 275

### REORGANIZATION OF SCHOOL DISTRICTS

#### **275.23A Redistricting following federal decennial census.**

1. School districts which have directors who represent director districts as provided in section 275.12, subsection 2, paragraphs “b”, “c”, “d”, and “e”, shall be divided into director districts according to the following standards:

*a.* All director district boundaries shall follow the boundaries of areas for which official population figures are available from the most recent federal decennial census and, wherever possible, shall follow precinct boundaries.

*b.* To the extent possible in order to comply with paragraph “a”, all director districts shall be as nearly equal as practicable to the ideal population for the districts as determined by dividing the number of districts to be established into the population of the school district.

*c.* All districts shall be composed of contiguous territory as compact as practicable unless the school district is composed of marginally adjacent territory. A school district which is composed of marginally adjacent territory shall have director districts composed of contiguous territory to the extent practicable.

*d.* Consideration shall not be given to the addresses of incumbent officeholders, political affiliations of registered voters, previous election results, or demographic information other than population head counts, except as required by the Constitution and the laws of the United States.

*e.* Cities shall not be divided into two or more districts unless the population of the city is greater than the ideal size of a director district. Cities shall be divided into the smallest number of director districts possible.

2. Following each federal decennial census the school board shall determine whether the existing director district boundaries meet the standards in subsection 1 according to the most recent federal decennial census. In addition to the authority granted to voters to change the number of direc-

tors or method of election as provided in sections 275.35, 275.36, and 278.1, the board of directors of a school district may, following a federal decennial census, by resolution and in accordance with this section, authorize a change in the method of election as set forth in section 275.12, subsection 2, or a change to either five or seven directors after the board conducts a hearing on the resolution. If the board proposes to change the number of directors from seven to five directors, the resolution shall include a plan for reducing the number of directors. If the board proposes to increase the number of directors to seven directors, two directors shall be added according to the procedure described in section 277.23, subsection 2. If necessary, the board of directors shall redraw the director district boundaries. The director district boundaries shall be described in the resolution adopted by the school board. The resolution shall be adopted no earlier than November 15 of the year immediately following the year in which the federal decennial census is taken nor later than May 15 of the second year immediately following the year in which the federal decennial census is taken. A copy of the plan shall be filed with the area education agency administrator of the area education agency in which the school’s electors reside. If the board does not provide for an election as provided in sections 275.35, 275.36, and 278.1 and adopts a resolution to change the number of directors or method of election in accordance with this subsection, the district shall change the number of directors or method of election as provided unless, within twenty-eight days following the action of the board, the secretary of the board receives a petition containing the required number of signatures, asking that an election be called to approve or disapprove the action of the board in adopting the resolution. The petition must be signed by eligible electors equal in number to not less than one hundred or thirty percent of the number of voters at the last preceding regular school election,

whichever is greater. The board shall either rescind its action or direct the county commissioner of elections to submit the question to the registered voters of the school district at the next following regular school election or a special election. If a majority of those voting on the question at the election favors disapproval of the action of the board, the district shall not change the number of directors or method of election. If a majority of those voting on the question does not favor disapproval of the action, the board shall certify the results of the election to the department of management and the district shall change the number of directors or method of election as provided in this subsection. At the expiration of the twenty-eight-day period, if no petition is filed, the board shall certify its action to the department of management and the district shall change the number of directors or method of election as provided in this subsection.

3. The school board shall notify the state commissioner of elections and the county commissioner of elections of each county in which a portion of the school district is located when the boundaries of director districts are changed. The notices of changes submitted to the state commissioner shall be postmarked no later than the deadline for adoption of the resolution under subsection 2. The board shall provide the commissioners with maps showing the new boundaries and shall also certify to the state commissioner the populations of the new director districts as determined under the latest federal decennial census. If, following a feder-

al decennial census a school district elects not to redraw director districts under this section, the school board shall so certify to the state commissioner of elections, and the school board shall also certify to the state commissioner the populations of the retained director districts as determined under the latest federal decennial census. If the state commissioner determines that a district board has failed to make the required changes by the dates specified by this section, the state commissioner of elections shall make or cause to be made the necessary changes as soon as possible. The state commissioner shall assess any expenses incurred to the school district. The state commissioner of elections may request the services of personnel of and materials available to the legislative services agency to assist the state commissioner in making any required boundary changes.

4. If more than one incumbent director resides in a redrawn director district, the terms of office of the affected directors expire at the organizational meeting of the board of directors following the next regular school election following the adoption of the redrawn districts.

5. The boundary changes under this section take effect July 1 following their adoption for the next regular school election.

6. Section 275.9 and sections 275.14 through 275.23 do not apply to changes in director district boundaries made under this section.

2003 Acts, ch 35, §44, 49  
Terminology change applied

## CHAPTER 277

### SCHOOL ELECTIONS

#### **277.23 Directors — number — change.**

1. In any district including all of a city of fifteen thousand or more population and in any district in which the voters, or the board as provided in section 275.23A, subsection 2, have authorized seven directors, the board shall consist of seven members; in all other districts the board shall consist of five members.

2. A change from five to seven directors shall be effected in a district at the first regular election after authorization by the voters or the board, or after a district first includes all of a city of fifteen thousand or more population, in the manner described in section 275.37.

2003 Acts, ch 44, §57  
Subsection 2 amended

## CHAPTER 279

### DIRECTORS — POWERS AND DUTIES

#### **279.3 Appointment of secretary and treasurer.**

The board shall appoint a secretary who shall not be a teacher employed by the board but may be another employee of the board. The board shall also appoint a treasurer who may be another employee of the board. However, the board may appoint one person to serve as the secretary and the

treasurer.

These officers shall be appointed from outside the membership of the board and the appointment and qualification shall be entered of record in the minutes of the secretary. They shall qualify within ten days following appointment by taking the oath of office in the manner required by section 277.28 and filing a bond as required by section 291.2 and

shall hold office until their successors are appointed and qualified.

2003 Acts, ch 180, §30  
Unnumbered paragraph 2 amended

**279.7A Interest in public contracts prohibited — exceptions.**

A member of the board of directors of a school corporation shall not have an interest, direct or indirect, in a contract for the purchase of goods, including materials and profits, and the performance of services for the director's school corporation. A contract entered into in violation of this section is void. This section does not apply to contracts for the purchase of goods or services which benefit a director, or to compensation for part-time or temporary employment which benefits a director, if the benefit to the director does not exceed two thousand five hundred dollars in a fiscal year, and contracts made by a school board, upon competitive bid in writing, publicly invited and opened. This section does not apply to a contract that is a bond, note, or other obligation of a school corporation if the contract is not acquired directly from the school corporation, but is acquired in a transaction with a third party, who may or may not be the original underwriter, purchaser, or obligee of the contract, or to a contract in which a director has an interest solely by reason of employment if the contract is made by competitive bid in writing, publicly invited and opened, or if the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract. The competitive bid qualification of this section does not apply to a contract for professional services not customarily awarded by competitive bid.

2003 Acts, ch 36, §1  
Section amended

**279.12 Contracts — teachers — insurance — educational leave.**

The board shall carry into effect any instruction from the regular election upon matters within the control of the voters, and shall elect all teachers and make all contracts necessary or proper for exercising the powers granted and performing the duties required by law, and may establish and pay all or any part thereof from school district funds the cost of group health insurance plans, nonprofit group hospital service plans, nonprofit group medical service plans and group life insurance plans adopted by the board for the benefit of employees of the school district, but the board may authorize any subdirector to employ teachers for the school in the subdirector's subdistrict; but no such employment by a subdirector shall authorize a contract, the entire period of which is wholly beyond the subdirector's term of office.

The board may enter into an agreement pursuant to chapter 28E with another school district

or an area education agency for the purpose of jointly procuring a group health insurance plan, nonprofit group hospital service plan, nonprofit group medical service plan, or group life insurance plan for the benefit of the districts or agencies which are parties to the agreement. Such plan may include a cafeteria plan as defined in 26 C.F.R. § 1.125-2T. An agreement entered into pursuant to this paragraph shall not be construed to establish a multiple employer welfare arrangement as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40.

The board may approve a policy for educational leave for licensed school employees and for reimbursement for tuition paid by licensed school employees for courses approved by the board. The board of directors of a community college may approve a policy for educational leave for its instructors and for reimbursement for tuition paid by its instructors for courses approved by the board. For the purpose of this section, "educational leave" means a leave granted to an employee for the purpose of study including study in areas outside of a teacher's area of specialization, travel, or other reasons deemed by the board to be of value to the school system.

2002 Acts, ch 1047, §13, 20  
2002 amendment to unnumbered paragraph 3 is effective July 1, 2003;  
2002 Acts, ch 1047, §20  
Unnumbered paragraph 3 amended

**279.13 Contracts with teachers — automatic continuation.**

1. Contracts with teachers, which for the purpose of this section means all licensed employees of a school district and nurses employed by the board, excluding superintendents, assistant superintendents, principals, and assistant principals, shall be in writing and shall state the number of contract days, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract may include employment for a term not exceeding the ensuing school year, except as otherwise authorized.

The contract is invalid if the teacher is under contract with another board of directors to teach during the same time period until a release from the other contract is achieved. The contract shall be signed by the president of the board, or by the superintendent if the board has adopted a policy authorizing the superintendent to sign teaching contracts, when tendered, and after it is signed by the teacher, the contract shall be filed with the secretary of the board before the teacher enters into performance under the contract.

2. The contract shall remain in force and effect for the period stated in the contract and shall be automatically continued for equivalent periods except as modified or terminated by mutual agreement of the board of directors and the teacher or as terminated in accordance with the provisions

specified in this chapter. A contract shall not be offered by the employing board to a teacher under its jurisdiction prior to March 15 of any year. A teacher who has not accepted a contract for the ensuing school year tendered by the employing board may resign effective at the end of the current school year by filing a written resignation with the secretary of the board. The resignation must be filed not later than the last day of the current school year or the date specified by the employing board for return of the contract, whichever date occurs first. However, a teacher shall not be required to return a contract to the board or to resign less than twenty-one days after the contract has been offered.

3. If the provisions of a contract executed or automatically renewed under this section conflict with a collective bargaining agreement negotiated under chapter 20 and effective when the contract is executed or renewed, the provisions of the collective bargaining agreement shall prevail.

4. For purposes of this section, sections 279.14, 279.15 through 279.17, 279.19, and 279.27, unless the context otherwise requires, “teacher” includes the following individuals employed by a community college:

- a. An instructor, but does not include an adjunct instructor.
- b. A librarian, including those denoted as being a learning resource specialist or a media specialist.
- c. A counselor.

5. Notwithstanding the other provisions of this section, a temporary contract may be issued to a teacher to fill a vacancy created by a leave of absence in accordance with the provisions of section 29A.28, which contract shall automatically terminate upon return from military leave of the former incumbent of the teaching position and which contract shall not be subject to the provisions of sections 279.15 through 279.19, or section 279.27. A separate extracurricular contract issued pursuant to section 279.19A to a person issued a temporary contract under this section shall automatically terminate with the termination of the temporary contract as required under section 279.19A, subsection 8.

2003 Acts, ch 19, §1; 2003 Acts, ch 180, §31  
 Proposed 2002 amendment to this section effective July 1, 2003, repealed; 2002 Acts, ch 1047, §14, 20; 2003 Acts, ch 19, §4, 5  
 NEW subsections 4 and 5

**279.18 Appeal by either party to court.**

1. If either party rejects the adjudicator’s decision, the rejecting party shall, within thirty days of the initial filing of such decision, appeal to the district court of the county in which the administrative office of the school district is located. The notice of appeal shall be immediately mailed by certified mail to the other party. The adjudicator shall transmit to the reviewing court the original or a certified copy of the entire record which may

be the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the shortened record.

2. In proceedings for judicial review of the adjudicator’s decision, the court shall not hear any further evidence but shall hear the case upon the certified record. In such judicial review, especially when considering the credibility of witnesses, the court shall give weight to the fact findings of the board; but shall not be bound by them. The court may affirm the adjudicator’s decision or remand to the adjudicator or the board for further proceedings upon conditions determined by the court. The court shall reverse, modify, or grant any other appropriate relief from the board decision or the adjudicator’s decision equitable or legal and including declaratory relief if substantial rights of the petitioner have been prejudiced because the action is:

- a. In violation of constitutional or statutory provisions; or
- b. In excess of the statutory authority of the board or the adjudicator; or
- c. In violation of a board rule or policy or contract; or
- d. Made upon unlawful procedure; or
- e. Affected by other error of law; or
- f. Unsupported by a preponderance of the competent evidence in the record made before the board and the adjudicator when that record is viewed as a whole; or
- g. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

3. An aggrieved or adversely affected party to the judicial review proceeding may obtain a review of any final judgment of the district court by appeal to the supreme court. The appeal shall be taken as in other civil cases, although the appeal may be taken regardless of the amount involved.

4. For purposes of this section, unless the context otherwise requires, “rejecting party” shall include, but not be limited to, an instructor employed by a community college.

2002 Acts, ch 1047, §15  
 2002 amendment to section is effective July 1, 2003; 2002 Acts, ch 1047, §20  
 Unnumbered paragraph 1 editorially redesignated as subsection 1  
 Unnumbered paragraph 2 and subsections 1 – 7 editorially redesignated as subsection 2 and paragraphs a – g respectively  
 Unnumbered paragraph 3 editorially redesignated as subsection 3  
 NEW subsection 4

**279.19A Extracurricular contracts.**

1. School districts employing individuals to coach interscholastic athletic sports shall issue a separate extracurricular contract for each of these sports. An extracurricular contract offered under this section shall be separate from the contract issued under section 279.13. Wages for employees

who coach these sports shall be paid pursuant to established or negotiated supplemental pay schedules. An extracurricular contract shall be in writing, and shall state the number of contract days for that sport, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract shall be for a single school year.

2. An extracurricular contract shall be continued automatically in force and effect for equivalent periods, except as modified or terminated by mutual agreement of the board of directors and the employee, or terminated in accordance with this section. An extracurricular contract shall initially be offered by the employing board to an individual on the same date that contracts are offered to teachers under section 279.13. An extracurricular contract may be terminated at the end of a school year pursuant to sections 279.15 through 279.19. If the school district offers an extracurricular contract for a sport for the subsequent school year to an employee who is currently performing under an extracurricular contract for that sport, and the employee does not wish to accept the extracurricular contract for the subsequent year, the employee may resign from the extracurricular contract within twenty-one days after it has been received.

Section 279.13, subsection 3, applies to this section.

3. The board of directors of a school district may require an employee who has resigned from an extracurricular contract to accept, as a condition of employment under section 279.13, the extracurricular contract for no longer than one additional school year if all the following conditions apply:

a. The employee has accepted a teaching contract issued by the board pursuant to section 279.13 for the subsequent school year.

b. The board of directors has made a good faith effort to fill the coaching position with a licensed or authorized replacement.

c. The position has not been filled by June 1 of the year in which the employee resigned the extracurricular contract.

4. As a condition of employment under section 279.13, the board of directors of a school district may require an employee who has been issued a teaching contract pursuant to section 279.13 to accept an extracurricular contract for which the employee is licensed, or may require as a condition of employment that an applicant for a teaching contract under section 279.13 accept an extracurricular contract if all of the following conditions apply:

a. The individual who held the coaching position during the year has not been issued a teaching contract by the board pursuant to section 279.13 for the subsequent school year, or has been terminated from the extracurricular contract.

b. The board of directors has made a good faith effort to fill the coaching position with a licensed

or authorized replacement.

c. The position has not been filled by June 1 of the year in which the vacancy occurred for the interscholastic athletic sport.

5. Within seven days following June 1 of that year, the board shall notify the employee in writing if the board intends to require the employee to accept an extracurricular contract for the subsequent school year under subsection 3 or 4. If the employee believes that the board did not make a good faith effort to fill the position the employee may appeal the decision by notifying the board in writing within ten days after receiving the notification.

The appeal shall state why the employee believes that the board did not make a good faith effort to fill the position. If the parties are unable to informally resolve the dispute, the parties shall attempt to agree upon an alternative means of resolving the dispute.

If the dispute is not resolved by mutual agreement, either party may appeal to the district court.

6. Subsections 3, 4, and 5 do not apply if the terms of a collective bargaining agreement provide otherwise.

7. An extracurricular contract may be terminated prior to the expiration of that contract pursuant to section 279.27.

8. A termination proceeding of an extracurricular contract either by the board pursuant to subsection 2 or pursuant to section 279.27 does not affect a contract issued pursuant to section 279.13.

A termination of a contract entered into pursuant to section 279.13, or a resignation from that contract by the teacher, constitutes an automatic termination or resignation of the extracurricular contract in effect between the same teacher and the employing school board.

9. For the purposes of this section, “good faith effort” includes advertising for the position in an appropriate publication, interviewing applicants, and giving serious consideration to those licensed or authorized, and otherwise qualified, applicants who apply.

10. The licensure requirements of subsections 3, 4, and 9 shall not apply to community colleges.

2002 Acts, ch 1047, §16, 20  
Subsection 10 is effective July 1, 2003; 2002 Acts, ch 1047, §20  
NEW subsection 10

### **279.19B Coaching endorsement and authorization.**

1. a. The board of directors of a school district may employ for head coach of any interscholastic athletic activities or for assistant coach of any interscholastic athletic activity, an individual who possesses a coaching authorization issued by the board of educational examiners or possesses a teaching license with a coaching endorsement issued pursuant to chapter 272. However, a board of directors of a school district shall consider applicants with qualifications described below, in the

following order of priority:

(1) A qualified individual who possesses a valid teaching license with a proper coaching endorsement.

(2) A qualified individual who possesses a coaching authorization issued by the board of educational examiners.

b. Qualifications are to be determined by the board of directors or their designee on a case-by-case basis.

2. An individual who has been issued a coaching authorization or who possesses a teaching license with a coaching endorsement but is not issued a teaching contract under section 279.13 and who is employed by the board of directors of a school district serves at the pleasure of the board of directors and is not subject to sections 279.13 through 279.19, and 279.27. Subsection 1 of section 279.19A applies to coaching authorizations.

3. The licensure and coaching authorization requirements of this section shall not apply to community colleges. An individual employed as a coach of a community college interscholastic athletic activity who is not issued a teaching contract under section 279.13 serves at the pleasure of the board of directors of the community college and is not subject to sections 279.13 through 279.19, and 279.27.

2003 Acts, ch 19, §2  
 Proposed 2002 amendment to this section effective July 1, 2003, repealed; 2002 Acts, ch 1047, §17, 20; 2003 Acts, ch 19, §4, 5  
 Former unnumbered paragraph 1 redesignated as subsection 1, paragraph a  
 Former subsections 1 and 2 redesignated as subsection 1, paragraph a, subparagraphs (1) and (2)  
 Former unnumbered paragraph 2 redesignated as subsection 1, paragraph b  
 Former unnumbered paragraph 3 redesignated as subsection 2  
 NEW subsection 3

**279.23 Continuing contract for administrators.**

1. Contracts with administrators shall be in writing and shall contain all of the following:

a. The term of employment which for all administrators except for superintendents may be a term of up to two years. Superintendents may be employed under section 279.20 for a term not to exceed three years.

b. The length of time during the school year services are to be performed.

c. The compensation per week of five consecutive days or month of four consecutive weeks.

d. A statement that the contract is invalid if the administrator is under contract with another board of directors in this state covering the same period of time, until such contract shall have been released or terminated by its provisions.

e. Such other matters as may be agreed upon.

2. The contract shall be signed by the president and the administrator and shall be filed with the secretary of the board before the administrator enters upon performance of the contract. A contract shall not be tendered by an employing board to an administrator under its jurisdiction

prior to March 15. A contract shall not be required to be signed by the administrator and returned to the board in less than twenty-one days after being tendered.

3. Except as otherwise specifically provided, an administrator's contract shall be governed by the provisions of this section and sections 279.23A, 279.24, and 279.25, and not by section 279.13.

4. For purposes of this section and sections 279.23A, 279.24, and 279.25, the term "administrator" includes school superintendents, assistant superintendents, educational directors employed by school districts for grades kindergarten through twelve, educational directors employed by area education agencies under chapter 273, principals, assistant principals, other certified school supervisors employed by school districts for grades kindergarten through twelve as defined under section 20.4, and other certified school supervisors employed by area education agencies under chapter 273. For purposes of this section and sections 279.23A, 279.24, and 279.25, with regard to community college employees, "administrator" includes the administrator of an instructional division or an area of instructional responsibility, and the administrator of an instructional unit, department, or section.

5. Notwithstanding the other provisions of this section, a temporary contract may be issued to an administrator to fill a vacancy created by a leave of absence in accordance with the provisions of section 29A.28, which contract shall automatically terminate upon return from military leave of the former incumbent of the administrator position and which contract shall not be subject to the provisions of sections 279.24 and 279.25.

2003 Acts, ch 19, §3; 2003 Acts, ch 180, §32  
 Former unnumbered paragraph 1 and subsections 1 - 5 redesignated as subsection 1 and paragraphs a - e  
 Former unnumbered paragraph 2 redesignated as subsection 2  
 Former unnumbered paragraph 3 amended, divided, and redesignated as subsections 3 and 4  
 NEW subsection 5

**279.46 Retirement incentives — tax.**

The board of directors of a school district may adopt a program for payment of a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging its employees to retire before the normal retirement date as defined in chapter 97B. The program is available only to employees who notify the board of directors prior to April 1 of the fiscal year that they intend to retire not later than the start of the next following school calendar. The age at which employees shall be designated eligible for the program shall be at the discretion of the board. An employee retiring under this section may apply for a retirement allowance under chapter 97B or chapter 294. The board may include in the district management levy an amount to pay the total estimated accumulated cost to the school district of the health or medical insurance coverage, bonus,

or other incentives for employees within the age range of fifty-five to sixty-five years of age who retire under this section.

2003 Acts, ch 180, §33  
1998 amendment applies retroactively to retirement incentive programs in existence after December 31, 1997; 98 Acts, ch 1216, §43  
Section amended

#### **279.55 Teacher exchange program.**

If funds are appropriated by the general assembly, an Iowa teacher exchange program is estab-

lished to permit school districts to exchange licensed instructional personnel with other districts in order to promote the exchange and enhancement of instructional methods and materials and encourage the educational development of Iowa's teachers. Community colleges may exchange their instructional personnel only with other community colleges under this program.

2002 Acts, ch 1047, §18, 20  
2002 amendment to this section is effective July 1, 2003; 2002 Acts, ch 1047, §20  
Section amended

## CHAPTER 280

### UNIFORM SCHOOL REQUIREMENTS

#### **280.12 School improvement advisory committee.**

The board of directors of each public school district and the authorities in charge of each nonpublic school shall do the following:

1. Appoint a school improvement advisory committee to make recommendations to the board or authorities. The advisory committee shall consist of members representing students, parents, teachers, administrators, and representatives from the local community, which may include representatives of business, industry, labor, community agencies, higher education, or other community constituents. To the extent possible, committee membership shall have balanced representation with regard to race, gender, national origin, and disability.

2. Utilize the recommendations from the school improvement advisory committee to determine the following:

- a. Major educational needs.
- b. Student learning goals.
- c. Long-range and annual improvement goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement.
- d. Desired levels of student performance.
- e. Progress toward meeting the goals set out in

paragraphs "b" through "d".

3. Consider recommendations from the school improvement advisory committee to infuse character education into the educational program.

2003 Acts, ch 27, §2  
NEW subsection 3

#### **280.14 School requirements — administration.**

1. The board or governing authority of each school or school district subject to the provisions of this chapter shall establish and maintain adequate administration, school staffing, personnel assignment policies, teacher qualifications, certification requirements, facilities, equipment, grounds, graduation requirements, instructional requirements, instructional materials, maintenance procedures, and policies on extracurricular activities. In addition, the board or governing authority of each school or school district shall provide such principals as it finds necessary to provide effective supervision and administration for each school and its faculty and student body.

2. An individual who is employed or contracted as a superintendent by a school or school district may also serve as an elementary or secondary principal in the same school or school district.

2003 Acts, ch 180, §34  
Section amended

## CHAPTER 282

### SCHOOL ATTENDANCE AND TUITION

#### **282.18 Open enrollment.**

1. It is the goal of the general assembly to permit a wide range of educational choices for children enrolled in schools in this state and to maximize ability to use those choices. It is therefore the intent that this section be construed broadly to maximize parental choice and access to educational opportunities which are not available to children because of where they live.

For the school year commencing July 1, 1989, and each succeeding school year, a parent or

guardian residing in a school district may enroll the parent's or guardian's child in a public school in another school district in the manner provided in this section.

2. By January 1 of the preceding school year, the parent or guardian shall send notification to the district of residence and the receiving district, on forms prescribed by the department of education, that the parent or guardian intends to enroll the parent's or guardian's child in a public school in another school district. If a parent or guardian

fails to file a notification that the parent intends to enroll the parent's or guardian's child in a public school in another district by the deadline of January 1 of the previous year, and one of the criteria defined in subsection 4 exists for the failure to meet the deadline or if the request is to enroll a child in kindergarten in a public school in another district, the parent or guardian shall be permitted to enroll the child in the other district in the same manner as if the deadline had been met.

The board of the receiving district shall enroll the pupil in a school in the receiving district for the following school year unless the receiving district does not have classroom space for the pupil. If the request is granted, the board shall transmit a copy of the form to the parent or guardian and the school district of residence within five days after board action, but not later than March 1 of the preceding school year. The parent or guardian may withdraw the request at any time prior to the start of the school year. A denial of a request by the board of a receiving district is not subject to appeal.

3. In all districts involved with voluntary or court-ordered desegregation, minority and nonminority pupil ratios shall be maintained according to the desegregation plan or order. The superintendent of a district subject to voluntary or court-ordered desegregation may deny a request for transfer under this section if the superintendent finds that enrollment or release of a pupil will adversely affect the district's implementation of the desegregation order or plan, unless the transfer is requested by a pupil whose sibling is already participating in open enrollment to another district, or unless the request for transfer is submitted to the district in a timely manner as required under subsection 2 prior to the adoption of a desegregation plan by the district. If a transfer request would facilitate a voluntary or court-ordered desegregation plan, the district shall give priority to granting the request over other requests.

A parent or guardian, whose request has been denied because of a desegregation order or plan, may appeal the decision of the superintendent to the board of the district in which the request was denied. The board may either uphold or overturn the superintendent's decision. A decision of the board to uphold the denial of the request is subject to appeal to the district court in the county in which the primary business office of the district is located. By July 1, 2004, the state board of education shall adopt rules establishing guidelines and a review process for school districts that adopt voluntary desegregation plans. The guidelines shall include criteria and standards that school districts must follow when developing a voluntary desegregation plan. The department of education shall provide technical assistance to a school district that is seeking to adopt a voluntary desegregation plan. A school district implementing a voluntary desegregation plan prior to July 1, 2004,

shall have until July 1, 2006, to comply with guidelines adopted by the state board pursuant to this section.

4. *a.* After January 1 of the preceding school year and until the third Friday in September of that calendar year, the parent or guardian shall send notification to the district of residence and the receiving district, on forms prescribed by the department of education, that good cause, as defined in paragraph "b", exists for failure to meet the January 1 deadline. The board of the receiving district shall take action to approve the request if good cause exists. If the request is granted, the board shall transmit a copy of the form to the parent or guardian and the school district of residence within five days after board action. A denial of a request by the board of a receiving district is not subject to appeal.

*b.* For purposes of this section, "good cause" means a change in a child's residence due to a change in family residence, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship or custody proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program, a change in the status of a child's resident district such as removal of accreditation by the state board, surrender of accreditation, or permanent closure of a nonpublic school, revocation of a charter school contract as provided in section 256F.8, the failure of negotiations for a whole-grade sharing, reorganization, dissolution agreement or the rejection of a current whole-grade sharing agreement, or reorganization plan. If the good cause relates to a change in status of a child's school district of residence, however, action by a parent or guardian must be taken to file the notification within forty-five days of the last board action or within thirty days of the certification of the election, whichever is applicable to the circumstances.

*c.* If a resident district believes that a receiving district is unreasonable in approving applications submitted in accordance with this subsection, the resident district may request that the department review and take appropriate action.

5. Open enrollment applications filed after January 1 of the preceding school year that do not qualify for good cause as provided in subsection 4 shall be subject to the approval of the board of the resident district and the board of the receiving district. The parent or guardian shall send notification to the district of residence and the receiving district that the parent or guardian seeks to enroll the parent's or guardian's child in the receiving district. A decision of either board to deny an application filed under this subsection involving repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address is subject to appeal under section 290.1. The state board

shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children.

6. A request under this section is for a period of not less than one year. If the request is for more than one year and the parent or guardian desires to have the pupil enroll in a different district, the parent or guardian may petition the current receiving district by January 1 of the previous school year for permission to enroll the pupil in a different district for a period of not less than one year. Upon receipt of such a request, the current receiving district board may act on the request to transfer to the other school district at the next regularly scheduled board meeting after the receipt of the request. The new receiving district shall enroll the pupil in a school in the district unless there is insufficient classroom space in the district or unless enrollment of the pupil would adversely affect the court-ordered or voluntary desegregation plan of the district. A denial of a request to change district enrollment within the approved period is not subject to appeal. However, a pupil who has been in attendance in another district under this section may return to the district of residence and enroll at any time, once the parent or guardian has notified the district of residence and the receiving district in writing of the decision to enroll the pupil in the district of residence.

7. A pupil participating in open enrollment shall be counted, for state school foundation aid purposes, in the pupil's district of residence. A pupil's residence, for purposes of this section, means a residence under section 282.1. The board of directors of the district of residence shall pay to the receiving district the state cost per pupil for the previous school year, plus any moneys received for the pupil as a result of the non-English speaking weighting under section 280.4, subsection 3, for the previous school year multiplied by the state cost per pupil for the previous year. If the pupil participating in open enrollment is also an eligible pupil under chapter 261C, the receiving district shall pay the tuition reimbursement amount to an eligible postsecondary institution as provided in section 261C.6.

8. If a request filed under this section is for a child requiring special education under chapter 256B, the request to transfer to the other district shall only be granted if the receiving district maintains a special education instructional program which is appropriate to meet the child's educational needs and the enrollment of the child in the receiving district's program would not cause the size of the class in that special education instructional program in the receiving district to exceed the maximum class size in rules adopted by the state board of education for that program. For children requiring special education, the board of directors of the district of residence shall pay to the receiving district the actual costs incurred in providing the appropriate special education.

9. If a parent or guardian of a child, who is participating in open enrollment under this section, moves to a different school district during the course of either district's academic year, the child's first district of residence shall be responsible for payment of the cost per pupil plus weightings or special education costs to the receiving school district for the balance of the school year in which the move took place. The new district of residence shall be responsible for the payments during succeeding years.

If a request to transfer is due to a change in family residence, change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program, and the child, who is the subject of the request, is not currently using any provision of open enrollment, the parent or guardian of the child shall have the option to have the child remain in the child's original district of residence under open enrollment with no interruption in the child's educational program. If a parent or guardian exercises this option, the child's new district of residence is not required to pay the amount calculated in subsection 7, until the start of the first full year of enrollment of the child.

Quarterly payments shall be made to the receiving district.

If the transfer of a pupil from one district to another results in a transfer from one area education agency to another, the sending district shall forward a copy of the request to the sending district's area education agency. The receiving district shall forward a copy of the request to the receiving district's area education agency. Any moneys received by the area education agency of the sending district for the pupil who is the subject of the request shall be forwarded to the receiving district's area education agency.

A district of residence may apply to the school budget review committee if a student was not included in the resident district's enrollment count during the fall of the year preceding the student's transfer under open enrollment.

10. Notwithstanding section 285.1 relating to transportation of nonresident pupils, the parent or guardian is responsible for transporting the pupil without reimbursement to and from a point on a regular school bus route of the receiving district. However, a receiving district may send school vehicles into the district of residence of the pupil using the open enrollment option under this section, for the purpose of transporting the pupil to and from school in the receiving district, if the boards of both the sending and receiving districts agree to this arrangement. If the pupil meets the economic eligibility requirements established by the department and state board of education, the sending district is responsible for providing transportation

or paying the pro rata cost of the transportation to a parent or guardian for transporting the pupil to and from a point on a regular school bus route of a contiguous receiving district unless the cost of providing transportation or the pro rata cost of the transportation to a parent or guardian exceeds the average transportation cost per pupil transported for the previous school year in the district. If the cost exceeds the average transportation cost per pupil transported for the previous school year, the sending district shall only be responsible for that average per pupil amount. A sending district which provides transportation for a pupil to a contiguous receiving district under this subsection may withhold from the district cost per pupil amount, that is to be paid to the receiving district, an amount which represents the average or pro rata cost per pupil for transportation, whichever is less.

11. Every school district shall adopt a policy which defines the term "*insufficient classroom space*" for that district.

12. The board of directors of a school district subject to voluntary or court-ordered desegregation shall develop a policy for implementation of open enrollment in the district. The policy shall contain objective criteria for determining when a request would adversely impact the desegregation order or plan and criteria for prioritizing requests that do not have an adverse impact on the order or plan.

13. A pupil who participates in open enrollment for purposes of attending a grade in grades ten through twelve in a school district other than the district of residence is ineligible to participate in interscholastic athletic contests and athletic competitions during the pupil's first ninety school days of enrollment in the district except that the pupil may participate immediately in an interscholastic sport if the district of residence and the other school district jointly participate in the sport, if the sport in which the pupil wishes to participate is not offered in the district of residence, if the pupil chooses to use open enrollment to attend school in another school district because the district in which the student previously attended school was dissolved and merged with one or more contiguous school districts under section 256.11, subsection 12, if the pupil participates in open enrollment because the pupil's district of residence has entered into a whole grade sharing agreement with another district for the pupil's grade, or if the parent or guardian of the pupil participating in open enrollment is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services. A pupil who has paid tuition and attended school, or has attended school pursuant to a mutual agreement between the two districts, in a district other than the pupil's district of residence for at least one school year prior to March 10, 1989, is also eligible to participate immediate-

ly in interscholastic athletic contests and athletic competitions under this section, but only as a member of a team from the district that pupil had attended. For purposes of this subsection, "*school days of enrollment*" do not include enrollment in summer school.

14. If a pupil, for whom a request to transfer has been filed with a district, has been suspended or expelled in the district, the pupil shall not be permitted to transfer until the pupil has been reinstated in the sending district. Once the pupil has been reinstated, however, the pupil shall be permitted to transfer in the same manner as if the pupil had not been suspended or expelled by the sending district. If a pupil, for whom a request to transfer has been filed with a district, is expelled in the district, the pupil shall be permitted to transfer to a receiving district under this section if the pupil applies for and is reinstated in the sending district. However, if the pupil applies for reinstatement but is not reinstated in the sending district, the receiving district may deny the request to transfer. The decision of the receiving district is not subject to appeal.

15. If a request under this section is for transfer to a laboratory school, as described in chapter 265, the student, who is the subject of the request, shall not be included in the basic enrollment of the student's district of residence, and the laboratory school shall report the enrollment of the student directly to the department of education, unless the number of students from the district attending the laboratory school during the current school year, as a result of open enrollment under this section, exceeds the number of students enrolled in the laboratory school from that district during the 1989-1990 school year. If the number of students enrolled in the laboratory school from a district during the current year exceeds the number of students enrolled from that district during the 1989-1990 school year, those students who represent the difference between the current and the 1988-1989 school year enrollment figures shall be included in the basic enrollment of the students' districts of residence and the districts shall retain any moneys received as a result of the inclusion of the student in the district enrollment. The total number of students enrolled at a laboratory school during a school year shall not exceed six hundred seventy students. The regents institution operating the laboratory school and the board of directors of the school district in the community in which the regents institution is located shall develop a student transfer policy designed to protect and promote the quality and integrity of the teacher education program at the laboratory school, the viability of the education program of the local school district in which the regents institution is located, and to indicate the order in which and reasons why requests to transfer to a laboratory school shall be considered. A laboratory school may deny a request for transfer under the policy.

A denial of a request to transfer under this paragraph is not subject to appeal under section 290.1.

16. An application for open enrollment may be granted at any time with approval of the resident and receiving districts.

17. The director of the department of education shall recommend rules to the state board of education for the orderly implementation of this section. The state board shall adopt rules as needed for the implementation of this section.

2002 Acts, ch 1124, §13, 16; 2003 Acts, ch 79, §5, 7, 8; 2003 Acts, ch 180, §35, 36, 72

2002 amendment to subsection 4, paragraph b, Code 2003, applies on the date the department of education initiates implementation of chapter 256F; 2002 Acts, ch 1124, §13, 16; 2003 Acts, ch 79, §5, 7, 8

2003 amendments to subsection 3 take effect May 30, 2003, and apply retroactively to July 1, 2002; 2003 Acts, ch 180, §72

Subsection 3 amended

Subsection 4, paragraph b amended

Subsection 7 amended

**282.28 Children at Eldora and Toledo.**  
Repealed by 2003 Acts, ch 178, § 59.

With respect to proposed amendment to this section by 2003 Acts, ch 145, §286, see Code editor's note to §2.9

**282.31 Funding for special programs.**

1. *a.* A child who lives in a facility pursuant to section 282.30, subsection 1, paragraph "a", and who is not enrolled in the educational program of the district of residence of the child, shall receive appropriate educational services. The area education agency shall submit a proposed program and budget to the department of education by January 1 for the next succeeding school year. The department of education shall review and approve or modify the program and proposed budget and shall notify the department of administrative services and the area education agency of its action by February 1. The department of administrative services shall pay the approved budget amount for an area education agency in monthly installments beginning September 15 and ending June 15 of the next succeeding school year. The installments shall be as nearly equal as possible as determined by the department of management, taking into consideration the relative budget and cash position of the state's resources. The department of administrative services shall transfer the approved budget amount for an area education agency from the moneys appropriated under section 257.16 and make the payment to the area education agency. The area education agency shall submit an accounting for the actual cost of the program to the department of education by August 1 of the following school year. The department shall review and approve or modify all expenditures incurred in compliance with the guidelines pursuant to section 256.7, subsection 10, and shall notify the department of administrative services of the approved accounting amount. The approved accounting amount shall be compared with any amounts paid by the department of administrative services to the area education agency and any differences added to or subtracted from the Octo-

ber payment made under this paragraph for the next school year. Any amount paid by the department of administrative services shall be deducted monthly from the state foundation aid paid under section 257.16 to all school districts in the state during the subsequent fiscal year. The portion of the total amount of the approved budget that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year in which the deduction is made.

*b.* A child who lives in a facility or home pursuant to section 282.19, and who does not require special education and who is not enrolled in the educational program of the district of residence of the child, shall be included in the basic enrollment of the school district in which the facility or home is located.

However, on June 30 of a school year, if the board of directors of a school district determines that the number of children under this paragraph who were counted in the basic enrollment of the school district on the third Friday of September of that school year is fewer than the sum of the number of months all children were enrolled in the school district under this paragraph during the school year divided by nine, the secretary of the school district may submit a claim to the department of education by August 1 following the school year for an amount equal to the district cost per pupil of the district for the previous school year multiplied by the difference between the number of children counted and the number of children calculated by the number of months of enrollment. The amount of the claim shall be paid by the department of administrative services to the school district by October 1. The department of administrative services shall transfer the total amount of the approved claim of a school district from the moneys appropriated under section 257.16 and the amount paid shall be deducted monthly from the state foundation aid paid to all school districts in the state during the remainder of the subsequent fiscal year in the manner provided in paragraph "a".

2. *a.* The actual special education instructional costs incurred for a child who lives in a facility pursuant to section 282.19 or for a child who is placed in a facility or home pursuant to section 282.29, who requires special education and who is not enrolled in the educational program of the district of residence of the child but who receives an educational program from the district in which the facility or home is located, shall be paid by the district of residence of the child to the district in which the facility or home is located, and the costs shall include the cost of transportation.

*b.* A child shall not be denied special education programs and services because of a dispute over the determination of district of residence of the child. The director of the department of education

shall determine the district of residence when a dispute arises regarding the determination of the district of residence for a child who requires special education pursuant to this subsection.

3. The actual special education instructional costs, including transportation, for a child who requires special education shall be paid by the department of administrative services to the school district in which the facility or home is located, only when a district of residence cannot be determined, and the child was not included in the weighted enrollment of any district pursuant to section 256B.9, and the payment pursuant to subsection 2, paragraph "a", was not made by any district. The district shall submit a proposed program and budget to the department of education by January 1 for the next succeeding school year. The department of education shall review and approve or modify the program and proposed budget and shall notify the district by February 1. The district shall submit a claim by August 1 following the school year for the actual cost of the program. The department shall review and approve or modify the claim and shall notify the department of administrative services of the approved claim amount by September 1. The total amount of the approved claim shall be paid by the department of administrative services to the school district by October 1. The total amount paid by the department of administrative services shall be deducted monthly from the state foundation aid paid under section 257.16 to all school districts in the state during the subsequent fiscal year. The portion of the total amount of the approved claims that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for the budget year in which the deduction is made. The department of administrative services shall transfer the total amount of the approved claims from moneys appropriated under section 257.16 for payment to the school district.

4. For purposes of this section, "*district of residence*" means the school district in which the parent or legal guardian of the child resides or the district in which the district court is located if the district court is the guardian of the child.

5. Programs may be provided during the summer and funded under this section if the school district or area education agency determines a valid educational reason to do so.

2003 Acts, ch 145, §286  
Terminology change applied

### **282.32 Appeal.**

An area education agency or local school district may appeal a decision made pursuant to section 282.31 to the state board of education. The decision of the state board is final.

2003 Acts, ch 178, §57  
Section amended

### **282.33 Funding for children residing in state mental health institutes or institutions.**

1. A child who resides in an institution for children under the jurisdiction of the director of human services referred to in section 218.1, subsection 3, 5, 7, or 8, and who is not enrolled in the educational program of the district of residence of the child, shall receive appropriate educational services. The institution in which the child resides shall submit a proposed program and budget based on the average daily attendance of the children residing in the institution to the department of education and the department of human services by January 1 for the next succeeding school year. The department of education shall review and approve or modify the proposed program and budget and shall notify the department of revenue\* of its action by February 1. The department of revenue\* shall pay the approved budget amount to the department of human services in monthly installments beginning September 15 and ending June 15 of the next succeeding school year. The installments shall be as nearly equal as possible as determined by the department of revenue,\* taking into consideration the relative budget and cash position of the state's resources. The department of revenue\* shall pay the approved budget amount for the department of human services from the moneys appropriated under section 257.16 and the department of human services shall distribute the payment to the institution. The institution shall submit an accounting for the actual cost of the program to the department of education by August 1 of the following school year. The department shall review and approve or modify all expenditures incurred in compliance with the guidelines adopted pursuant to section 256.7, subsection 10, and shall notify the department of revenue\* of the approved accounting amount. The approved accounting amount shall be compared with any amounts paid by the department of revenue\* to the department of human services and any differences added to or subtracted from the October payment made under this subsection for the next school year. Any amount paid by the department of revenue\* shall be deducted monthly from the state foundation aid paid under section 257.16 to all school districts in the state during the subsequent fiscal year. The portion of the total amount of the approved budget that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year in which the deduction is made.

2. Programs may be provided during the summer and funded under this section if the institution determines a valid educational reason to do so and the department of education approves the pro-

gram in the manner provided in subsection 1.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §58

\*Department of administrative services probably intended; corrective

legislation is pending

NEW section

Terminology change applied

## CHAPTER 283

### ACCEPTANCE AND DISTRIBUTION OF FEDERAL FUNDS

#### 283.1 Federal funds accepted.

The director of the department of education is the “state educational authority” for the purpose of accepting and administering funds appropriated by Congress for educational purposes and the funds shall be deposited with the treasurer of state and disbursed through the department of administrative services on vouchers audited as provided by law. When state matching funds are required as a condition to the acceptance of federal funds, the director of the department of education may make expenditures for matching only from

funds provided by the legislature for that purpose. However, when federal funds may be matched with expenditures from funds appropriated for the general operation of the department of education, this may be done with the approval of the legislative council.

2003 Acts, ch 145, §286

Terminology change applied

#### 283.2 Transferred to § 18.15.\*

\*Chapter 18 repealed by 2003 Acts, ch 145, §291

Footnote added

## CHAPTER 284

### TEACHER PERFORMANCE, COMPENSATION, AND CAREER DEVELOPMENT

#### 284.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Beginning teacher*” means an individual serving under an initial license, issued by the board of educational examiners under chapter 272, who is assuming a position as a classroom teacher. For purposes of the beginning teacher mentoring and induction program created pursuant to section 284.5, “*beginning teacher*” also includes preschool teachers who are licensed by the board of educational examiners under chapter 272 and are employed by a school district or area education agency.

2. “*Classroom teacher*” means an individual who holds a valid practitioner’s license and who is employed under a contract issued by a board of directors under section 279.13 to provide classroom instruction to students, or as a preschool teacher.

3. “*Comprehensive evaluation*” means a summative evaluation of a beginning teacher conducted by an evaluator for purposes of determining a beginning teacher’s level of competency, for recommendation for licensure based upon the Iowa teaching standards, and to determine whether the teacher’s practice meets the school district expectations for a career teacher.

4. “*Department*” means the department of education.

5. “*Director*” means the director of the department of education.

6. “*Evaluator*” means an administrator or other practitioner who successfully completes an evaluator training program pursuant to section 284.10.

7. “*Intensive assistance*” means the provision of organizational support and technical assistance to teachers, other than beginning teachers, for the remediation of identified teaching and classroom management concerns for a period not to exceed twelve months.

8. “*Mentor*” means an individual employed by a school district or area education agency as a classroom teacher or a retired teacher who holds a valid license issued under chapter 272. The individual must have a record of four years of successful teaching practice, must be employed on a non-probationary basis, and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning teachers.

9. “*Performance review*” means a summative evaluation of a teacher other than a beginning teacher and used to determine whether the teacher’s practice meets school district expectations and the Iowa teaching standards, and to determine whether the teacher’s practice meets school district expectations for career advancement in accordance with section 284.7.

10. “*School board*” means the board of directors of a school district or a collaboration of boards of directors of school districts.

11. “*State board*” means the state board of education.

12. “*Teacher*” means an individual holding a practitioner’s license issued under chapter 272, who is employed in a nonadministrative position as a teacher, librarian, media specialist, preschool teacher, or counselor by a school district or area education agency pursuant to a contract issued by

a board of directors under section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position. "Teacher" includes a licensed individual employed on a less than full-time basis by a school district through a contract between the school district and an institution of higher education with a practitioner preparation program in which the licensed teacher is enrolled.

2003 Acts, ch 180, §37  
Subsections 1 and 3 amended

**284.3 Iowa teaching standards.**

1. For purposes of this chapter and for developing teacher evaluation criteria under chapter 279, the Iowa teaching standards are as follows:

- a. Demonstrates ability to enhance academic performance and support for and implementation of the school district's student achievement goals.
- b. Demonstrates competence in content knowledge appropriate to the teaching position.
- c. Demonstrates competence in planning and preparing for instruction.
- d. Uses strategies to deliver instruction that meets the multiple learning needs of students.
- e. Uses a variety of methods to monitor student learning.
- f. Demonstrates competence in classroom management.
- g. Engages in professional growth.
- h. Fulfills professional responsibilities established by the school district.

2. A school board shall provide for the following:

- a. For purposes of comprehensive evaluations for beginning teachers required to allow beginning teachers to progress to career teachers, standards and criteria that are the Iowa teaching standards specified in subsection 1 and the criteria for the Iowa teaching standards developed by the department in accordance with section 256.9, subsection 50. These standards and criteria shall be set forth in an instrument provided by the department. The comprehensive evaluation and instrument are not subject to negotiations or grievance procedures pursuant to chapter 20 or determinations made by the board of directors under section 279.14. A local school board and its certified bargaining representative may negotiate, pursuant to chapter 20, evaluation and grievance procedures for beginning teachers that are not in conflict with this chapter. If, in accordance with section 279.19, a beginning teacher appeals the determination of a school board to an adjudicator under section 279.17, the adjudicator selected shall have successfully completed training related to the Iowa teacher standards, the criteria adopted by the state board of education in accordance with subsection 3, and any additional training required

under rules adopted by the public employment relations board in cooperation with the state board of education.

b. By July 1, 2005, for purposes of performance reviews for teachers other than beginning teachers, evaluations that contain, at a minimum, the Iowa teaching standards specified in subsection 1, as well as the criteria for the Iowa teaching standards developed by the department in accordance with section 256.9, subsection 50. A local school board and its certified bargaining representative may negotiate, pursuant to chapter 20, additional teaching standards and criteria. A local school board and its certified bargaining representative may negotiate, pursuant to chapter 20, evaluation and grievance procedures for teachers other than beginning teachers that are not in conflict with this chapter.

3. The state board shall adopt by rule pursuant to chapter 17A the criteria developed by the department in accordance with section 256.9, subsection 50.

2003 Acts, ch 108, §49; 2003 Acts, ch 180, §38, 39  
See Code editor's note to §2.9  
Subsection 2, paragraphs a and b amended  
Subsection 3 amended

**284.4 Participation.**

1. A school district is eligible to receive moneys appropriated for purposes specified in this chapter if the school board applies to the department to participate in the student achievement and teacher quality program and submits a written statement declaring the school district's willingness to do all of the following:

- a. Commit and expend local moneys to improve student achievement and teacher quality.
- b. Implement a beginning teacher mentoring and induction program as provided in this chapter.
- c. Provide, beginning in the fifth year of participation, the equivalent of two additional contract days, outside of instruction time, than were provided in the school year preceding the first year of participation, to provide additional time for teacher career development that aligns with student learning and teacher development needs, including the integration of technology into curriculum development, in order to achieve attendance center and district-wide student achievement goals outlined in the district comprehensive school improvement plan. School districts are encouraged to develop strategies for restructuring the school calendar to provide for the most effective professional development, evaluate their current career development alignment with their student achievement goals and research-based instructional strategies, and implement district career development plans. A school district that provides the equivalent of ten or more contract days for career development is exempt from this paragraph.
- d. Adopt district and teacher career development plans in accordance with this chapter.
- e. Adopt a teacher evaluation plan that, at

minimum, requires a performance review of teachers in the participating district at least once every three years based upon the Iowa teaching standards and individual career development plans, and requires administrators to complete evaluator training in accordance with section 284.10.

*f.* Adopt teacher career paths based upon demonstrated knowledge and skills in accordance with this chapter.

*g.* Adopt a team-based variable pay plan that rewards attendance center success upon the implementation of a statewide variable pay plan.

2. By July 1, 2002, each school district shall participate in the student achievement and teacher quality program if the general assembly appropriates moneys for purposes of the student achievement and teacher quality program established pursuant to this chapter.

2003 Acts, ch 180, §40

Subsection 1, paragraphs c and d amended

### **284.5 Beginning teacher mentoring and induction program.**

1. A beginning teacher mentoring and induction program is created to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of classroom teachers.

2. The state board shall adopt rules to administer this section.

3. Each school district and area education agency shall provide a beginning teacher mentoring and induction program for all classroom teachers who are beginning teachers, and notwithstanding section 284.4, subsection 1, a school district and an area education agency shall be eligible to receive moneys under section 284.13, subsection 1, paragraph "c", for purposes of implementing a beginning teacher mentoring and induction program in accordance with this section.

4. Each participating school district and area education agency shall develop an initial beginning teacher mentoring and induction plan. A school district shall include its plan in the school district's comprehensive school improvement plan submitted pursuant to section 256.7, subsection 21. The beginning teacher mentoring and induction plan shall, at a minimum, provide for a two-year sequence of induction program content and activities to support the Iowa teaching standards and beginning teacher professional and personal needs; mentor training that includes, at a minimum, skills of classroom demonstration and coaching, and district expectations for beginning teacher competence on Iowa teaching standards; placement of mentors and beginning teachers; the process for dissolving mentor and beginning teacher partnerships; district organizational sup-

port for release time for mentors and beginning teachers to plan, provide demonstration of classroom practices, observe teaching, and provide feedback; structure for mentor selection and assignment of mentors to beginning teachers; a district facilitator; and program evaluation.

5. A beginning teacher shall be informed by the school district or the area education agency, prior to the beginning teacher's participation in a mentoring and induction program, of the criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district or area education agency.

6. Upon completion of the program, the beginning teacher shall be comprehensively evaluated to determine if the teacher meets expectations to move to the career level. The school district or area education agency that employs the beginning teacher shall recommend for a standard license a beginning teacher who is determined through a comprehensive evaluation to demonstrate competence in the Iowa teaching standards. A school district or area education agency may offer a beginning teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district determines that the teacher is likely to successfully complete the mentoring and induction program by the end of the third year of eligibility. A teacher granted a third year of eligibility shall develop a teacher's mentoring and induction program plan in accordance with this chapter and shall undergo a comprehensive evaluation at the end of the third year. The board of educational examiners shall grant a one-year extension of the beginning teacher's initial license upon notification by the school district that the teacher will participate in a third year of the school district's program.

7. If a beginning teacher who is participating in a mentoring and induction program leaves the employ of a participating school district or area education agency prior to completion of the program, the participating school district or area education agency subsequently hiring the beginning teacher shall credit the beginning teacher with the time earned in the program prior to the subsequent hiring.

8. If the general assembly appropriates moneys for purposes of this section, a school district or area education agency is eligible to receive state assistance for up to two years under this section for each teacher the school district or area education agency employs who was formerly employed in an accredited nonpublic school or in another state as a first-year teacher. The school district or area education agency employing the teacher shall determine the conditions and requirements of a teacher participating in a program in accordance with this subsection. The school district or area education agency that employs the teacher shall recommend the teacher for an educational license if the teacher, through a comprehensive

evaluation, is determined to demonstrate competence in the Iowa teaching standards.

2003 Acts, ch 180, §41; 2003 Acts, ch 182, §15  
Subsections 3 and 6 amended

#### **284.6 Teacher career development.**

1. The department shall coordinate a statewide network of career development for Iowa teachers. A participating school district or career development provider that offers a career development program in accordance with section 256.9, subsection 50, shall demonstrate that the program contains the following:

a. Support that meets the career development needs of individual teachers and is aligned with the Iowa teaching standards.

b. Research-based instructional strategies aligned with the school district's student achievement needs and the long-range improvement goals established by the district.

c. Instructional improvement components including student achievement data, analysis, theory, classroom demonstration and practice, technology integration, observation, reflection, and peer coaching.

d. An evaluation component that documents the improvement in instructional practice and the effect on student learning.

2. The department shall identify models of career development practices that produce evidence of the link between teacher training and improved student learning.

3. A participating school district shall incorporate a district career development plan into the district's comprehensive school improvement plan submitted to the department in accordance with section 256.7, subsection 21. The district career development plan shall include a description of the means by which the school district will provide access to all teachers in the district to career development programs or offerings that meet the requirements of subsection 1. The plan shall align all career development with the school district's long-range student learning goals and the Iowa teaching standards. The plan shall indicate the school district's approved career development provider or providers.

4. In cooperation with the teacher's evaluator, the career teacher employed by a participating school district shall develop an individual teacher career development plan. The evaluator shall consult with the teacher's supervisor on the development of the individual teacher career development plan. The purpose of the plan is to promote individual and group career development. The individual plan shall be based, at minimum, on the needs of the teacher, the Iowa teaching standards, and the student achievement goals of the attendance center and the school district as outlined in the comprehensive school improvement plan.

5. The teacher's evaluator shall annually meet with the teacher to review progress in meeting the

goals in the teacher's individual plan. The teacher shall present to the evaluator evidence of progress. The purpose of the meeting shall be to review the teacher's progress in meeting career development goals in the plan and to review collaborative work with other staff on student achievement goals and to modify as necessary the teacher's individual plan to reflect the individual teacher's and the school district's needs and the individual's progress in meeting the goals in the plan. The teacher's supervisor and the evaluator shall review, modify, or accept modifications made to the teacher's individual plan.

6. School districts, a consortium of school districts, area education agencies, higher education institutions, and other public or private entities including professional associations may be approved by the state board to provide teacher career development. The career development program or offering shall, at minimum, meet the requirements of subsection 1. The state board shall adopt rules for the approval of career development providers and standards for the district career development plan.

2003 Acts, ch 180, §42  
Subsection 5 amended

#### **284.7 Iowa teacher career path.**

To promote continuous improvement in Iowa's quality teaching workforce and to give Iowa teachers the opportunity for career recognition that reflects the various roles teachers play as educational leaders, an Iowa teacher career path is established for teachers employed by participating school districts. A participating school district shall use funding allocated under section 284.13, subsection 1, paragraph "f", to raise teacher salaries to meet the requirements of this section. The Iowa teacher career path and salary minimums are as follows:

1. Effective July 1, 2001, the following career path levels are established and shall be implemented in accordance with this chapter:

a. *Beginning teacher.*

(1) A beginning teacher is a teacher who meets the following requirements:

(a) Has successfully completed an approved practitioner preparation program as defined in section 272.1.

(b) Holds an initial teacher license issued by the board of educational examiners.

(c) Participates in the beginning teacher mentoring and induction program as provided in this chapter.

(2) The participating district shall increase the district's minimum salary for a first-year beginning teacher by at least one thousand five hundred dollars per year above the minimum salary paid to a first-year beginning teacher in the previous year unless the minimum salary for a first-year beginning teacher exceeds twenty-eight thousand dollars.

*b. Career teacher.*

(1) A career teacher is a teacher who meets the following requirements:

(a) Has successfully completed the beginning teacher mentoring and induction program and has successfully completed a comprehensive evaluation as provided in this chapter.

(b) Is reviewed by the school district as demonstrating the competencies of a career teacher.

(c) Holds a valid license issued by the board of educational examiners.

(d) Participates in teacher career development as set forth in this chapter and demonstrates continuous improvement in teaching.

(2) The participating district shall provide a two thousand dollar difference between the average beginning teacher salary and the minimum career teacher salary, unless the school district has a minimum career teacher salary that exceeds thirty thousand dollars.

2. It is the intent of the general assembly to establish and require the implementation of and provide for the implementation of the following additional career path levels:

*a. Career II teacher.*

(1) A career II teacher is a teacher who meets the requirements of subsection 1, paragraph "b", has met the requirements established by the school district that employs the teacher, and is evaluated by the school district as demonstrating the competencies of a career II teacher. The teacher shall have successfully completed a performance review in order to be classified as a career II teacher.

(2) It is the intent of the general assembly that the participating district shall establish a minimum salary for a career II teacher that is at least five thousand dollars greater than the minimum career teacher salary. It is further intended that the district shall adopt a plan that facilitates the transition of a career teacher to a career II level.

*b. Advanced teacher.*

(1) An advanced teacher is a teacher who meets the following requirements:

(a) Receives the recommendation of the review panel that the teacher possesses superior teaching skills and that the teacher should be classified as an advanced teacher.

(b) Holds a valid license from the board of educational examiners.

(c) Participates in teacher career development as outlined in this chapter and demonstrates continuous improvement in teaching.

(d) Possesses the skills and qualifications to assume leadership roles.

(2) It is the intent of the general assembly that the participating district shall establish a minimum salary for an advanced teacher that is at least thirteen thousand five hundred dollars greater than the minimum career teacher salary. In conjunction with the development of the review panel pursuant to section 284.9, the department

shall make recommendations to the general assembly by January 1, 2002, regarding the appropriate district-to-district recognition for advanced teachers and methods that facilitate the transition of a teacher to the advanced level.

3. A teacher shall be promoted one level at a time and a teacher promoted to the next career level shall remain at that level for at least one year before requesting promotion to the next career level.

4. If a performance review for a teacher is conducted in the fifth year of the teacher's status at the career level, and indicates that the teacher's practice no longer meets the standards for that level, a performance review shall be conducted in the next following school year. If the performance review establishes that the teacher's practice fails to meet the standards for that level, the teacher shall be ineligible for any additional pay increase other than a cost-of-living increase.

5. A teacher employed in a participating district shall not receive less compensation in that participating district than the teacher received in the school year preceding participation, as set forth in section 284.4 due to implementation of this chapter. A teacher who achieves national board for professional teaching standards certification and meets the requirements of section 256.44 shall continue to receive the award as specified in section 256.44 in addition to the compensation set forth in this section.

6. *a.* If the licensed employees of a school district or area education agency receiving funds pursuant to section 284.13, subsection 1, paragraph "f" or "g", for purposes of this section, are organized under chapter 20 for collective bargaining purposes, the board of directors and the certified bargaining representative for the licensed employees shall mutually agree upon a formula for distributing the funds among the teachers employed by the school district or area education agency. However, the school district must comply with the salary minimums provided for in this section. The parties shall follow the negotiation and bargaining procedures specified in chapter 20 except that if the parties reach an impasse, neither impasse procedures agreed to by the parties nor sections 20.20 through 20.22 shall apply and the funds shall be paid as provided in paragraph "b". Negotiations under this section are subject to the scope of negotiations specified in section 20.9. If a board of directors and the certified bargaining representative for licensed employees have not reached mutual agreement for the distribution of funds received pursuant to section 284.13, subsection 1, paragraph "f" or "g", by July 15 of the fiscal year for which the funds are distributed, paragraph "b" of this subsection shall apply.

*b.* If, once the minimum salary requirements of this section have been met by the school district or area education agency, and the school district or area education agency receiving funds pursuant to

section 284.13, subsection 1, paragraph “f” or “g”, for purposes of this section, and the certified bargaining representative for the licensed employees have not reached an agreement for distribution of the funds remaining, in accordance with paragraph “a”, the board of directors shall divide the funds remaining among full-time teachers employed by the district or area education agency whose regular compensation is equal to or greater than the minimum career teacher salary specified in this section. The payment amount for teachers employed on less than a full-time basis shall be prorated.

c. If the licensed employees of a school district or area education agency are not organized for collective bargaining purposes, the board of directors shall determine the method of distribution of such funds.

2003 Acts, ch 180, §43 – 46  
 Minimum teacher salary requirements for the fiscal year beginning July 1, 2003, and ending June 30, 2004; 2003 Acts, ch 180, §68  
 Internal reference change applied  
 Subsection 1, paragraph a, subparagraph (1), subparagraph subdivision (b) amended  
 Subsection 2, paragraph a, subparagraph (1) amended  
 Subsection 4 amended  
 Subsection 6, paragraph a amended

#### **284.8 Performance review requirements for teachers.**

1. A participating school district shall review a teacher’s performance at least once every three years for purposes of assisting teachers in making continuous improvement, documenting continued competence in the Iowa teaching standards, identifying teachers in need of improvement, or to determine whether the teacher’s practice meets school district expectations for career advancement in accordance with section 284.7. The review shall include, at minimum, classroom observation of the teacher, the teacher’s progress, and implementation of the teacher’s individual career development plan; shall include supporting documentation from other evaluators, teachers, parents, and students; and may include video portfolios as evidence of teaching practices.

2. If a supervisor or an evaluator determines, at any time, as a result of a teacher’s performance that the teacher is not meeting district expectations under the Iowa teaching standards specified in section 284.3, subsection 1, paragraphs “a” through “g”, the criteria for the Iowa teaching standards developed by the department in accordance with section 256.9, subsection 50, and any other standards or criteria established in the collective bargaining agreement, the evaluator shall, at the direction of the teacher’s supervisor, recommend to the district that the teacher participate in an intensive assistance program. The intensive assistance program and its implementation are not subject to negotiation or grievance procedures established pursuant to chapter 20. By July 1, 2005, all school districts must be prepared to offer an intensive assistance program.

3. If a teacher is denied advancement to the career II or advanced teacher level based upon a performance review, the teacher may appeal the decision to an adjudicator under the process established under section 279.17. However, the decision of the adjudicator is final.

2003 Acts, ch 180, §47  
 Subsection 2 amended

#### **284.9 Review panel.**

1. A career II teacher seeking to receive an advanced designation shall submit a portfolio of work evidence aligned with the Iowa teaching standards to a review panel established in accordance with subsection 2. A majority of the evidence in the portfolio shall be classroom-based. The review panel shall evaluate the career II teacher’s portfolio to determine whether the teacher demonstrates superior teaching skills and shall make a recommendation to the board of educational examiners whether or not the teacher shall receive an advanced designation. The standards for recommendation include, but are not limited to, meeting the Iowa teaching standards at an advanced level.

2. The department shall establish up to five regional review panels consisting of five members per panel. Each panel shall include, at a minimum, a nationally board-certified teacher and a school district administrator. Panel members shall be appointed by the director and shall possess the knowledge necessary to determine the quality of the evidence submitted in an applicant’s portfolio. Panel members shall serve staggered three-year terms and may be reappointed to a second term. The department shall provide support and evaluation training for panel members and convene panels as needed. Panel members shall be reimbursed for mileage expenses incurred while engaged in the performance of official duties and shall receive per diem compensation by the department.

3. To assure fairness and consistency in the evaluation process, the review panels may perform random audits of the comprehensive evaluations and performance reviews conducted by evaluators throughout the state, and may randomly review how the evaluators are evaluating teachers based upon the Iowa teaching standards.

4. A teacher who does not receive a recommendation from a review panel may appeal that denial to an administrative law judge located in the department of inspections and appeals. The state shall not be liable for a teacher’s attorney fees, costs, or damages that may result from an appeal of a review panel’s decision. The state board shall adopt rules to administer this section.

2003 Acts, ch 180, §48  
 Subsection 3 amended

#### **284.10 Evaluator training program.**

1. The department shall establish an evaluator training program to improve the skills of school

district evaluators in making employment decisions, making recommendations for licensure, and moving teachers through a career path as established under this chapter. The department shall consult with persons representing teachers, national board-certified teachers, administrators, school boards, higher education institutions with approved practitioner and administrator preparation programs, and with persons from the private sector knowledgeable in employment evaluation and evaluator training in order to develop standards and requirements for the program. Evaluator training programs offered pursuant to this chapter may be provided by a public or private entity. The department shall distribute a list of evaluator training program providers to each school district.

2. An administrator licensed under chapter 272 who conducts evaluations of teachers for purposes of this chapter shall complete the evaluator training program. A practitioner licensed under chapter 272 who is not an administrator may enroll in the evaluator training program. Enrollment preference shall be given to administrators. Upon successful completion, the provider shall certify that the administrator or other practitioner is qualified to conduct evaluations for employment, make recommendations for licensure, and make recommendations that a teacher is qualified to advance from one career path level to the next career path level pursuant to this chapter. Certification is for a period of five years and may be renewed.

3. Effective until July 1, 2004, a school district shall be paid, from moneys allocated pursuant to section 284.13, subsection 1, paragraph "d", the amount of one thousand dollars for each individual who is licensed as a practitioner under chapter 272 on or after July 1, 2001, and who has been certified in accordance with this section. The district shall compensate the practitioner who achieves certification not less than one thousand dollars. By October 1 annually, the school district shall notify the department of education of the number of individuals who have achieved certification in accordance with this section, and shall submit any documentation requested by the department.

4. A higher education institution approved by the state board to provide an administrator preparation program shall incorporate the evaluator training program into the program offered by the institution.

5. The board of educational examiners shall require certification as a condition of issuing or renewing an administrator's license.

6. By July 1, 2005, the director shall develop and implement an evaluator training certification renewal program for administrators and other practitioners who need to renew a certificate issued pursuant to this section.

2003 Acts, ch 180, §49  
Subsections 4 and 5 amended

#### **284.11 Pilot program for team-based variable pay for student achievement.**

1. It is the intent of the general assembly to create a statewide team-based variable pay program to reward individual attendance centers for improvement in student achievement. A pilot program is established to give Iowa school districts with one or more participating attendance centers the opportunity to explore and demonstrate successful methods to implement team-based variable pay and to compare student achievement gains in school districts participating in the program with gains in school districts similar in nature that are not participating in the program. The department shall develop and administer the pilot program and shall provide technical assistance in the areas of goal setting and student assessments to school districts approved to participate in the pilot program. Preference shall be given to school districts that were previously approved to participate in a pilot program administered by the department in accordance with this section. Each school district approved by the department to participate in the pilot program shall administer valid and reliable standardized assessments at the beginning and end of the school year to demonstrate growth in student achievement.

2. All licensed practitioners employed at a participating attendance center that has demonstrated improvement in student achievement shall share in a cash award paid from moneys received by a school district pursuant to section 284.13, subsection 1. However, the school district is encouraged to extend cash awards to other staff employed at the attendance center.

3. The principal, with the participation of a team of licensed practitioners appointed by the principal, at each participating attendance center within a school district shall annually submit district attendance center student performance goals to the school board for approval. The attendance center goals must be aligned with the school improvement goals for the district developed in accordance with section 256.7, subsection 21. The district shall determine the designation of an attendance center for purposes of this section. The attendance center student performance goals may differ from attendance center to attendance center and may contain goals and indicators in addition to the comprehensive school improvement plan. An attendance center shall demonstrate student achievement through the use of multiple measures that are valid and reliable.

4. Each participating district shall create its own design for a team-based variable pay plan linked to the district's comprehensive school improvement plan. The plan must include attendance center student performance goals, student performance levels, multiple indicators to determine progress toward attendance center goals,

and a system for providing financial rewards. The team-based variable pay plan shall be approved by the local board.

5. Each district team-based variable pay plan shall be reviewed by the department. The department shall include a review of the locally established goals, targeted levels of improvement, assessment strategies, and financial reward system.

6. A district electing to initiate a team-based variable pay plan according to this section during the school year beginning July 1, 2003, shall notify the department of its election in writing no later than August 1, 2003. The department shall certify the school district plan by October 1, 2003.

7. The district team-based variable pay plan shall specify how the funding received by the district for purposes of this section is to be awarded to eligible staff in attendance centers that meet or exceed their goals. The district shall provide all attendance centers equal access to the available funds. Moneys shall be released by the department to the district only upon certification by the school board that an attendance center has met or exceeded its goals.

8. Moneys received for purposes of this section shall not be used for payment of any collective bargaining agreement or arbitrator's decision negotiated or awarded under chapter 20.

2003 Acts, ch 44, §58; 2003 Acts, ch 108, §50; 2003 Acts, ch 180, §50  
Subsections 1, 2, and 4 – 7 amended

#### **284.12 Reports — rules.**

1. The department shall annually report the statewide progress on the following:

a. Student achievement scores in mathematics and reading at the fourth and eighth grade levels on a district-by-district basis as reported to the local communities pursuant to section 256.7, subsection 21, paragraph "c".

b. Evaluator training program.

c. Team-based variable pay for student achievement.

d. Changes and improvements in the evaluation of teachers under the Iowa teaching standards.

2. The report shall be made available to the chairpersons and ranking members of the senate and house committees on education, the legislative education accountability and oversight committee, the deans of the colleges of education at approved practitioner preparation institutions in this state, the state board, the governor, and school districts by January 1. School districts shall provide information as required by the department for the compilation of the report and for accounting and auditing purposes.

3. Subject to an appropriation of sufficient funds by the general assembly, the department shall provide for a comprehensive independent evaluation of all components of the student achievement and teacher quality program and shall submit the results of the evaluation in the re-

port submitted pursuant to subsection 2 by January 1, 2007.

4. The board of educational examiners shall compile statistical information from the results of the examinations administered pursuant to section 272.2, subsection 16, Code 2003. The information compiled shall identify the practitioner preparation programs from which the applicants graduated, but shall not identify applicants individually. The statistical information compiled by the board pursuant to this subsection is a public record. The board shall submit a review of the statistical information to the chairpersons and ranking members of the senate and house committees on education and the state board by January 15, 2004. This subsection is repealed effective June 30, 2004.

5. In developing administrative rules for consideration by the state board, the department shall consult with persons representing teachers, administrators, school boards, approved practitioner preparation institutions, other appropriate education stakeholders, and the legislative education accountability and oversight committee.

2003 Acts, ch 45, §1  
Subsection 4 amended

#### **284.13 State program allocation.**

1. For each fiscal year in which moneys are appropriated by the general assembly for purposes of the student achievement and teacher quality program, the moneys shall be allocated as follows in the following priority order:

a. For each fiscal year in the fiscal period beginning July 1, 2003, and ending June 30, 2005, the department shall reserve up to five hundred thousand dollars of any moneys appropriated for purposes of this chapter. For each fiscal year in which moneys are appropriated by the general assembly for purposes of team-based variable pay pursuant to section 284.11, the amount of moneys allocated to school districts shall be in the proportion that the basic enrollment of a school district bears to the sum of the basic enrollments of all participating school districts for the budget year. However, the per pupil amount distributed to a school district under the pilot program shall not exceed one hundred dollars.

b. For the fiscal year beginning July 1, 2003, and ending June 30, 2004, to the department of education, the amount of seven hundred thousand dollars for the issuance of national board certification awards in accordance with section 256.44.

c. For the fiscal year beginning July 1, 2003, and succeeding fiscal years, an amount up to four million two hundred thousand dollars for first-year and second-year beginning teachers, to the department of education for distribution to school districts for purposes of the beginning teacher mentoring and induction programs. A school district shall receive one thousand three hundred dollars per beginning teacher participating in the

program. If the funds appropriated for the program are insufficient to pay mentors and school districts as provided in this paragraph, the department shall prorate the amount distributed to school districts based upon the amount appropriated. Moneys received by a school district pursuant to this paragraph shall be expended to provide each mentor with an award of five hundred dollars per semester, at a minimum, for participation in the school district's beginning teacher mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district.

*d.* For the fiscal year beginning July 1, 2003, and ending June 30, 2004, up to one million dollars to the department of education for purposes of establishing the evaluator training program, including but not limited to an evaluation process; the training of providers; development of a provider approval process; training materials and costs; for payment to practitioners under section 284.10, subsection 3, and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district; and for subsidies to school districts for training costs. A portion of the funds allocated to the department for purposes of this paragraph may be used by the department for administrative purposes.

*e.* For the fiscal year beginning July 1, 2003, and ending June 30, 2004, up to three hundred seventy-five thousand dollars to the department of education for purposes of implementing the career development program requirements of section 284.6, and the review panel requirements of section 284.9. From the moneys allocated to the department pursuant to this paragraph, not less than seventy-five thousand dollars shall be used to administer the ambassador to education position in accordance with section 256.45. A portion of the funds allocated to the department for purposes of this paragraph may be used by the department for administrative purposes.

*f.* For each fiscal year in which funds are appropriated for purposes of this chapter, the moneys remaining after distribution as provided in paragraphs "a" through "e" and "g" shall be allocated to school districts for salaries and career development in accordance with the following formula:

(1) Fifty percent of the allocation shall be in

the proportion that the basic enrollment of a school district bears to the sum of the basic enrollments of all school districts in the state for the budget year.

(2) Fifty percent of the allocation shall be based upon the proportion that the number of full-time equivalent teachers employed by a school district bears to the sum of the number of full-time equivalent teachers who are employed by all school districts in the state for the base year.

*g.* From moneys available under paragraph "f", the department shall allocate to area education agencies an amount per classroom teacher employed by an area education agency that is approximately equivalent to the average per teacher amount allocated to the districts. The average per teacher amount shall be calculated by dividing the total number of classroom teachers employed by school districts and the classroom teachers employed by area education agencies into the total amount of moneys available under paragraph "f".

*h.* Notwithstanding section 8.33, any moneys remaining unencumbered or unobligated from the moneys allocated for purposes of paragraph "b" or "c" shall not revert but shall remain available in the succeeding fiscal year for expenditure for the purposes designated. The provisions of section 8.39 shall not apply to the funds appropriated pursuant to this subsection.

2. A school district that is unable to meet the provisions of section 284.7, subsection 1, with funds allocated pursuant to subsection 1, paragraph "f", may request a waiver from the department to use funds appropriated under chapter 256D to meet the provisions of section 284.7, subsection 1, if the difference between the funds allocated to the school district pursuant to subsection 1, paragraph "f", and the amount required to comply with section 284.7, subsection 1, is not less than ten thousand dollars. The department shall consider the average class size of the school district, the school district's actual unspent balance from the preceding year, and the school district's current financial position.

3. Moneys received by a school district under this chapter are miscellaneous income for purposes of chapter 257 or are considered encumbered. A school district shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section.

2003 Acts, ch 179, §116, 117; 2003 Acts, ch 182, §16, 17, 19, 20

Subsection 1, paragraphs a - e amended

Subsection 1, paragraph f stricken and former paragraphs g and h redesignated as f and g

Subsection 1, paragraph f, unnumbered paragraph 1 amended

Subsection 1, NEW paragraph h

Subsection 3 stricken and former subsection 4 renumbered as 3

## CHAPTER 285

### STATE AID FOR TRANSPORTATION

#### **285.2 Payment of claims for nonpublic school pupil transportation.**

Boards of directors of school districts shall be required to provide transportation services to nonpublic school pupils as provided in section 285.1 when the general assembly appropriates funds to the department of education for the payment of claims for transportation costs submitted by the school district.

There is appropriated from the general fund of the state to the department of education funds sufficient to pay the approved claims of public school districts for transportation services to nonpublic school pupils as provided in this section. The portion of the amount appropriated for approved claims under section 285.1, subsection 3, shall be determined under section 285.3.

The costs of providing transportation to nonpublic school pupils as provided in section 285.1 shall not be included in the computation of district cost under chapter 257, but shall be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a local school district for transporting nonpublic school pupils shall not affect district cost limitations of chapter 257. The reimbursements provided in this section are miscellaneous income as defined in section 257.2.

Claims for reimbursement shall be made to the department of education by the public school district providing transportation or transportation reimbursement during a school year on a form prescribed by the department, and the claim shall state the services provided and the actual costs incurred. A claim shall not exceed the average transportation costs of the district per pupil transported except as otherwise provided. If transportation is provided under section 285.1, subsection 3, the amount of a claim shall be determined under section 285.3 regardless of the average transportation costs of the district per pupil transported.

Claims shall be accompanied by an affidavit of an officer of the public school district affirming the accuracy of the claim. By February 1 and on or about June 15 of each year, the department shall certify to the department of administrative services the amounts of approved claims to be paid, and the department of administrative services shall draw warrants payable to school districts which have established claims. Claims shall be allowed where practical, and at the option of the public school district of the pupil's residence, subject to approval by the area education agency of the pupil's residence, under section 285.9, subsection 3, the public school district of the pupil's residence may transport a pupil to a school located in

a contiguous public school district outside the boundary lines of the public school district of the pupil's residence. The public school district of the pupil's residence may contract with the contiguous public school district or with a private contractor under section 285.5 to transport the pupils to the school of attendance within the boundary lines of the contiguous public school district. The public school district in which the pupil resides may contract with the contiguous public school district or with a private contractor under section 285.5 to transport the pupil from the pupil's residence or from designated school bus collection locations to the school located within the boundary lines of the contiguous public school district, subject to the approval of the area education agency of the pupil's residence. The public school district of the pupil's residence may utilize the reimbursement provisions of section 285.1, subsection 3.

2003 Acts, ch 145, §286  
Terminology change applied

#### **285.10 Powers and duties of local boards.**

The powers and duties of the local school boards shall be to:

1. Provide transportation for each resident pupil who attends public school, and each resident pupil who attends a nonpublic school, and who is entitled to transportation under the laws of this state.
2. Establish, maintain, and operate bus routes for the transportation of pupils so as to provide for the economical and efficient operation thereof without duplication of facilities, and to properly safeguard the health and safety of the pupils transported.
3. Purchase or lease buses and other transportation facilities, and maintain same, and to enter into contracts for transportation subject to any provisions of law affecting same.
4. Employ such drivers and other employees as may be necessary and prescribe their qualifications and adopt rules for their conduct.
5. Exercise any and all powers and duties relating to transportation of pupils enjoined upon them by law.
6. Shall purchase liability insurance and other insurance coverage which the board deems advisable to insure the school district, its officers, employees, and agents against liability incurred as a result of operating school buses, including but not limited to liability to pupils or other persons lawfully transported. Section 670.7 shall apply to such insurance. However, the board of directors in its discretion shall determine the insurance coverages and limits, and the school district and direc-

tors shall not be liable as a result of any such discretionary decision.

7. When a school qualifies to purchase buses, they may be purchased as follows:

*a.* From funds available in the general fund or in the physical plant and equipment levy fund.

*b.* May purchase buses and enter into contracts to pay for such buses over a five-year period as follows: one-fourth of the cost when the bus is delivered and the balance in equal annual installments, plus simple interest due. The interest rate shall be the lowest rate available and shall not exceed the rate in effect under section 74A.2. The bus shall serve as security for balance due. Competitive bids on comparable equipment shall be requested on all school bus purchases and shall be based upon minimum construction standards established by the department of education. Bids shall be requested unless the bus is a used or demonstrator bus.

8. Boards in school districts which have sufficient resident pupils they are required to transport to warrant the purchase of transportation equipment may purchase buses needed to provide the transportation.

9. In the discretion of the board, furnish a school bus and services of a qualified driver to an organization of, or sponsoring activities for, senior citizens, children, persons with disabilities, or other persons and groups in this state. The board shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver except when the bus is used for transporting pupils to and from extracurricular activities sponsored by the school. A school bus shall be used as provided in this subsection only at times when it is not needed for transportation of pupils.

10. In the discretion of the board furnish a school bus and services of a qualified driver for transportation of persons other than pupils to activities in which pupils from the school are participants or are attending the activity or for which the school is a sponsor. The board shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver. A school bus shall be used as provided in this subsection only at times when it is not needed for transportation

of pupils.

2003 Acts, ch 180, §52  
Subsection 7, paragraph b amended

### **285.12 Disputes — hearings and appeals.**

In the event of a disagreement between a school patron and the board of the school district, the patron if dissatisfied with the decision of the district board, may appeal to the area education agency board, notifying the secretary of the district in writing within ten days of the decision of the board and by filing an affidavit of appeal with the agency board within the ten-day period. The affidavit of appeal shall include the reasons for the appeal and points at issue. The secretary of the local board on receiving notice of appeal shall certify all papers to the agency board which shall hear the appeal within ten days of the receipt of the papers and decide it within three days of the conclusion of the hearing and shall immediately notify all parties of its decision. Either party may appeal the decision of the agency board to the director of the department of education by notifying the opposite party and the agency administrator in writing within five days after receipt of notice of the decision of the agency board and by filing with the director of the department of education an affidavit of appeal, reasons for appeal, and the facts involved in the disagreement within five days after receipt of notice of the decision of the agency board. The agency administrator shall, within ten days of receipt of the notice, file with the director all records and papers pertaining to the case, including action of the agency board. The director shall hear the appeal within fifteen days of the filing of the records in the director's office, notifying all parties and the agency administrator of the date and time of hearing. The director shall notify all parties of the decision and return all papers with a copy of the decision to the agency administrator. The decision of the director shall be subject to judicial review in accordance with chapter 17A. Pending final order made by the director, upon any appeal prosecuted to such director, the order of the agency board from which the appeal is taken shall be operative and be in full force and effect.

2003 Acts, ch 108, §127, 132  
Section not amended; section history revised

## **CHAPTER 292**

### **SCHOOL INFRASTRUCTURE PROGRAM**

#### **292.2 School infrastructure program.**

1. *a.* The department shall establish and administer a school infrastructure program to provide financial assistance in the form of grants to school districts with school infrastructure needs.

*b.* The department of education, in consultation with the department of management, shall annually compute the property tax infrastructure capacity per pupil for each school district in

the state.

*c.* The department of education, in consultation with the department of revenue and the legislative services agency, shall annually calculate the estimated sales and services tax for school infrastructure, if imposed at one percent, that is or would be received by each school district in the state pursuant to section 422E.3. These calculations shall be made on a total tax and on a tax per

pupil basis for each school district.

*d.* The department of education, in consultation with the department of revenue and the department of management, shall annually compute capacity per pupil and the local match percentage for each school district in the state. The calculations shall be released not later than September 1 of each year.

2. *a.* A school district's local match requirement is equivalent to the total investment of a project multiplied by the school district's local match percentage. A school district may submit an application to the department for financial assistance under the program if the school district meets the district's local match requirement through one or more of the following sources:

(1) The issuance of bonds pursuant to section 298.18.

(2) Local sales and services tax moneys received pursuant to section 422E.3.

(3) A physical plant and equipment levy under chapter 298.

(4) Other moneys locally obtained by the school district excluding other state or federal grant moneys.

*b.* If the project is in collaboration with other public or private entities, the school district shall be eligible to apply for only the school district's portion of the project. As such, state or federal grants received by the other entities cannot be used toward the local match requirement under paragraph "a", subparagraph (4).

*c.* A school district may submit an application for a project which includes activities at more than one attendance center. However, if the activities relate to new construction, the project shall only relate to one attendance center.

*d.* A school district may submit an application for conditional approval to the department for financial assistance under the program if the school district submits a plan for securing the school district's local match requirement under paragraph "a". If a school district does not meet the local match requirement of paragraph "a" within nine months of receiving conditional approval from the department, the application for financial assistance shall be denied by the department and the financial assistance shall be carried forward to be made available under the allocation provided under subsection 4, paragraph "d", for the next available grant cycle.

*e.* For the fiscal year beginning July 1, 2000, applications shall be submitted to the department by March 1, 2001. For the fiscal year beginning July 1, 2001, and every fiscal year thereafter, applications shall be submitted to the department by October 15 of each year.

*f.* For the fiscal year beginning July 1, 2000, the department shall notify all approved applicants by May 1, 2001, regarding the approval of the application. For the fiscal year beginning July 1, 2001, and every fiscal year thereafter, the de-

partment shall notify all approved applicants by December 15 of each year regarding the approval of the application.

*g.* An applicant which is not successful in obtaining financial assistance under the program may reapply for financial assistance in succeeding years.

3. The application shall include, but shall not be limited to, the following information:

*a.* The total capital investment of the project.

*b.* The amount and percentage of moneys which the school district will be providing for the project.

*c.* The infrastructure needs of the school district, especially the fire and health safety needs of the school district, and including the extent to which the project would allow the school district to meet the infrastructure needs of the school district on a long-term basis.

*d.* The financial assistance needed by the school district based upon the capacity per pupil.

*e.* Any previous efforts by the school district to secure infrastructure funding from federal, state, or local resources, including any funding received for any project under the Iowa demonstration construction grant program. The previous efforts shall be evaluated on a case-by-case basis.

*f.* Evidence that the school district meets or will meet the local match requirement in subsection 2, paragraph "a".

*g.* The nature of the proposed project and its relationship to improving educational opportunities for the students.

*h.* Evidence that the school district has reorganized on or after July 1, 2000, or that the school district has initiated a resolution to reorganize by July 1, 2004, or entered into an innovative collaboration with another school district or school districts.

*i.* Evidence that the school district receives sales and services tax for school infrastructure funding under section 422E.3.

4. A school district shall not receive more than one grant under the program. The financial assistance shall be in the form of grants and shall be allocated in the following manner:

*a.* Twenty-five percent of the financial assistance each year shall be awarded to school districts with an enrollment of one thousand one hundred ninety-nine students or less.

*b.* Twenty-five percent of the financial assistance each year shall be awarded to school districts with an enrollment of more than one thousand one hundred ninety-nine students but not more than four thousand seven hundred fifty students.

*c.* Twenty-five percent of the financial assistance each year shall be awarded to school districts with an enrollment of more than four thousand seven hundred fifty students.

*d.* Twenty-five percent of the financial assistance each year, any financial assistance not

awarded under paragraphs “a” through “c”, and financial assistance not awarded in previous fiscal years shall be awarded to school districts with any size enrollment.

5. A district shall receive the lesser of one million dollars of financial assistance under the program, or the total capital investment of the project minus the local match requirement. The program shall provide grants in an amount of not more than ten million dollars during the fiscal year beginning July 1, 2000, not more than twenty million dollars during the fiscal year beginning July 1, 2001, and not more than twenty million dollars during the fiscal year beginning July 1, 2002. If the amount of grants awarded in a fiscal year is less than the maximum amount provided for grants for that fiscal year in this subsection, the amount of the difference shall be carried forward to subsequent fiscal years for purposes of providing grants under the program and the maximum amount of grants for each fiscal year, as provided in this subsection, shall be adjusted accordingly.

6. The school budget review committee shall review all applications for financial assistance under the program and make recommendations regarding the applications to the department. The department shall make the final determination on grant awards. The school budget review committee shall base the recommendations on the criteria established pursuant to subsections 3 and 7.

7. The department shall form a task force to review applications for financial assistance and provide recommendations to the school budget review committee. The task force shall include, at a minimum, representatives from the kindergarten through grade twelve education community, the state fire marshal, and individuals knowledgeable in school infrastructure and construction issues. The department, in consultation with the task force, shall establish the parameters and the details of the criteria for awarding grants based on the information listed in subsection 3, including greater priority to the following:

*a.* A school district with a lower capacity per pupil.

*b.* A school district whose plans address specific occupant safety issues.

*c.* A school district reorganizing or collaborating as described in subsection 3, paragraph “h”.

*d.* A school district for which a sales and services tax for school infrastructure has not been imposed pursuant to section 422E.2 or a school district receiving minimal revenues under section 422E.3 when the total enrollment of the school district is considered.

8. An applicant receiving financial assistance

under the program shall submit a progress report to the department of education as requested by the department which shall include a description of the activities under the project, the status of the implementation of the project, and any other information required by the department.

9. If a school district receives financial assistance under the vision Iowa program created under section 15F.302 pursuant to a joint application submitted under section 15F.302, subsection 3, the school district shall not be eligible to receive financial assistance under the school infrastructure program.

10. A school district located in whole or in part in a county which has imposed the maximum rate of sales and services tax for school infrastructure pursuant to section 422E.2 and has sales and services tax for school infrastructure revenue of more than the statewide average of sales tax capacity per pupil, as defined in section 292.1, subsection 8, shall not be eligible for financial assistance under the program. For purposes of this subsection, an individual school district’s sales tax capacity per pupil is the estimated total sales and services tax for infrastructure revenue to be actually received by the school district divided by the school district’s enrollment as specified in section 292.1, subsection 8.

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286  
Terminology changes applied

#### **292.4 Appropriation.**

There is appropriated from the general fund of the state from moneys credited to the general fund of the state as a result of the state entering into the streamlined sales and use tax agreement to the secure an advanced vision for education fund created in section 422E.3A, the sum of five million dollars for each fiscal year of the fiscal period beginning July 1, 2004, and ending June 30, 2014. The appropriation in this section shall be made after the appropriation from the same source to the grow Iowa fund\* created in 2003 Iowa Acts, First Extraordinary Session, chapter 1, or another Act. For purposes of this section, “*moneys credited to the general fund of the state as a result of entering into the streamlined sales and use tax agreement*” means the amount of sales and use tax receipts credited to the general fund of the state during a fiscal year that exceeds by two percent or more the total sales and use tax receipts credited to the general fund of the state during the previous fiscal year.

2003 Acts, 1st Ex, ch 2, §92, 209

\*\*“Grow Iowa values fund” probably intended; corrective legislation is pending

NEW section

## CHAPTER 294A

### EDUCATIONAL EXCELLENCE PROGRAM — TEACHERS

#### 294A.1 Educational excellence program.

The purpose of this chapter is to promote excellence in education. In order to maintain and advance the educational excellence in the state of Iowa, this chapter establishes the Iowa educational excellence program. The program shall consist of two major phases addressing the following:

1. Phase I — The recruitment of quality teachers.
2. Phase II — The retention of quality teachers.

2003 Acts, ch 180, §53, 54  
Unnumbered paragraph 1 amended  
Subsection 3 stricken

#### 294A.3 Educational excellence fund.

An educational excellence fund is established in the office of treasurer of state to be administered by the department of education. Moneys appropriated by the general assembly for deposit in the fund shall be paid to school districts and area education agencies pursuant to the requirements of this chapter and shall be expended only to pay for increases in the regular compensation of teachers and other salary increases for teachers, to pay the costs of the employer's share of federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, payments on the salary increases, and to pay costs associated with providing specialized or general training. Moneys received by school districts and area education agencies shall not be used for pay earned by a teacher for performance of additional noninstructional duties.

2003 Acts, ch 180, §55  
Unnumbered paragraph 2 stricken

#### 294A.6 Payments.

For the school year beginning July 1, 1998, the department of education shall notify the department of administrative services of the total minimum salary supplement, as described in section 294A.5, subsection 2, paragraphs "a" and "b", to be paid to each school district and area education agency under phase I and the department of administrative services shall make the payments. For school years after the school year beginning July 1, 2001, if a school district or area education agency reduces the number of its full-time equivalent teachers in the base year below the number employed during the school year beginning July 1, 1998, the department of administrative services shall reduce the total minimum salary supplement payable to that school district or area education agency in the budget year so that the amount paid is equal to the ratio of the number of full-time equivalent teachers employed in the school dis-

trict or area education agency for the base year divided by the number of full-time equivalent teachers employed in the school district or area education agency for the school year beginning July 1, 1998, and multiplying that fraction by the total minimum salary supplement paid to that school district or area education agency for the school year beginning July 1, 1998. For purposes of this section, "base year" and "budget year" mean the same as defined in section 257.2.

If the moneys allocated for phase I for a school year exceed the moneys required to pay the total minimum salary supplements to all school districts and area education agencies, the board of directors of a school district that has employed one or more additional teachers as a result of a whole grade sharing agreement completed under section 282.7 may request approval from the department of education for additional funding for its minimum salary supplement for that school year and succeeding school years if the other school district or districts that are parties to the sharing agreement have correspondingly reduced their number of teachers. If the department of education approves the payment of the additional salary supplement to a district, the department shall certify to the department of administrative services that the additional payment be made. The payment shall be equal to the amount of the difference between eighteen thousand dollars and the teacher's regular compensation, plus the amount required to make the payments on the additional salary moneys for the employer's share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294. If the phase I moneys remaining are insufficient to pay the entire amount approved by the department of education, the department of administrative services shall prorate the payments to school districts.

2003 Acts, ch 145, §286  
Terminology change applied

#### 294A.9 Phase II program.

Phase II is established to improve the salaries of teachers. For each fiscal year beginning on or after July 1, 1992, the per pupil amount upon which the phase II moneys are based is equal to the per pupil allocation plus supplemental allocations for the immediately preceding fiscal year.

The department of education shall certify the amounts of the allocations for each school district and area education agency to the department of administrative services and the department of administrative services shall make the payments to school districts and area education agencies.

If a school district has discontinued grades un-

der section 282.7, subsection 1, or students attend school in another school district, under an agreement with the board of the other school district, the board of directors of the district of residence either shall transmit the phase II moneys allocated to the district for those students based upon the full-time equivalent attendance of those students to the board of the school district of attendance of the students or shall transmit to the board of the school district of attendance of the students a portion of the phase II moneys allocated to the district of residence based upon an agreement between the board of the resident district and the board of the district of attendance.

If a school district uses teachers under a contract between the district and the area education agency in which the district is located, the school district shall transmit to the employing area education agency a portion of its phase II allocation based upon the portion that the salaries of teachers employed by the area education agency and assigned to the school district for a school year bears to the total teacher salaries paid in the district for that school year, including the salaries of the teachers employed by the area education agency.

If the school district or area education agency is organized under chapter 20 for collective bargaining purposes, the board of directors and certified bargaining representative for the licensed employees shall mutually agree upon a formula for distributing the phase II allocation among the teachers. For the school year beginning July 1, 1987 only, the parties shall follow the procedures specified in chapter 20 except that if the parties reach an impasse, neither impasse procedures agreed to by the parties nor sections 20.20 through 20.22 shall apply and the phase II allocation shall be divided as provided in section 294A.10. Negotiations under this section are subject to the scope of negotiations specified in section 20.9. If a board of directors and certified bargaining representative for licensed employees have not reached mutual agreement by July 15, 1987 for the distribution of the phase II payment, section 294A.10 will apply.

If the school district or area education agency is not organized for collective bargaining purposes, the board of directors shall determine the method of distribution.

2003 Acts, ch 145, §286  
Terminology change applied

**294A.12 through 294A.20** Repealed by 2003 Acts, ch 180, § 70.

With respect to proposed amendment to former §294A.19 in 2003 Acts, ch 35, §45, 49, see Code editor's note

**294A.22 Payments.**

Payments for each phase of the educational excellence program shall be made by the department of administrative services on a monthly basis commencing on October 15 and ending on June 15 of each fiscal year, taking into consideration the rela-

tive budget and cash position of the state resources. The payments shall be separate from state aid payments made pursuant to sections 257.16 and 257.35. The payments made under this section to a school district or area education agency may be combined and a separate accounting of the amount paid for each program shall be included.

Any payments made to school districts or area education agencies under this chapter are miscellaneous income for purposes of chapter 257.

Payments made to a teacher by a school district or area education agency under this chapter are wages for the purposes of chapter 91A.

2003 Acts, ch 145, §286; 2003 Acts, ch 180, §56  
Terminology change applied  
Unnumbered paragraph 3 amended

**294A.23 Multiple salary payments.** Repealed by 2003 Acts, ch 180, § 70.

**294A.25 Appropriation.**

1. For the fiscal year beginning July 1, 2003, and for each succeeding year, there is appropriated from the general fund of the state to the department of education the amount of fifty-six million eight hundred ninety-one thousand three hundred thirty-six dollars to be used to improve teacher salaries. The moneys shall be distributed as provided in this section.

2. The amount of one hundred fifteen thousand five hundred dollars to be paid to the department of human services for distribution to its licensed classroom teachers at institutions under the control of the department of human services for payments for phase II based upon the average student yearly enrollment at each institution as determined by the department of human services.

3. The amount of ninety-four thousand six hundred dollars to be paid to the state board of regents for distribution to licensed classroom teachers at the Iowa braille and sight saving school and the Iowa school for the deaf for payments of minimum salary supplements for phase I and payments for phase II based upon the average yearly enrollment at each school as determined by the state board of regents.

4. Commencing with the fiscal year beginning July 1, 1988, the amount of one hundred thousand dollars to be paid to the department of education for distribution to the tribal council of the Sac and Fox Indian settlement located on land held in trust by the secretary of the interior of the United States. Moneys allocated under this subsection shall be used for the purposes specified in section 256.30.

5. For the fiscal year beginning July 1, 2002, and ending June 30, 2003, the amount of fifty thousand dollars to be paid to the department of education for participation in a state and national project, the national assessment of education progress, to determine the academic achievement of Iowa students in math, reading, science, United

States history, or geography.

6. Except as otherwise provided in this section, for the fiscal year beginning July 1, 2003, and succeeding fiscal years, the remainder of moneys appropriated in subsection 1 to the department of education shall be deposited in the educational excellence fund to be allocated in an amount to meet the requirements of this chapter for phase I and phase II.

7. Commencing with the fiscal year beginning July 1, 2003, the amount of two hundred thirty thousand dollars for a kindergarten to grade twelve management information system.

8. For the fiscal year beginning July 1, 2003, and for each succeeding fiscal year, the amount of one hundred seventy thousand dollars to the state

board of regents for distribution in the amount of sixty-eight thousand dollars to the Iowa braille and sight saving school and in the amount of one hundred two thousand dollars to the Iowa state school for the deaf.

9. For each fiscal year, to the department of education the amount of forty-seven thousand dollars for the Iowa mathematics and science coalition.

2003 Acts, ch 179, §9, 36, 118, 119; 2003 Acts, ch 182, §21, 22  
For amendments to former subsection 6, effective May 30, 2003, and ending June 30, 2003, that change the fiscal year designation related to expenditure of funds to administer the ambassador to education position from FY 2002 to FY 2003, see 2003 Acts, ch 182, §21, 22

See Code editor's note  
Subsection 1 amended  
Subsection 5 amended  
Subsection 6 stricken and former subsections 7 – 10 amended and renumbered as 6 – 9

## CHAPTER 297

### SCHOOLHOUSES AND SCHOOLHOUSE SITES

#### 297.4 Vacancy notification.

The board of directors shall notify the cities located within the school district, the counties in which the school district may be located, and the department of administrative services annually of

the facilities and buildings owned by the public school corporation which are vacant and available to be leased or purchased.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 298

### SCHOOL TAXES AND BONDS

#### 298.3 Revenues from the levies.

The revenue from the regular and voter-approved physical plant and equipment levies shall be placed in the physical plant and equipment levy fund and expended only for the following purposes:

1. The purchase and improvement of grounds. For the purpose of this subsection:

a. *“Purchase of grounds”* includes the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental to the property acquisition.

b. *“Improvement of grounds”* includes grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements, as defined in section 384.37.

2. The construction of schoolhouses or buildings and opening roads to schoolhouses or buildings.

3. The purchase, lease, or lease-purchase of a single unit of equipment or technology exceeding five hundred dollars in value per unit.

4. The payment of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.

5. Procuring or acquisition of library facilities.

6. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and additions to existing schoolhouses.

For the purpose of this subsection, *“repairing”* means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance; and *“reconstructing”* means rebuilding or restoring as an entity a thing which was lost or destroyed.

7. Expenditures for energy conservation.

8. The rental of facilities under chapter 28E.

9. Purchase of transportation equipment for transporting students.

10. The purchase of buildings or lease-purchase option agreements for school buildings.

11. Equipment purchases for recreational purposes.

12. Payments to a municipality or other entity as required under section 403.19, subsection 2.

Interest earned on money in the physical plant and equipment levy fund may be expended for a

purpose listed in this section.

Unencumbered funds collected prior to July 1, 1991, from the levy previously authorized under section 297.5, Code 1991, may be expended for the purposes listed in this section.

Revenue from the regular and voter-approved physical plant and equipment levies shall not be expended for school district employee salaries or travel expenses, supplies, printing costs or media services, or for any other purpose not expressly authorized in this section.

2003 Acts, ch 13, §1, 2  
Subsections 3 and 10 amended

#### **298.11 Apportionment of school funds.**

The county auditor shall, on the first Monday in April and the first Monday in October of each year, apportion the school tax, together with rents on unsold school lands to which the county is entitled as shown in notice from the director of the department of administrative services, and all other money in the hands of the county treasurer belonging in common to the schools of the county and not included in a previous apportionment, among the corporations in the county in the manner provided by law.

The county auditor shall immediately notify the county treasurer of such apportionment and of the amount due thereby to each corporation.

The county treasurer shall thereupon give notice to the president of each corporation, and shall pay out such apportionment moneys in the same manner that the county treasurer is authorized to

pay other school moneys to the treasurers of the several school districts.

2003 Acts, ch 145, §286  
Terminology change applied

#### **298.14 School district income surtaxes.**

For each fiscal year, the cumulative total of the percents of surtax approved by the board of directors of a school district and collected by the department of revenue under sections 257.21, 257.29, and 298.2, and the enrichment surtax under section 442.15, Code 1989, and an income surtax collected by a political subdivision under chapter 422D, shall not exceed twenty percent.

A school district income surtax fund is created in the office of treasurer of state. Income surtaxes collected by the department of revenue under sections 257.21, 257.29, and 298.2 and section 442.15, Code 1989, shall be deposited in the school district income surtax fund to the credit of each school district. A separate accounting of each surtax, by school district, shall be maintained.

The director of the department of administrative services shall draw warrants in payment of the surtaxes collected in each school district. Warrants shall be payable in two installments to be paid on approximately the first day of December and the first day of February following collection of the taxes and shall be delivered to the respective school districts.

2003 Acts, ch 145, §234  
See also §422D.2 for limit on total surtax  
Section amended

## CHAPTER 301

### TEXTBOOKS

#### **301.1 Adoption — purchase and sale — accredited nonpublic school pupil textbook services.**

1. The board of directors of each and every school district is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, loan such textbooks to such pupils free, or rent them to such pupils at such reasonable fee as the board shall fix, and said money so received shall be returned to the general fund.

2. Textbooks adopted and purchased by a school district shall, to the extent funds are appropriated by the general assembly, be made available to pupils attending accredited nonpublic schools upon request of the pupil or the pupil's parent under comparable terms as made available to pupils attending public schools. If the general as-

sembly appropriates moneys for purposes of making textbooks available to accredited nonpublic school pupils, the department of education shall ascertain the amount available to a school district for the purchase of nonsectarian, nonreligious textbooks for pupils attending accredited nonpublic schools. The amount shall be in the proportion that the basic enrollment of a participating accredited nonpublic school bears to the sum of the basic enrollments of all participating accredited nonpublic schools in the state for the budget year. For purposes of this section, a "*participating accredited nonpublic school*" means an accredited nonpublic school that submits a written request on behalf of the school's pupils in accordance with this subsection, and that certifies its actual enrollment to the department of education by October 1, annually. By October 15, annually, the department of education shall certify to the director of revenue\* the annual amount to be paid to each school district, and the director of revenue\* shall draw warrants payable to school districts in accordance with this subsection. For purposes of this

subsection, an accredited nonpublic school's enrollment count shall include only students who are residents of Iowa. The costs of providing textbooks to accredited nonpublic school pupils as provided in this subsection shall not be included in the computation of district cost under chapter 257, but shall be shown in the budget as an expense from miscellaneous income. Textbook expenditures made in accordance with this subsection shall be kept on file in the school district.

3. As used in subsection 2, "textbooks" means books and loose-leaf or bound manuals, systems of

reusable instructional materials or combinations of books and supplementary instructional materials which convey information to the student or otherwise contribute to the learning process, or electronic textbooks, including but not limited to computer software, applications using computer-assisted instruction, interactive videodisc, and other computer courseware and magnetic media.

2003 Acts, ch 145, §286

\*Director of the department of administrative services probably intended; corrective legislation is pending

Terminology change applied

## CHAPTER 303

### DEPARTMENT OF CULTURAL AFFAIRS

#### 303.1A Director's duties.

The duties of the director shall include, but are not limited to, the following:

1. Adopt rules that are necessary for the effective administration of the department.

2. Direct and administer the programs and services of the department.

3. Prepare the departmental budget request by September first of each year on the forms furnished, and including the information required by the department of management.

4. Accept, receive, and administer grants or other funds or gifts from public or private agencies including the federal government for the various divisions and the department.

5. Appoint and approve the technical, professional, secretarial, and clerical staff necessary to accomplish the purposes of the department subject to chapter 8A, subchapter IV.

6. Administer the Iowa cultural trust as provided in chapter 303A and do all of the following:

a. Develop and adopt by rule criteria for the issuance of trust fund credits by measuring the efforts of qualified organizations, as defined in section 303A.3, to increase their endowment or other resources for the promotion of the arts, history, or the sciences and humanities in Iowa. If the director determines that the organizations have increased the amount of their endowment and other resources, the director shall certify the amount of increase in the form of trust fund credits to the treasurer, who shall deposit in the Iowa cultural trust fund, from moneys received for purposes of the trust fund as provided in section 303A.4, subsection 2, an amount equal to the trust fund credits. If the amount of the trust fund credits issued by the director exceeds the amount of moneys available to be deposited in the trust fund as provided in section 303A.4, subsection 2, the outstanding trust fund credits shall not expire but shall be available to draw down additional moneys which become available to be deposited in the trust fund as provided in section 303A.4, sub-

section 2.

b. Develop and implement, in accordance with chapter 303A, a grant application process for grants issued to qualified organizations as defined in section 303A.3.

c. Develop and adopt by rule criteria for the approval of Iowa cultural trust grants. The criteria shall include, but shall not be limited to, the future stability and sustainability of a qualified organization.

d. Compile, in consultation with the Iowa arts council and the state historical society of Iowa, a list of grant applications recommended for funding in accordance with the amount available for distribution as provided in section 303A.6, subsection 3. The list of recommended grant applications shall be submitted to the Iowa cultural trust board of trustees for approval.

e. Monitor the allocation and use of grant moneys by qualified organizations to determine whether moneys are used in accordance with the provisions of this subsection and chapter 303A. The director shall annually submit the director's findings and recommendations in a report to the Iowa cultural trust board of trustees prior to final board action in approving grants for the next succeeding fiscal year.

The director may appoint a member of the staff to be acting director who shall have the powers delegated by the director in the director's absence. The director may delegate the powers and duties of that office to the administrators.

2003 Acts, ch 145, §235

Subsection 5 amended

#### 303.2 Division responsibilities.

1. The administrative services section shall provide administrative, accounting, public relations and clerical services for the department, report to the director and perform other duties assigned to it by the director.

2. The historical division shall:

a. Administer and care for historical sites un-

der the authority of the division, and maintain collections within these buildings.

Except for the state board of regents, a state agency which owns, manages, or administers a historical site must enter into an agreement with the department of cultural affairs under chapter 28E to insure the proper management, maintenance, and development of the site. For the purposes of this section, "historical site" is defined as any district, site, building, or structure listed on the national register of historic sites or identified as eligible for such status by the state historic preservation officer or that is identified according to established criteria by the state historic preservation officer as significant in national, state, and local history, architecture, engineering, archaeology, or culture.

b. Encourage and assist local county and state organizations and museums devoted to historical purposes.

c. Develop standards and criteria for the acquisition of historic properties and for the preservation, restoration, maintenance, operation, and interpretation of properties under the jurisdiction of the division. The administrator of the division shall serve as the state historic preservation officer, certified by the governor, pursuant to federal requirements.

d. Administer the state archives and records program in accordance with chapter 305.

e. Identify and document historic properties.

f. Prepare and maintain a state register of historic places, including those listed on the national register of historic places.

g. Conduct historic preservation activities pursuant to federal and state requirements.

h. Publish matters of historical value to the public, and pursue historical, architectural, and archaeological research and development which may include but are not limited to continuing surveys, excavation, scientific recording, interpretation, and publication of the historical, architectural, archaeological, and cultural sites, buildings, and structures in the state.

i. Buy or receive by other means historical materials including, but not limited to, artifacts, art, books, manuscripts, and images. Such materials are not personal property under sections 8A.321 and 8A.324 and shall be received and cared for under the rules of the department. The historical division may sell or otherwise dispose of those materials according to the rules of the department and be credited for any revenues credited by the disposal less the costs incurred.

j. Administer the historical resource development program established in section 303.16.

k. Administer, preserve, and interpret the battle flag collection assembled by the state in consultation and coordination with the commission of veterans affairs and the department of administrative services. A portion of the battle flag collection shall be on display at the state capitol and the

state historical building at all times, unless on loan approved by the department of cultural affairs.

3. The arts division shall:

a. Make surveys as deemed advisable of existing artistic and cultural programs and activities within the state, including but not limited to music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts.

b. Administer the program of agreements for indemnification by the state in the event of loss of or damage to special exhibit items established by sections 304A.21 through 304A.30.

c. Submit a report to the governor and to the general assembly not later than ten calendar days following the commencement of each first session of the general assembly concerning the studies undertaken during the biennium and recommending legislation and other action as necessary for the implementation and enforcement of this subsection and subchapter VI of this chapter.

2003 Acts, ch 92, §3; 2003 Acts, ch 145, §236, 286

Terminology change applied

Subsection 2, paragraphs d and i amended

### **303.3B Cultural and entertainment districts.**

1. The department of cultural affairs shall establish and administer a cultural and entertainment district certification program. The program shall encourage the growth of communities through the development of areas within a city or county for public and private uses related to cultural and entertainment purposes.

2. A city or county may create and designate a cultural and entertainment district subject to certification by the department of cultural affairs, in consultation with the department of economic development. A cultural and entertainment district shall consist of a geographic area not exceeding one square mile in size. A cultural and entertainment district certification shall remain in effect for ten years following the date of certification. Two or more cities or counties may apply jointly for certification of a district that extends across a common boundary. Through the adoption of administrative rules, the department of cultural affairs shall develop a certification application for use in the certification process. The provisions of this subsection relating to the adoption of administrative rules shall be construed narrowly.

3. The department of cultural affairs shall encourage development projects and activities located in certified cultural and entertainment districts through incentives under cultural grant programs pursuant to section 303.3, chapter 303A, and any other grant programs.

2003 Acts, 1st Ex, ch 1, §110, 133

For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114

NEW section

### **303.9 Funds received by department.**

1. All funds received by the department, in-

cluding but not limited to gifts, endowments, funds from the sale of memberships in the state historical society, funds from the sale of mementos and other items relating to Iowa history as authorized under subsection 2, interest generated by the life membership trust fund, and fees, shall be credited to the account of the department and are appropriated to the department to be invested or used for programs and purposes under the authority of the department. Interest earned on funds credited to the department, except funds appropriated to the department from the general fund of the state, shall be credited to the department. Section 8.33 does not apply to funds credited to the department under this section.

2. The department may sell mementos and other items relating to Iowa history and historic sites on the premises of property under control of the department and at the state capitol. Notwithstanding sections 8A.321 and 8A.327, the department may directly and independently enter into rental and lease agreements with private vendors for the purpose of selling mementos. All fees and income produced by the sales and rental or lease agreements shall be credited to the account of the

department. The mementos and other items sold by the department or vendors under this subsection are exempt from section 8A.311. The department is not a retailer under chapter 422 and the sale of such mementos and other items by the department is not a retail sale under chapter 422 and is exempt from the sales tax.

3. Notwithstanding section 633.63, the board may authorize nonprofit foundations acting solely for the support of the state historical society of Iowa to accept and administer trusts deemed by the board to be beneficial to the division's operations. The board and the foundation may act as trustees in such instances.

2003 Acts, ch 145, §237  
For future amendment to subsection 2 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §160, 205  
Subsection 2 amended

**303.12 through 303.15** Repealed by 2003 Acts, ch 92, § 21. See chapter 305.

With respect to proposed amendment to former §303.14 by 2003 Acts, ch 145, §286, see Code editor's note to §2.9

**303.17 Terrace Hill commission.** Repealed by 93 Acts, ch 48, § 55. See § 8A.326.

Repeal entry revised

## CHAPTER 303A

### IOWA CULTURAL TRUST

#### **303A.6 Board of trustees — powers and duties.**

The board shall do any or all of the following:

1. Enter into agreements with any qualified organization, the state, or any federal or other state agency, or other entity as required to administer this chapter.

2. Approve or disapprove the grants recommended for approval by the director, in consultation with the Iowa arts council and the state historical society of Iowa, in accordance with section 303.1A, subsection 6, paragraph "c". The board may delete any recommendation, but shall not add to or otherwise amend the list of recommended grants.

3. Upon approving a grant, the board shall cer-

tify to the treasurer of state the amount of financial assistance payable from the grant account to the qualified organization whose grant application is approved.

4. Determine, in consultation with the treasurer of state, the amount of investment income attributable to the trust fund that will be available for distribution as grants to qualified organizations.

5. Accept any devise, gift, bequest, donation, or federal or other grant from any person, firm, partnership, or corporation, which the treasurer of state shall deposit into the trust fund.

2003 Acts, ch 108, §51  
Subsection 3 amended

## CHAPTER 304

### STATE FORMS AND RECORDS

Repealed by 2003 Acts, ch 92, §20; see chapter 305  
With respect to proposed amendments to former §304.3 by 2003 Acts, ch 145, §238, see Code editor's note to §2.9

## CHAPTER 304A

### FINE ARTS PROJECTS AND INDEMNIFICATION FOR SPECIAL EXHIBITS

#### 304A.21 Definitions.

When used in this division, unless the context otherwise requires:

1. “*Administrator*” means the administrator of the arts division of the department of cultural affairs.
2. “*Council*” means the Iowa state arts council.
3. “*Department*” means the department of administrative services.
4. “*Indemnity agreement*” means an agreement authorized by section 304A.22.
5. “*Nonprofit organization*” means a corporation organized under chapter 504, Code 1989, or chapter 504A or which holds a permit or certificate under chapter 504, Code 1989, or chapter 504A to do business or conduct affairs in this state.

2003 Acts, ch 108, §52; 2003 Acts, ch 145, §286  
Terminology change applied  
Subsection 5 amended

#### 304A.25 Review and determination as to qualification for indemnity coverage.

1. Every application received by the administrator shall be submitted to the department of administrative services which shall review the application and determine whether the applicant qualifies for indemnity coverage under this division. The criteria for qualification shall be prescribed by rule of the department of administrative services and shall include but are not limited to:

- a. Physical security of the applicant’s exhibition facilities and of the means of transportation of the items.
- b. Experience and qualifications of the applicant’s director, curator, registrar, or other staff.
- c. Eligibility of the applicant’s exhibition facilities for commercial insurance coverage of art objects and artifacts exhibited there.
- d. Availability of proper equipment to protect art objects and artifacts from damage from extremes of temperature or humidity or exposure to glare, dust, or corrosion.

2. The department may consult with experts as necessary to carry out its duties under this section.

3. If the department of administrative services is not staffed for risk management, the de-

partment shall utilize the services of a consultant in carrying out the department’s duties under this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

#### 304A.26 Review and determination as to eligibility and estimated value of items.

1. If the department of administrative services determines that the applicant qualifies for indemnity coverage, the administrator shall review and determine the validity of other portions of the application, including the eligibility of items for which coverage by an indemnity agreement is sought and the estimated value of those items.

2. The administrator may order an appraisal of the items by an independent appraiser at the expense of the applicant.

3. The council shall designate a committee of experts to advise the administrator in determining the eligibility and estimated value of the items. The administrator shall not approve an estimated value without the approval of the committee.

2003 Acts, ch 145, §286  
Terminology change applied

#### 304A.29 Claims.

1. Claims for losses covered by indemnity agreements under this division shall be submitted to the department of administrative services which shall review the claims. If the department determines that the loss is covered by the agreement, the department shall certify the validity of the claim and authorize payment of the amount of loss, less any deductible portion, to the lender.

2. The department shall prescribe rules providing for prompt adjustment of valid claims. The rules shall include provisions for the employment of consultants and for the arbitration of issues relating to the dollar value of damages involving less than total loss or destruction of covered items.

3. The authorization for payment shall be forwarded to the director of the department of administrative services, who shall issue a warrant for payment of the claim from the state general fund out of any funds not otherwise appropriated.

2003 Acts, ch 145, §286  
Terminology changes applied

## CHAPTER 305

## STATE RECORDS AND ARCHIVES

**305.1 Citation.**

This chapter shall be known and may be cited as the “*State Archives and Records Act*”.

2003 Acts, ch 92, §4  
NEW section

**305.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “*Agency*” means any department, office, commission, board, or other unit of state government except as otherwise provided by law.

2. “*Archives*” means records that have been appraised by the state records commission as having sufficient historical, research, evidential, or informational value to warrant permanent preservation and that have been transferred to the custody of the state archives.

3. “*Commission*” means the state records commission created in section 305.3.

4. “*Custody*” means guardianship or control of records, including both physical possession, referred to as physical custody, and legal responsibility, referred to as legal custody, unless one or the other is specified.

5. “*Designee*” means an appointee of a commission member listed in section 305.3, who is a year-round, full-time state employee, appointed to regularly represent the commission member in the activities of the commission for a period of at least two years.

6. “*Government records program*” means a systematic state government program for the creation, organization, administrative use, maintenance, security, public availability, and final disposition of records.

7. “*Guideline*” means a suggested method of operation for specific activities.

8. “*Policy*” means a basic statement describing the boundaries within which activities are to take place.

9. “*Record*” means a document, book, paper, electronic record, photograph, sound recording, or other material, regardless of physical form or characteristics, made, produced, executed, or received pursuant to law in connection with the transaction of official business of state government. “*Record*” does not include library and museum material made or acquired and preserved solely for reference or exhibition purposes or stocks of publications and unprocessed forms.

10. “*Records series retention and disposition schedule*” means a timetable established by the state records commission that describes the length of time a records series of an agency or multiple agencies must be retained in active and inactive status and provides authorization for a final

disposition of the records series by destruction or permanent retention.

11. “*Records inventory*” means a detailed listing of the volume, scope, and complexity of an agency’s records that is compiled for the purpose of creating records series retention and disposition schedules.

12. “*Records officer*” means a year-round, full-time agency official who possesses a broad understanding of programs and records of an agency and who is designated by the agency head to coordinate the records program or programs within the agency.

13. “*Standard*” means a specific rule or principle established to measure quality or value.

14. “*Vital operating record*” means a record containing information essential to continue or to reestablish an agency in the event of a natural or other disaster, allowing the re-creation of the state’s legal and financial status, and the determination of the rights and obligations of the state and its citizens.

2003 Acts, ch 92, §5  
NEW section

**305.3 Commission created — duties.**

A state records commission is created. The commission shall consist of the following officials or their designees:

1. The secretary of state.
2. The director of the department of cultural affairs.
3. The treasurer of state.
4. The director of revenue.
5. The director of the department of management.
6. The state librarian.
7. The auditor of state.
8. The director of the department of administrative services.

2003 Acts, ch 92, §6; 2003 Acts, ch 179, §70, 84  
NEW section

**305.4 Commission purpose.**

The commission shall adopt government information policies, standards, and guidelines to do all of the following:

1. Provide for economy and efficiency in the creation, organization, maintenance, administrative use, security, public availability, and final disposition of government records.
2. Ensure creation of proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of state government agencies to protect the legal and financial rights of the state and of persons directly affected by the government’s activities.
3. Identify and preserve state government rec-

ords that document the history and development of the state.

2003 Acts, ch 92, §7  
NEW section

### 305.5 Expenses.

Members of the commission shall serve without compensation but may receive their actual expenses incurred in the performance of their duties.

2003 Acts, ch 92, §8  
NEW section

### 305.6 Meetings.

The commission shall have its offices at the seat of government but may hold meetings in other locations. The commission shall meet quarterly and at the call of the chairperson.

2003 Acts, ch 92, §9  
NEW section

### 305.7 Administration.

The department of cultural affairs, through the state archives and records program, is the primary agency responsible for providing administrative personnel and services for the commission.

2003 Acts, ch 92, §10  
NEW section

### 305.8 Commission responsibilities.

1. The commission shall do all of the following:
  - a. Develop and adopt government information policies, standards, and guidelines for the creation, storage, retention, and disposition of records.
  - b. In consultation with the homeland security and emergency management division of the department of public safety, establish policies, standards, and guidelines for the identification, protection, and preservation of records essential for the continuity or reestablishment of governmental functions in the event of an emergency arising from a natural or other disaster.
  - c. Provide planning, policy development, and review for the government records program.
  - d. Adopt rules pursuant to chapter 17A that provide government information policies and standards.
  - e. Adopt and maintain an interagency records manual containing the rules governing records management, as well as records series retention and disposition schedules, guidelines, and other information relating to implementation of this chapter.
  - f. Make recommendations, in consultation with the department of administrative services, to the governor and the general assembly for the continued reduction of printed reports throughout state government in a manner that protects the public's right to access such reports.
  - g. Provide advice, counsel, and services to the legislative, judicial, and executive branch agencies subject to this chapter on the care and management of state government records.

h. Report to the governor and the general assembly on the status of the government records program.

- i. Perform any act necessary and proper to carry out its duties.
  2. The commission may do all of the following:
    - a. Examine records in the possession, constructive possession, or control of state agencies to carry out the purposes of this chapter.
    - b. Enter into agreements and contracts.
    - c. Secure appropriations, grants, or other outside funding.
    - d. Appoint advisory committees of citizens, public officials, or professional consultants to secure advice on records issues.
    - e. Make, or cause to be made, preservation duplicates of records, which may include existing copies of original state records. Any preservation duplicate record shall be durable, accurate, complete, and clear, and shall be made by means designated by the commission.
    - f. Develop appropriate charges for services provided for the convenience of state agencies, the judicial and legislative branches, political subdivisions, or the public.
    - g. Provide advice and counsel to political subdivisions on the care and management of local government records.
    - h. Establish a centralized records storage facility.

2003 Acts, ch 92, §11; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §157  
NEW section  
Terminology changes applied

### 305.9 Department of cultural affairs responsibilities.

1. The department of cultural affairs shall do all of the following:
  - a. Provide administrative support to the state records commission through the state archives and records program.
  - b. Appoint a state archivist to head the state archives and records program.
  - c. Maintain all official records of the state records commission.
  - d. Provide training, advice, and counsel to agencies on government information policies, standards, and guidelines.
  - e. Recommend records series retention and disposition schedules to the commission for consideration.
  - f. Recommend plans, policies, standards, and guidelines on records issues to the commission for consideration.
  - g. Compile, update, and distribute the state records manual as adopted by the commission.
  - h. Manage any centralized records storage facility established by the commission for the temporary storage of agency records prior to their final disposition by destruction or permanent preservation in accordance with the records series retention and disposition schedules.

*i.* Develop and distribute operating procedures for agencies to use to implement the plans, policies, standards, and guidelines adopted by the commission.

*j.* Provide advice, counsel, and services to the legislative, judicial, and executive branch agencies subject to this chapter on the care and management of state government records.

*k.* Manage the state archives and develop operating procedures for the transfer, accessioning, arrangement, description, preservation, protection, and public access of those records the commission identifies as having permanent value.

*l.* Maintain physical custody and legal custody of archives that have been transferred and delivered to the state archives.

(1) Upon receipt by the state archivist, the archives shall not be removed without the state archivist's consent except in response to a subpoena of a court of record or in accordance with approved records series retention and disposition schedules or after review and approval of the commission.

(2) Upon request, the state archivist shall make a certified copy of any record in the legal custody or in the physical custody of the state archivist, or a certified transcript of any record if reproduction is inappropriate because of legal or physical considerations. If a copy or transcript is properly authenticated, it has the same legal effect as though certified by the officer from whose office it was transferred or by the secretary of state. The department of cultural affairs shall establish reasonable fees for certified copies or certified transcripts of records in the legal custody or physical custody of the state archivist.

2. The department of cultural affairs may:

*a.* Upon written consent of the state archivist, accept records of political subdivisions that are voluntarily transferred to the state archives.

*b.* Provide advice and counsel to political subdivisions on the care and management of local government records.

2003 Acts, ch 92, §12  
NEW section

### 305.10 Agency head responsibilities.

1. Each agency head shall do all of the following:

*a.* Make and maintain records containing adequate and proper documentation of the agency organization, functions, policies, decisions, procedures, and essential transactions designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities.

*b.* Designate one or more agency officials with broad understanding of agency programs and records to be an agency records officer to coordinate records programs within the agency and to be the point of contact with the state archives and records program.

*c.* Cooperate with the state records commis-

sion and the state archives and records program in the development and implementation of government information policies, standards, and guidelines, and in the development and implementation of records series retention and disposition schedules.

*d.* Comply with requests from the state records commission or the state archives and records program to examine records in the possession, constructive possession, or control of the agency in order to carry out the purposes of this chapter.

*e.* Inventory agency records in accordance with state records commission policies to draft records series retention and disposition schedules.

*f.* Identify vital operating records in accordance with the policies, standards, and guidelines of the state records commission.

*g.* Provide for the identification, protection, and preservation of vital operating records in the custody of the agency.

*h.* Prepare all mandated reports, newsletters, and publications for electronic distribution in accordance with government information policies, standards, and guidelines. A reference copy of all mandated reports, newsletters, and publications shall be located at an electronic repository for public access to be developed and maintained by the department of administrative services in consultation with the state librarian and the state archivist.

*i.* Provide for maximum economy and efficiency in the day-to-day recordkeeping activities of the agency.

*j.* Provide for compliance with this chapter and the rules adopted by the state records commission.

2. Agency heads may petition the state records commission to create or modify government information policies, standards, and guidelines, and to create or modify records series retention and disposition schedules.

2003 Acts, ch 92, §13; 2003 Acts, ch 145, §286  
NEW section  
Terminology change applied

### 305.11 Termination of state agency — records transfer.

Upon the termination of a state agency whose functions have not been transferred to another agency, custody of the records of the agency shall transfer to the commission.

2003 Acts, ch 92, §14  
NEW section

### 305.12 Duplicates.

A preservation duplicate record shall have the same force and effect for all purposes as the original record whether or not the original record is in existence. A certified transcript, exemplification, or copy of a preservation duplicate record shall be deemed for all purposes to be a certified transcript, exemplification, or copy of the original record.

2003 Acts, ch 92, §15  
NEW section

**305.13 Records state property.**

All records made or received by or under the authority of or coming into the custody, control, or possession of public officials of this state in the course of their public duties are the property of the state and shall not be mutilated, destroyed, transferred, removed, or otherwise damaged or disposed of, in whole or in part, except as provided by law or by rule.

2003 Acts, ch 92, §16  
NEW section

**305.14 Liability precluded.**

No member of the commission or head of an agency shall be held liable for damages or loss, or civil or criminal liability, because of the destruction of public records pursuant to the provisions of this chapter or any other law authorizing their destruction.

2003 Acts, ch 92, §17  
NEW section

**305.15 Exemptions — duties of state department of transportation and state board of regents.**

The state department of transportation and the agencies and institutions under the control of the state board of regents are exempt from the state records manual and the provisions of this chapter. However, the state department of transportation and the state board of regents shall adopt rules pursuant to chapter 17A for their employees, agencies, and institutions that are consistent with the objectives of this chapter. The rules shall be approved by the state records commission.

2003 Acts, ch 92, §18  
NEW section

**305.16 Iowa historical records advisory board established.**

An Iowa historical records advisory board is established in accordance with 36 C.F.R. § 1206.36–38.

1. *Membership.* The board shall consist of nine members appointed by the governor for three-year staggered terms. Members shall be eligible for reappointment. The members shall have experience in a field of research or an activity that administers or makes extensive use of historical records. The majority of the members shall have professional qualifications and experience in the administration of government records, historical

records, or archives. The administrator of the historical division of the department of cultural affairs shall serve as an ex officio member of the board.

2. *Coordinator.* The state archivist shall serve as chair of the board and as state historical records coordinator.

3. *Administration.* The department of cultural affairs, through the state archives and records program, is the primary agency responsible for providing administrative personnel and services for the board.

4. *Meetings.* The board shall meet at least three times annually and at the call of the chair. At least one meeting annually shall be held outside the state capital or in conjunction with a meeting of a relevant statewide professional organization.

5. *Expenses.* Members of the board shall serve without compensation but may receive their actual expenses incurred in the performance of their duties.

6. *Responsibilities.*

a. The board shall do all of the following:

(1) Serve as the central advisory body for historical records planning in the state and as a coordinating body to facilitate cooperation among historical records repositories and other information agencies within the state.

(2) Serve as a state level review body for grant proposals submitted to the national historical publications and records commission.

b. The board may do all of the following:

(1) Serve in an advisory capacity to the state records commission, the state archives and records program, and other statewide archival or records agencies.

(2) Seek funds from the national historical publications and records commission or other grant-funding bodies for sponsoring and publishing surveys of the conditions and needs of historical records in the state; for developing, revising, and distributing funding priorities for historical records projects in Iowa; for implementing projects to be carried out in the state for the preservation of historical records and publications; or for reviewing through reports and otherwise, the operation and progress of records projects in the state.

2003 Acts, ch 92, §19  
NEW section

**CHAPTER 306****ESTABLISHMENT, ALTERATION, AND VACATION OF HIGHWAYS****306.3 Definition throughout Code.**

As used in this chapter or in any chapter of the Code relating to highways:

1. *“Area service”* or *“area service system”* means those secondary roads that are not part of

the farm-to-market road system.

2. *“County conservation parkways”* or *“county conservation parkway system”* means those parkways located wholly within the boundaries of county lands operated as parks, forests, or public

access areas.

3. “*Farm-to-market roads*” or “*farm-to-market road system*” means those county jurisdiction intracounty and intercounty roads which serve principal traffic generating areas and connect such areas to other farm-to-market roads and primary roads. The farm-to-market road system includes those county jurisdiction roads providing service for short-distance intracounty and intercounty traffic or providing connections between farm-to-market roads and area service roads, and includes those secondary roads which are federal aid eligible. The farm-to-market road system shall not exceed thirty-five thousand miles.

4. “*Interstate roads*” or “*interstate road system*” means those roads and streets of the primary road system that are designated by the secretary of the United States department of transportation as the national system of interstate and defense highways in Iowa.

5. “*Municipal street system*” means those streets within municipalities that are not primary roads or secondary roads.

6. “*Primary roads*” or “*primary road system*” means those roads and streets both inside and outside the boundaries of municipalities which are under department jurisdiction.

7. “*Public road right-of-way*” means an area of land, the right to possession of which is secured or reserved by the state or a governmental subdivision for roadway purposes. The right-of-way for all secondary roads is sixty-six feet in width, unless otherwise specified by the county board of supervisors of the respective counties.

8. “*Road*” or “*street*” means the entire width between property lines through private property or the designated width through public property of every way or place of whatever nature if any part of such way or place is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

9. “*Secondary roads*” or “*secondary road system*” means those roads under county jurisdiction.

10. “*State park, state institution, and other state land road system*” consists of those roads and streets wholly within the boundaries of state lands operated as parks, or on which institutions or other state governmental agencies are located.

2003 Acts, ch 144, §1  
Subsection 5 amended

### 306.4 Jurisdiction of systems.

The jurisdiction and control over the roads and streets of the state are vested as follows:

1. Jurisdiction and control over the primary roads shall be vested in the department.

2. Jurisdiction and control over the secondary roads shall be vested in the county board of supervisors of the respective counties.

3. *a.* Effective July 1, 2004, jurisdiction and control over a farm-to-market extension or road transferred pursuant to section 306.8A within a

city with a population of less than five hundred shall be vested in the county board of supervisors of the respective county.

*b.* If the population of a city drops below five hundred after July 1, 2004, as determined by the latest available federal census or special census, jurisdiction and control over a farm-to-market extension located within the city shall be vested in the county board of supervisors of the respective county effective July 1 following census certification by the secretary of state.

*c.* If the population of a city from which jurisdiction and control over a road has been transferred pursuant to paragraph “*a*” or “*b*” exceeds seven hundred fifty, as determined by the latest available federal census or special census, such jurisdiction and control shall be transferred back to the city effective July 1 following census certification by the secretary of state.

4. Jurisdiction and control over the municipal street system shall be vested in the governing bodies of each municipality; except that the department and the municipal governing body shall exercise concurrent jurisdiction over the municipal extensions of primary roads in all municipalities. When concurrent jurisdiction is exercised, the department shall consult with the municipal governing body as to the kind and type of construction, reconstruction, repair, and maintenance and the two parties shall enter into agreements with each other as to the division of costs thereof.

When the two parties cannot initially come to agreement as to the division of costs under this subsection, they shall contract with an organization in this state to provide mediation services. The costs of the mediation services shall be equally allocated between the two parties. If after submitting to mediation the parties still cannot come to agreement as to the division of costs, the mediator shall sign a statement that the parties did not reach an agreement, and the parties shall then submit the matter for binding arbitration to a mutually agreed-upon third party. If the parties cannot agree upon a third-party arbitrator, they shall submit the matter to an arbitrator selected under the rules of the American arbitration association.

5. Jurisdiction and control over the roads and streets in any state park, state institution or other state land shall be vested in the board, commission, or agency in control of such park, institution, or other state land; except that:

*a.* The department and the controlling agency shall have concurrent jurisdiction over any road which is an extension of a primary road and which both enters and exits from the state land at separate points. The department may expend the moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each

other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement the jurisdiction and control of such road shall remain in the department.

b. The board of supervisors of any county and the controlling state agency shall have concurrent jurisdiction over any road which is an extension of a secondary road and which both enters and exits from the state land at separate points. The board of supervisors of any county may expend the moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such road shall remain in the board of supervisors of the county.

6. Jurisdiction and control over parkways within county parks and conservation areas shall be vested in the county conservation boards within their respective counties; except that:

a. The department and the county conservation board shall have concurrent jurisdiction over an extension of a primary road which both enters and exits from a county park or other county conservation area at separate points. The department may expend moneys available for such roads in the same manner as the department expends such funds on other roads over which the department exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction

and control of such roads shall remain in the department.

b. The board of supervisors of any county and the county conservation board shall have concurrent jurisdiction over an extension of a secondary road which both enters and exits from a county park or other county conservation area at separate points. The board of supervisors of any county may expend moneys available for such roads in the same manner as the board expends such funds on other roads over which the board exercises jurisdiction and control. The parties exercising concurrent jurisdiction may enter into agreements with each other as to the kind and type of construction, reconstruction, repair and maintenance and the division of costs thereof. In the absence of such agreement, the jurisdiction and control of such roads shall remain in the board of supervisors of the county.

2003 Acts, ch 144, §2

NEW subsection 3 and former subsections 3 – 5 renumbered as 4 – 6

#### **306.8A Transfer of roads identified in report.**

1. The department shall maintain on file the transfer of jurisdiction report compiled by the ad hoc road use tax fund committee. Such report identifies primary roads for transfer to local jurisdictions.

2. The jurisdiction and control of only those primary roads identified in the transfer of jurisdiction report that are also classified by the department as local service roads shall be transferred from the state to the appropriate county or city effective July 1, 2003. Such transfers are not subject to the terms and conditions provided in section 306.8.

2003 Acts, ch 144, §3

NEW section

## CHAPTER 306C

### JUNKYARD BEAUTIFICATION AND BILLBOARD CONTROL

#### **306C.1 Definitions.**

For the purposes of this division unless the context otherwise requires:

1. “*Department*” means the state department of transportation.

2. “*Interstate highway*” includes “*interstate road*” and “*interstate system*” and means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.

3. “*Junk*” means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts of automobiles, or iron, steel, or oth-

er old or scrap ferrous or nonferrous material.

4. “*Junkyard*” means an establishment or place of business which is maintained, operated, or used primarily for storing, keeping, buying, or selling junk; and the term includes garbage dumps, sanitary fills, and automobile graveyards.

2003 Acts, ch 8, §1

Subsection 5 stricken

#### **306C.2 Junkyards prohibited — exceptions.**

A person shall not establish, operate, or maintain a junkyard, any portion of which is within one thousand feet of the nearest edge of the right-of-way of any interstate highway, except:

1. Those which are screened by natural ob-

jects, plantings, fences, or other appropriate means obscuring them from view from the main-traveled portion of the highway.

2. Those located within areas which are zoned for industrial use under authority of law.

3. Those located within unzoned industrial areas which areas shall be determined from actual land uses and defined by regulations to be promulgated by the department under the provisions of chapter 17A in accordance with the standards, criteria, and rules and regulations promulgated under authority of Title 23, United States Code.

4. Those which are not visible from the main-traveled portion of the highway.

2003 Acts, ch 8, §2  
Unnumbered paragraph 1 amended

### 306C.3 Junkyards lawfully in existence.

Any junkyard located outside a zoned or unzoned industrial area lawfully in existence on July 1, 1972, which is within one thousand feet of the nearest edge of the right-of-way and visible from the main-traveled portion of any highway on the interstate system shall be screened, if feasible, by the department, or by the owner under rules and direction of the department, at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way in order to obscure the junkyard from the main-traveled way of such highways.

2003 Acts, ch 8, §3  
Section amended

### 306C.8 Agreements with the United States authorized.

The department may enter into agreements with the United States secretary of transportation as provided by Title 23, United States Code, relating to control of junkyards in areas adjacent to the interstate system, and take action in the name of the state to comply with the terms of such agreements.

2003 Acts, ch 8, §4  
Section amended

### 306C.10 Definitions.

For the purposes of this division, unless the context otherwise requires:

1. “*Adjacent area*” means an area which is contiguous to and within six hundred sixty feet of the nearest edge of the right-of-way of any interstate, freeway primary, or primary highway.

2. “*Advertising device*” includes any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other device designed, intended, or used to advertise or give information in the nature of advertising, and having the capacity of being visible from the traveled portion of any interstate or primary highway.

3. “*Bonus interstate highways*” includes all interstate highways except those interstate highways adjacent to areas excepted from control under chapter 306B by authority of section 306B.2, subsection 4.

4. “*Commercial or industrial activities*” means those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

a. Outdoor advertising structures.

b. Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce.

c. Activities in operation less than three months per year.

d. Activities conducted in a building principally used as a residence.

e. Railroad tracks and minor spurs.

f. Activities outside of adjacent areas, as defined by this division and section 306B.5.

g. Activities which have been used in defining and delineating an unzoned area but which have since been discontinued or abandoned.

h. Residential housing developments.

i. Manufactured home communities or mobile home parks.

j. Institutions of learning.

k. State, county and charitable institutions.

l. State and county conservation and recreation areas, public parks, forests, playgrounds, or other areas of historic interest or areas designated as scenic beautification areas under section 313.67.

5. “*Commercial or industrial zone*” means those areas zoned commercial or industrial under authority of a law, regulation, or ordinance of this state, its subdivisions, or a municipality.

6. “*Department*” means the state department of transportation.

7. “*Erect*” means to construct, reconstruct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish; however, it shall not include any of the foregoing activities when performed incidental to the customary maintenance of an advertising device.

8. “*Freeway primary highway*” means those primary highways which have been constructed as a fully controlled access facility with no access to the facility except at established interchanges.

9. “*Information center*” means a site, either with or without structures or buildings, established and maintained at a rest area for the purpose of providing “information of specific interest to the traveling public”, as that phrase is defined in section 306C.11, subsection 5.

10. “*Interstate highway*” includes “*interstate road*” and “*interstate system*” and means any highway of the primary system at any time officially designated as a part of the national system of interstate and defense highways by the department and approved by the appropriate authority of the federal government.

11. “*Maintain*” means to cause to remain in a state of good repair but does not include reconstruction.

12. “*Main-traveled way*” means the portion of the roadway for movement of vehicles on which through traffic is carried exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main-traveled way includes each of the separated roadways for traffic in opposite directions, exclusive of frontage roads, turning roadways, or parking areas.

13. “*Primary highways*” includes the entire primary system as officially designated, or as may hereafter be so designated, by the department.

14. “*Reconstruction*” means any repair to the extent of sixty percent or more of the replacement cost of the structure, excluding buildings.

15. “*Rest area*” means an area or site established and maintained under authority of section 313.67 within the right-of-way of an interstate, freeway primary, or primary highway under supervision and control of the department for the safety, recreation, and convenience of the traveling public.

16. “*Right-of-way*” means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.

17. “*Special event sign*” means a temporary advertising device, not larger than thirty-two square feet in area, erected for the purpose of notifying the public of noncommercial community events in-

cluding but not limited to fairs, centennials, festivals, and celebrations open to the general public and sponsored or approved by a city, county, or school district.

18. “*Structure*” means any sign supporting device including but not limited to buildings.

19. “*Unzoned commercial or industrial area*” means those areas not zoned by state or local law, regulation, or ordinance, which are occupied by one or more commercial or industrial activities, and the land along the interstate highways and primary highways for a distance of seven hundred fifty feet immediately adjacent to the activities. All measurements shall be from the outer edge of the regularly used buildings, parking lots, storage, or processing areas of the activities and shall be parallel to the edge of pavement of the highway. Measurements shall not be from the property line of the activities unless that property line coincides with the limits of the activities. Unzoned commercial or industrial areas shall not include land on the opposite side of the highway from the commercial or industrial activities.

20. “*Visible*” means capable of being read or comprehended without visual aid by a person of normal visual acuity.

2003 Acts, ch 8, §5  
Subsection 13 stricken and former subsections 14 – 21 renumbered as 13 – 20

**306C.22 Political signs.** Repealed by 2003 Acts, ch 8, § 6.

## CHAPTER 307

### DEPARTMENT OF TRANSPORTATION (DOT)

Study to be conducted by September 1, 2004, and report issued by November 1, 2004, on the impact of transferring all state agency information technology employees to the department of administrative services and the impact of merging the data centers of the department of administrative services, the state department of transportation, and the department of workforce development into one data center; 2003 Acts, ch 145, §290

#### **307.12 Duties of the director.**

The director shall:

1. Manage the internal operations of the department and establish guidelines and procedures to promote the orderly and efficient administration of the department.

2. Employ personnel as necessary to carry out the duties and responsibilities of the department, consistent with chapter 8A, subchapter IV.

3. Assist the commission in developing state transportation policy and a state transportation plan.

4. Establish temporary advisory boards of a size the director deems appropriate to advise the department.

5. Prepare a budget for the department, subject to the approval of the commission, and prepare reports required by law.

6. Appoint the deputy director of transporta-

tion and the administrators of the department.

7. Review and submit legislative proposals necessary to maintain current state transportation laws.

8. Enter into reciprocal agreements relating to motor vehicle inspections with authorized officials of any other state, subject to approval by the commission. The director may exempt or impose requirements upon nonresident motor vehicles consistent with those imposed upon vehicles of Iowa residents operated in other states.

9. Adopt rules in accordance with chapter 17A as the director deems necessary for the administration of the department and the exercise of the director’s and department’s powers and duties.

10. Reorganize the administration of the department as needed to increase administrative efficiency.

11. Provide for the receipt or disbursement of

federal funds allocated to the state and its political subdivisions for transportation purposes.

12. Include in the department's annual budget all estimated federal funds to be received or allocated to the department.

13. Adopt, after consultation with the department of natural resources and the department of public safety, rules relating to enforcement of the rules regarding transportation of hazardous wastes adopted by the department of natural resources. The department and the division of the Iowa state patrol of the department of public safety shall carry out the enforcement of the rules.

14. Prepare and submit a report to the general assembly on or before January 15 of each fiscal year describing the prior fiscal year's highway construction program, actual expenditures of the program, and contractual obligations of the program.

15. Administer chapter 327J.

If in the interest of the state, the director may allow a subsistence expense to an employee under the supervision of the department's administrator for highways for continuous stay in one location while on duty away from established headquarters and place of domicile for a period not to exceed forty-five days; and allow automobile expenses in accordance with section 8A.363, for moving an employee and the employee's family from place of present domicile to new domicile, and actual transportation expense for moving of household goods. The household goods for which transportation expense is allowed shall not include pets or animals.

2003 Acts, ch 145, §239, 240  
Subsection 2 amended  
Unnumbered paragraph 2 amended

### 307.20 Biodiesel fuel revolving fund.

1. A biodiesel fuel revolving fund is created in the state treasury. The biodiesel fuel revolving fund shall be administered by the department and shall consist of moneys received from the sale of EPA credits banked by the department on April 19, 2001, moneys appropriated by the general assembly, and any other moneys obtained or accepted by the department for deposit in the fund. Moneys in the fund are appropriated to and shall be used by the department for the purchase of biodiesel fuel for use in department vehicles. The department shall submit an annual report not later than January 31 to the members of the general assembly and the legislative services agency, of the expenditures made from the fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the fund shall be credited to the fund.

2. A department motor vehicle operating on biodiesel fuel shall be affixed with a brightly visible sticker that notifies the traveling public that

the motor vehicle uses biodiesel fuel.

3. For purposes of this section the following definitions apply:

a. "Biodiesel fuel" means soydiesel fuel as defined in section 159A.2.

b. "EPA credit" means a credit issued pursuant to the federal Energy Policy Act (EPA), 42 U.S.C. § 13201 et seq.

2003 Acts, ch 35, §45, 49  
Terminology change applied

### 307.21 Administrative services.

The department's administrator of administrative services shall:

1. Provide for the proper maintenance and protection of the grounds, buildings, and equipment of the department, in cooperation with the department of administrative services.

2. Establish, supervise, and maintain a system of centralized electronic data processing for the department, in cooperation with the department of administrative services.

3. Assist the director in preparing the departmental budget.

4. a. Provide centralized purchasing services for the department, in cooperation with the department of administrative services. The administrator shall, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and plastic products with recycled content, including but not limited to plastic garbage can liners, and shall purchase these items in accordance with the schedule established in section 8A.315. However, the administrator need not purchase garbage can liners in accordance with the schedule if the liners are utilized by a facility approved by the environmental protection commission created under section 455A.6, for purposes of recycling. For purposes of this subsection, "recycled content" means that the content of the product contains a minimum of thirty percent postconsumer material.

b. The administrator shall do all of the following:

(1) Purchase and use recycled printing and writing paper in accordance with the schedule established in section 8A.315.

(2) Establish a wastepaper recycling program in accordance with recommendations made by the department of natural resources and the requirements of section 8A.329.

(3) Require in accordance with section 8A.311 product content statements and compliance with requirements regarding procurement specifications.

(4) Comply with the requirements for the purchase of lubricating oils, industrial oils, greases, and hydraulic fluids as established pursuant to section 8A.316.

c. The department shall report to the general assembly by February 1 of each year, the following:

(1) A listing of plastic products which are regularly purchased by the board for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the department, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

*d.* A motor vehicle purchased by the administrator shall not operate on gasoline other than gasoline blended with at least ten percent ethanol. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than gasoline blended with at least ten percent ethanol. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on gasoline blended with ethanol. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

5. Of all new passenger vehicles and light pickup trucks purchased by the administrator, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

*a.* A flexible fuel which is either of the following:

(1) A fuel blended with not more than fifteen percent gasoline and at least eighty-five percent ethanol.

(2) A fuel which is a mixture of processed soybean oil and diesel fuel. At least twenty percent of the fuel by volume must be processed soybean oil.

(3) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

*b.* Compressed or liquefied natural gas.

*c.* Propane gas.

*d.* Solar energy.

*e.* Electricity.

The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

6. The administrator shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, "*packing material*" means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace

the contents of a package.

7. Assist the director in employing the professional, technical, clerical and secretarial staff for the department and maintain employee records, in cooperation with the department of administrative services and provide personnel services, including but not limited to training, safety education and employee counseling.

8. Assist the director in coordinating the responsibilities and duties of the various divisions within the department.

9. Carry out all other general administrative duties for the department.

10. Perform such other duties and responsibilities as may be assigned by the director.

The administrator of administrative services may purchase items from the department of administrative services and may cooperate with the director of the department of administrative services by providing purchasing services for the department of administrative services.

2003 Acts, ch 145, §241, 242, 286

Terminology change applied

Subsection 4, paragraphs a and b amended

Unnumbered paragraph 2 amended

### 307.22 Planning and research.

The department's administrator of planning and research shall:

1. Assist the director in planning all modes of transportation in order to develop an integrated transportation system providing adequate transportation services for all citizens of the state.

2. Develop and maintain transportation statistical data for the department.

3. Assist the director in establishing, analyzing and evaluating alternative transportation policies for the state.

4. Coordinate planning and research duties and responsibilities with the planning functions carried on by other administrators of the department.

5. Conduct a study of the road and bridge facilities in state parks, state institutions, state fairgrounds, and on community college property. The study shall evaluate the construction and maintenance needs and projected needs based upon estimated growth for each type of facility to provide a quadrennially updated standard upon which to allocate funds appropriated for the purposes of this subsection.

6. Prepare, adopt, and cause to be published the results of a study of secondary roads in the state. The study shall be designed to investigate present deficiencies and future twenty-year maintenance and construction needs of the roads. The study shall be referred to as the "*quadrennial need study*" for the purposes of this chapter, chapter 307A, and chapter 312. The department shall report the results of the study to the general assembly by July 1, 2002, and the study results shall take effect July 1, 2003.

7. Annually recalculate the construction and

maintenance needs of roads under the jurisdiction of each county to take into account the needs of a road whose jurisdiction has been transferred from the department to a county or from a county to the department during the previous year. Prior to the fiscal year beginning July 1, 2013, the annual recalculation shall not include those roads transferred to a county pursuant to section 306.8A. The recalculation shall be reported by January 1 of the year following the transfer and shall take effect the following July 1 for the purposes of allocating moneys under sections 312.3 and 312.5.

8. Perform such other planning functions as may be assigned by the director.

The functions of planning and research do not include the detailed design of highways or other modal transportation facilities, but are restricted to the needs of this state for multimodal transportation systems.

2003 Acts, ch 144, §4  
Subsection 7 amended

### **307.27 Motor vehicles.**

The department's administrator of motor vehicles shall:

1. Administer and supervise the registration of motor vehicles pursuant to chapter 321.

2. Administer and supervise the licensing of motor vehicle manufacturers, distributors and dealers pursuant to chapter 322.

3. Administer the inspection of motor vehicles pursuant to chapter 321.

4. Administer motor vehicle registration reciprocity pursuant to chapter 326.

5. Administer the provisions of chapters 321A, 321E, 321F, and 321J relating to motor vehicle financial responsibility, the implied consent law, the movement of vehicles of excessive size and weight and the leasing and renting of vehicles.

6. Administer the regulation of motor vehicle franchisers pursuant to chapter 322A.

7. Administer the regulation of motor carriers pursuant to chapter 325A.

8. Administer the registration of interstate authority of motor carriers pursuant to chapter 327B as provided in 49 U.S.C. § 14504 and United States department of transportation regulations.

2003 Acts, ch 108, §53  
Subsection 8 amended

### **307.40 Copies of contracts to legislative services agency.**

The department shall give a copy of each contract for construction or reconstruction of roads, streets, or bridges entered into by the department in which the contract price is for five million dollars or more to the legislative services agency.

2003 Acts, ch 35, §45, 49  
Terminology change applied

### **307.46 Use of reversions.**

1. Notwithstanding the provisions of section 8.33 or any other provision of law to the contrary,

if on June 30 of a fiscal year a balance of an operational appropriation remains unexpended or unencumbered, not more than fifty percent of the balance may be encumbered by the department and used as provided in this section and the remaining balance shall be deposited in the fund from which the money was appropriated. The department shall not encumber an amount in excess of five hundred thousand dollars under this section in any fiscal year. Moneys encumbered under this section shall be used by the department during the succeeding fiscal year for employee training and for technology enhancement. Moneys which are encumbered under this section but not used shall revert to the fund from which the money was appropriated on June 30 of the succeeding fiscal year.

2. On or before June 30 of the fiscal year following the fiscal year in which funds were encumbered under this section, the department shall report to the joint transportation, infrastructure, and capitals appropriations subcommittee, the legislative services agency, the department of management, and the legislative fiscal and oversight committees of the legislative council detailing how the moneys were expended. Moneys shall not be encumbered under this section from an appropriation which received a transfer from another appropriation pursuant to section 8.39.

3. For purposes of this section, "*operational appropriation*" means an appropriation from the road use tax fund or primary road fund providing for salaries, support, maintenance, and miscellaneous purposes.

2003 Acts, ch 35, §45, 49  
Terminology change applied

### **307.47 Materials and equipment revolving fund — annual purchase report.**

1. The highway materials and equipment revolving fund is created from moneys appropriated out of the primary road fund. From this fund shall be paid all costs for materials and supplies, inventoried stock supplies, maintenance and operational costs of equipment, and equipment replacements incurred in the operation of centralized purchasing under the supervision of the department's administrator of highways. Direct salaries and expenses properly chargeable to direct salaries shall be paid from the fund. For each month the director shall render a statement to each unit under the supervision of the administrator of highways for the actual cost of materials and supplies, operational and maintenance costs of equipment, and equipment depreciation used. The expense shall be paid by the administrator of highways in the same manner as other interdepartmental billings are paid and when the expense is paid by the administrator of highways, the sum paid shall be credited to the highway materials and equipment revolving fund.

2. If surplus accrues to the revolving fund in excess of one hundred thousand dollars for which

there is no anticipated need or use, the governor shall order that surplus reverted to the primary road fund.

3. When the units under the supervision of the administrator of highways share equipment with other administrative units of the department, the director shall prorate the costs of the equipment among the administrative units using the equipment.

4. The department shall present a purchase report to the legislative services agency prior to the beginning of each regular annual session of the general assembly. The report shall cover all equipment and vehicle purchases through the highway materials and equipment revolving fund during the preceding fiscal year.

2003 Acts, ch 35, §45, 49  
Terminology change applied

## CHAPTER 308

### MISSISSIPPI RIVER PARKWAY

#### 308.1 Planning commission.

The Mississippi parkway planning commission shall be composed of ten members appointed by the governor, five members to be appointed for two-year terms beginning July 1, 1959, and five members to be appointed for four-year terms beginning July 1, 1959. In addition to the above members there shall be seven advisory ex officio members who shall be as follows: One member from the state transportation commission, one member from the natural resource commission, one member from the state soil conservation committee, one member from the state historical soci-

ety of Iowa, one member from the faculty of the landscape architectural division of the Iowa state university of science and technology, one member from the Iowa economic development board, and one member from the environmental protection commission. Members and ex officio members shall serve without pay, but the actual and necessary expenses of members and ex officio members may be paid if the commission so orders and if the commission has funds available for that purpose.

2003 Acts, ch 108, §54  
Section amended

## CHAPTER 309

### SECONDARY ROADS

#### 309.57 Area service classification.

1. The county board of supervisors, after consultation with the county engineer, and for purposes of specifying levels of maintenance effort and access, may classify the area service system into three classifications termed area service "A", area service "B", and area service "C". The area service "A" classification shall be maintained in conformance with applicable statutes. Area service "B" classification roads may have a lesser level of maintenance as specified by the county board of supervisors, after consultation with the county engineer. Area service "C" classification roads may have restricted access and a minimal level of maintenance as specified by the county board of supervisors after consultation with the county engineer.

2. Roads within area service "B" and "C" classifications shall have appropriate signs, conforming to the Iowa state sign manual, installed and maintained by the county at all access points to roads on this system from other public roads, to adequately warn the public they are entering a section of road which has a lesser level of maintenance effort than other public roads. In addition, area service "C" classification roads shall adequately warn the public that access is limited.

3. Roads may only be classified as area service "C" by ordinance or resolution. The ordinance or resolution shall specify the level of maintenance effort and the persons who will have access rights to the road. The county shall only allow access to the road to the owner, lessee, or person in lawful possession of any adjoining land, or the agent or employee of the owner, lessee, or person in lawful possession, or to any peace officer, magistrate, or public employee whose duty it is to supervise the use or perform maintenance of the road. Access to the road shall be restricted by means of a gate or other barrier.

4. Notwithstanding section 716.7, subsection 4, entering or remaining upon an area service "C" classification road without justification after being notified or requested to abstain from entering or to remove or vacate the road by any person lawfully allowed access shall be a trespass as defined in section 716.7.

5. A road with an area service "C" classification shall retain the classification until such time as a petition for reclassification is submitted to the board of supervisors. The petition shall be signed by one or more adjoining landowners. The board of supervisors shall approve or deny the request for reclassification within sixty days of receipt of

the petition.

6. The county and officers, agents, and employees of the county are not liable for injury to any person or for damage to any vehicle or equipment, or contents of any vehicle or equipment, which occurs proximately as a result of the maintenance of a road which is classified as area service “B” or “C”

if the road has been maintained to the level required for roads classified as area service “B” or “C”.

2003 Acts, ch 144, §5

Unnumbered paragraphs 1 – 6 editorially designated as subsections 1 – 6

Subsection 3 amended

## CHAPTER 310

### FARM-TO-MARKET ROADS

#### 310.7 Treasurer’s monthly statement.

The account of the farm-to-market road fund, kept by the director of the department of administrative services and the state treasurer, shall deal with said funds as a single fund with all credits

thereto and disbursements therefrom.

2003 Acts, ch 145, §286

See treasurer’s report to department of transportation, §312.4

Terminology change applied

## CHAPTER 312

### ROAD USE TAX FUND

#### 312.1 Fund created.

There is hereby created, in the state treasury, a road use tax fund. Said road use tax fund shall embrace and include:

1. All the net proceeds of the registration of motor vehicles under chapter 321.
2. All the net proceeds of the motor vehicle fuel tax or license fees under chapter 452A.
3. Revenue derived from the excise tax imposed upon the rental of automobiles, under chapter 422C, as provided by section 422C.5.
4. To the extent provided in section 423.24, subsection 1, paragraph “b”, from revenue derived from the use tax, under chapter 423 on motor vehicles, trailers, and motor vehicle accessories and equipment.
5. Any other funds which may by law be credited to the road use tax fund.

Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the road use tax fund and the funds to which moneys from the road use tax fund are credited shall be credited to the road use tax fund.

See §321.145, 423.24

For future amendments to subsection 4, and repealing and replacing chapter 423, effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §94 – 151, 161, 205

Section not amended; footnote added

#### 312.2 Allocations from fund.

The treasurer of the state shall, on the first day of each month, credit all road use tax funds which have been received by the treasurer, to the primary road fund, the secondary road fund of the counties, the farm-to-market road fund, and the street

construction fund of cities in the following manner and amounts:

1. To the primary road fund, forty-seven and one-half percent.
2. To the secondary road fund of the counties, twenty-four and one-half percent.
3. To the farm-to-market road fund, eight percent.
4. To the street construction fund of the cities, twenty percent.
5. The treasurer of state shall before making the above allotments credit annually to the highway grade crossing safety fund the sum of seven hundred thousand dollars, credit annually from the road use tax fund the sum of nine hundred thousand dollars to the highway railroad grade crossing surface repair fund, credit monthly to the primary road fund the dollars yielded from an allotment of sixty-five hundredths of one percent of all road use tax funds for the express purpose of carrying out subsection 11 of section 307A.2, section 313.4, subsection 2, and section 307.45, and credit annually to the primary road fund the sum of five hundred thousand dollars to be used for paying expenses incurred by the state department of transportation other than expenses incurred for extensions of primary roads in cities. All unobligated funds provided by this subsection, except those funds credited to the highway grade crossing safety fund, shall at the end of each year revert to the road use tax fund. Funds in the highway grade crossing safety fund shall not revert to the road use tax fund except to the extent they exceed five hundred thousand dollars at the end of any biennium. The cost of each highway railroad grade

crossing repair project shall be allocated in the following manner:

*a.* Twenty percent of the project cost shall be paid by the railroad company.

*b.* Twenty percent of the project cost shall be paid by the highway authority having jurisdiction of the road crossing the railroad.

*c.* Sixty percent of the project cost shall be paid from the highway railroad grade crossing surface repair fund.

6. The treasurer of state shall before making the allotments provided for in this section credit monthly to the state department of transportation funds sufficient in amount to pay the costs of purchasing certificate of title and registration forms, and supplies and materials and for the cost of prison labor used in manufacturing motor vehicle registration plates, decalcomania emblems, and validation stickers at the prison industries.

7. The treasurer of state, before making the allotments provided in this section, shall credit annually to the primary road fund from the road use tax fund the sum of seven million one hundred thousand dollars.

8. The treasurer of state, before making any allotments to counties under this section, shall reduce the allotment to a county for the secondary road fund by the amount by which the total funds that the county transferred or provided during the prior fiscal year under section 331.429, subsection 1, paragraphs "a", "b", "d", and "e", are less than seventy-five percent of the sum of the following:

*a.* From the general fund of the county, the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county.

*b.* From the rural services fund of the county, the dollar equivalent of a tax of three dollars and three-eighths of a cent per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county.

Funds remaining in the secondary road fund of the counties due to a reduction of allocations to counties for failure to maintain a minimum local tax effort shall be reallocated to counties that are not reduced under this subsection pursuant to the allocation provisions of section 312.3, subsection 1, based upon the needs and area of the county. Information necessary to make allocations under this subsection shall be provided by the state department of transportation or the director of the department of management upon request by the treasurer of state.

9. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the living roadway trust fund created under section 314.21 one hundred fifty thousand dollars from the road use tax fund.

10. The treasurer of state, before making the other allotments provided for in this section, shall credit annually to the primary road fund from the road use tax fund the sum of four million four hun-

dred thousand dollars and to the farm-to-market road fund from the road use tax fund the sum of one million five hundred thousand dollars for partial compensation of allowing trucks to operate on the roads of this state as provided in section 321.463.

11. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the living roadway trust fund created under section 314.21 one hundred thousand dollars from the road use tax fund.

12. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the revitalize Iowa's sound economy fund, created under section 315.2, the revenue accruing to the road use tax fund in the amount equal to the revenues collected under each of the following:

*a.* From the excise tax on motor fuel and special fuel imposed under the tax rate of section 452A.3 except aviation gasoline, the amount of excise tax collected from one and eleven-twentieths cents per gallon.

*b.* From the excise tax on special fuel for diesel engines, the amount of excise tax collected from one and eleven-twentieths cents per gallon.

13. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the secondary road fund the revenue accruing to the road use tax fund in the amount equal to the revenues collected under each of the following:

*a.* From the excise tax on motor fuel and special fuel imposed under the tax rate of section 452A.3, except aviation gasoline, the amount of excise tax collected from nine-twentieths cent per gallon.

*b.* From the excise tax on special fuel for diesel engines, the amount of excise tax collected from nine-twentieths cent per gallon.

14. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the general fund of the state from revenue credited to the road use tax fund under section 423.24, subsection 1, paragraph "b", an amount equal to one-twentieth of eighty percent of the revenue from the operation of section 423.7.

There is appropriated from the general fund of the state for each fiscal year to the state department of transportation the amount of revenues credited to the general fund of the state during the fiscal year under this subsection to be used for purposes of public transit assistance under chapter 324A.

15. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the state department of transportation for county, city and state traffic safety improvement projects an amount equal to one-half of one percent of moneys credited to the road use tax fund.

16. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the motorcycle rider education fund established in section 321.180B, an amount equal to one dollar per year of license validity for each issued or renewed driver's license which is valid for the operation of a motorcycle. Moneys credited to the motorcycle rider education fund under this subsection shall be taken from moneys credited to the road use tax fund under section 423.24.

17. *a.* The treasurer of state, before making the allotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, shall credit from the road use tax fund two million dollars to the county bridge construction fund, which is hereby created. Moneys credited to the county bridge construction fund shall be allocated to counties by the department for bridge construction, reconstruction, replacement, or realignment based on needs in accordance with rules adopted by the department.

*b.* The treasurer of state, before making the allotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, shall credit from the road use tax fund five hundred thousand dollars to the city bridge construction fund, which is hereby created. Moneys credited to the city bridge construction fund shall be allocated to cities by the department for bridge construction and reconstruction based on needs in accordance with rules adopted by the department.

18. The treasurer of state, before making the allotments provided for in this section, shall credit annually from the road use tax fund to the state department of transportation the sum of six hundred fifty thousand dollars for the purpose of providing county treasurers with automation and telecommunications equipment and support for vehicle registration and titling and driver licensing. Notwithstanding section 8.33, unobligated funds credited under this subsection remaining on June 30 of the fiscal year shall not revert but shall remain available for expenditure for purposes of this subsection in subsequent fiscal years.

Legislative intent that moneys directed to be deposited in road use tax fund under §312.1 not be used for loans, grants, or other financial assistance for passenger rail service; 2000 Acts, ch 1168, §4

For future amendment to subsection 14 effective July 1, 2004, see 2002 Acts, 2nd Ex, ch 1002, §3, 4

For future amendments to subsections 14 and 16 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §162, 205

Section not amended; footnote added

### **312.3 Apportionment to counties and cities.**

The treasurer of state shall, on the first day of each month:

1. Apportion among the counties in the ratio that the needs of the secondary roads of each county bear to the total needs of the secondary roads of the state for each fiscal year based upon

the total needs of secondary roads of the state as shown in the latest quadrennial need study report developed by the state department of transportation, and which is on record at the department, seventy percent of the allocation from road use tax funds which is credited to the secondary road fund of the counties, and apportion among the counties in the ratio that the area of each county bears to the total area of the state, thirty percent of the allocation from road use tax funds which is credited to the secondary road fund of the counties.

For the purposes of this subsection, "*latest quadrennial need study report*" includes the annual recalculation of construction and maintenance needs of roads whose jurisdiction has been transferred from the department to a county or from a county to the department during the previous year as recalculated pursuant to section 307.22, subsection 7.

2. *a.* Apportion among the cities of the state, in the ratio which the population of each city, as shown by the latest available federal census, bears to the total population of all such cities in the state, the percentage of the road use tax funds which is credited to the street construction fund of the cities, and shall remit to the city clerk of each such city the amount so apportioned to such city. A city may have one special federal census taken each decade, and the population figure thus obtained shall be used in apportioning amounts under this subsection beginning the calendar year following the year in which the special census is certified by the secretary of state.

*b.* The apportionment of moneys from the street construction fund of the cities to a city with a farm-to-market extension under county jurisdiction pursuant to section 306.4 shall be reduced in the proportion which the share of mileage of the farm-to-market extension bears to the total mileage of streets within the city. The amount of moneys by which the apportionment to the city is reduced shall be transferred to the secondary road fund of the respective county, to be used only for the maintenance or construction of roads under the county's jurisdiction, and all interest and earnings on the moneys transferred shall remain in the secondary road fund of the county, to be used for the same purposes.

*c.* The apportionment of moneys from the transfer of jurisdiction fund pursuant to section 313.4, subsection 6, paragraph "b", subparagraph (1), to a city with a street under county jurisdiction pursuant to section 306.4, subsection 3, shall be transferred to the secondary road fund of the respective county.

3. In any case where a city has been incorporated since the latest available federal census the mayor and council shall certify to the state treasurer the actual population of such incorporated city as of the date of incorporation and its apportionment of funds under this section shall be based

upon such certification until the next federal census enumeration. Any community which has dissolved its corporation shall not receive any apportionment of funds under this certificate for any period after said corporation has been dissolved.

4. In any case where a city has annexed any territory since the last available federal census or special federal census, the mayor and council shall certify to the treasurer of state the actual population of such annexed territory as determined by the last certified federal census of said territory and the apportionment of funds under this section shall be based upon the population of said city as modified by the certification of the population of the annexed territory until the next federal or special federal census enumeration.

5. In any case where two or more cities have consolidated, the apportionment of funds under this section shall be based upon the population of the city resulting from said consolidation and shall be determined by combining the population of all cities involved in the consolidation as determined by the last available federal or special fed-

eral census enumeration for said consolidating city.

2003 Acts, ch 144, §6  
See §310.1  
Subsection 2 amended

### **312.3D Street construction fund distribution advisory committee.**

A street construction fund distribution advisory committee is established to consider methodologies for distribution of moneys in the street construction fund of the cities. The committee shall be comprised of representatives appointed by the president of the Iowa section of the American public works association, the president of the Iowa league of cities, and the department. The committee shall recommend to the general assembly by January 1, 2004, for the general assembly's consideration and adoption, one or more alternative methodologies for distribution of moneys in the street construction fund of the cities.

2003 Acts, ch 144, §7  
NEW section

## CHAPTER 313

### PRIMARY ROADS

#### **313.4 Disbursement of fund.**

1. Said primary road fund is hereby appropriated for and shall be used in the establishment, construction and maintenance of the primary road system, including the drainage, grading, surfacing, construction of bridges and culverts, the elimination or improvement of railroad crossings, the acquiring of additional right-of-way, all other expense incurred in the construction and maintenance of said primary road system and the maintenance and housing of the department.

The department may expend moneys from the fund for dust control on a secondary road or municipal street within a municipal street system when there is a notable increase in traffic on the secondary road or municipal street due to closure of a road by the department for purposes of establishing, constructing, or maintaining a primary road.

2. Such fund is also appropriated and shall be used for the construction, reconstruction, improvement and maintenance of state institutional roads and state park roads and bridges on such roads and roads and bridges on community college property as provided in subsection 11 of section 307A.2, for restoration of secondary roads used as primary road detours and for compensation of counties for such use, for restoration of municipal streets so used and for compensation of cities for such use, and for the payments required in section 307.45.

3. There is appropriated from funds appro-

priated to the department which would otherwise revert to the primary road fund pursuant to the provisions of the Act appropriating the funds or chapter 8, an amount sufficient to pay the increase in salaries, which increase is not otherwise provided for by the general assembly in an appropriation bill, resulting from the annual review of the merit pay plan as provided in section 8A.413, subsection 2. The appropriation herein provided shall be in effect from the effective date of the revised pay plan to the end of the fiscal biennium in which it becomes effective.

4. Such fund is appropriated and shall be used by the department to provide energy and for the operation and maintenance of those primary road freeway lighting systems within the corporate boundaries of cities including energy and maintenance costs associated with interchange conflict lighting on existing and future freeway and expressway segments constructed to interstate standards.

The costs of serving freeway lighting for each utility providing the service shall be determined by the utilities division of the department of commerce, and rates for such service shall be no higher than necessary to recover these costs. Funds received under the provisions of this subsection shall be used solely for the operation and maintenance of a freeway lighting system.

5. During the fiscal year beginning July 1, 1990, and ending June 30, 1991, and each subse-

quent fiscal year, the department shall spend from the primary road fund an amount of not less than thirty million dollars for the network of commercial and industrial highways.

6. *a.* A transfer of jurisdiction fund is created in the office of the treasurer of state under the control of the department. For each fiscal year in the period beginning July 1, 2003, and ending June 30, 2013, there is transferred from the primary road fund to the transfer of jurisdiction fund one and seventy-five hundredths percent of the moneys credited to the primary road fund pursuant to section 312.2, subsection 1.

*b.* For each fiscal year in the period beginning July 1, 2003, and ending June 30, 2013, there is appropriated the following percentages of the moneys deposited in the transfer of jurisdiction fund for the fiscal year for the following purposes:

(1) Seventy-five percent of the moneys shall be apportioned among the counties and cities that assume jurisdiction of primary roads pursuant to section 306.8A. Such apportionment shall be made based upon the specific construction needs identified for the specific counties and cities in the transfer of jurisdiction report on file with the department pursuant to section 306.8A. All funds, including any interest or other earnings on the funds, received by a county from the transfer of jurisdiction fund shall be deposited in the secondary road fund of the county to be used only for the maintenance and construction of roads under the county's jurisdiction. All funds received by a city from the transfer of jurisdiction fund shall be used only for the maintenance and construction of roads under the city's jurisdiction.

(2) Twenty-two and one-half percent of the moneys shall be deposited in the secondary road fund.

(3) Two and one-half percent of the moneys shall be deposited in the street construction fund of the cities.

7. For the fiscal year beginning July 1, 2013, and ending June 30, 2014, and each subsequent fiscal year, there is transferred the following percentages of the moneys credited to the primary road fund pursuant to section 312.2, subsection 1, to the following funds:

*a.* One and five hundred seventy-five thousandths percent to the secondary road fund.

*b.* One hundred seventy-five thousandths of one percent to the street construction fund of the cities.

2003 Acts, ch 144, §8; 2003 Acts, ch 145, §243  
Subsection 3 amended  
NEW subsections 6 and 7

### 313.7 Monthly certification of funds.

The account of the primary road fund kept by the department of administrative services and the state treasurer shall show the amount of the primary road fund with all credits thereto and dis-

bursements therefrom.

2003 Acts, ch 145, §286  
Terminology change applied

### 313.18 Use of contingent fund.

When claims for labor, freight, or other items which must be paid promptly are presented to the said department for payment, the said department may direct that warrants in payment of said claims be drawn on said primary road contingent fund. Such warrants when so drawn and signed by the director of the department of administrative services, shall be honored by the treasurer of state for payment from said contingent fund. The primary road contingent fund shall be reimbursed for expenditures made by the state department of transportation from the fund to which the expenditure should be properly charged.

2003 Acts, ch 145, §286  
Terminology change applied

### 313.19 Audit of contingent claims.

The claims in payment of which warrants are drawn on the primary road contingent fund, shall be audited in the usual manner prescribed by law and shall have noted thereon that warrants in payment thereof have been drawn on the said contingent fund. After the final audit of such claims, the director of the department of administrative services shall draw warrants therefor payable to the treasurer of state and forward the same to the department for record. When such warrants have been recorded in the office of the said department, they shall be forwarded to the state treasurer who shall redeem the same, charge them to the proper fund and credit the primary road contingent fund with the amount thereof.

2003 Acts, ch 145, §286  
Terminology change applied

### 313.20 Auditor — appointment — bond — duties.

The director of the department of administrative services shall appoint the auditor of the department who shall give bond in the sum of fifty thousand dollars for the faithful performance of the auditor's duties. The premium on said bond shall be paid by the department from the primary road fund. Said auditor shall check and audit all claims against the department before such claims are approved by the department, and shall keep all records and accounts relating to the expenditures of the department. The auditor shall, in the checking and auditing of claims against the department, and keeping the records and accounts of the department, be under the direction and supervision of the director of the department of administrative services, and act as an agent of said director. The department shall furnish said auditor with such help and assistants as may be necessary to properly perform the duties herein specified. The said auditor may be removed by the director

of the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

### **313.28 Temporary primary road detours.**

When the department, for the purpose of establishing, constructing or maintaining any primary road, determines that any secondary road or portion thereof is necessary for a detour or haul road, the department, after consultation with the county board of supervisors having jurisdiction of the route, shall by order temporarily designate the secondary road or portion thereof as a temporary primary road detour or as a temporary primary road haul road, and the department shall maintain the same as a primary road until it shall revoke the temporary designation order. Prior to use of a secondary road as a primary haul road or detour, the department shall designate a representative to inspect the secondary road with the county engineer to determine and note the condition of the road.

Prior to revoking the designation, the department shall:

1. Restore the secondary road or portion thereof to as good condition as it was prior to its designation as a temporary primary road, or

2. Determine such amount as will adequately compensate the county exercising exclusive or concurrent jurisdiction over the secondary road or portion thereof for excessive traffic upon the secondary road or portion thereof during the period of its designation as a temporary primary road. The department shall certify the amount determined to the director of the department of administrative services. The director of the department of administrative services shall credit the amount to the county.

3. If on examination of the route, it is determined that the road can be restored to its original condition only by reconstruction, the department shall cause plans to be drawn, award the necessary contracts for work and proceed to reconstruct and make payments for in the same manner as is prescribed for primary construction projects.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 314

### ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

#### **314.3 Claims — approval and payment.**

All claims for construction, reconstruction, improvement, repair, or maintenance on any highway shall be itemized on voucher forms prepared for that purpose, certified to by the claimants and by the engineer in charge, and then forwarded to the agency in control of that highway for final audit and approval. Claims payable from the farm-to-market road fund shall be approved by both the board of supervisors and the department. Upon approval by the department of vouchers which are payable from the farm-to-market road fund, or from the primary road fund, as the case may be, such vouchers shall be forwarded to the director of

the department of administrative services, who shall draw warrants therefor and said warrants shall be paid by the treasurer of the state from the farm-to-market road fund or from the primary road fund, as the case may be.

If the engineer makes such certificate or a member of the agency approves such claim when said work has not been done in accordance with the plans and specifications, and said work be not promptly made good without additional cost, the engineer or member shall be liable on the person's bond for the amount of such claim.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 315

### REVITALIZE IOWA'S SOUND ECONOMY FUND

#### **315.7 Monthly certification of funds.**

The account of the fund shall be kept by the director of the department of administrative services and the treasurer of state and shall show the amount of the fund including all credits to the fund and disbursements. The director of the department of administrative services shall report monthly to the department an account of the fund

including all credits and disbursements. Upon certification by the department in accordance with rules adopted by the director of the department of administrative services, the director of the department of administrative services shall issue warrants for disbursements from the fund.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 321

## MOTOR VEHICLES AND LAW OF THE ROAD

**321.1 Definitions of words and phrases.**

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. *"Agricultural hazardous material"* means a hazardous material, other than hazardous waste, whose end use directly supports the production of an agricultural commodity, including, but not limited to, a fertilizer, pesticide, soil conditioner, or fuel. *"Agricultural hazardous material"* is limited to material in class 3, 8, or 9, division 2.1, 2.2, 5.1, or 6.1, or an ORM-D material as defined in 49 C.F.R. § 171.8.

1A. *"Alcohol concentration"* means the number of grams of alcohol per any of the following:

- a. One hundred milliliters of blood.
- b. Two hundred ten liters of breath.
- c. Sixty-seven milliliters of urine.

2. *"Alcoholic beverage"* includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

3. *"Alley"* means a thoroughfare laid out, established, and platted as such, by constituted authority.

4. *"All-terrain vehicle"* means a motor vehicle designed to travel on three or more wheels and designed primarily for off-road recreational use but not including farm tractors or equipment, construction equipment, forestry vehicles, or lawn and grounds maintenance vehicles.

5. *"Ambulance"* means a motor vehicle which is equipped with life support systems and used to transport sick and injured persons who require emergency medical care to medical facilities.

6. *"Authorized emergency vehicle"* means vehicles of the fire department, police vehicles, ambulances, and emergency vehicles owned by the United States, this state, any subdivision of this state, or any municipality of this state, and privately owned vehicles as are designated or authorized by the director of transportation under section 321.451.

7. *"Business district"* means the territory contiguous to and including a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business.

8. *"Chauffeur"* means a person who operates a motor vehicle, including a school bus, in the transportation of persons for wages, compensation, or hire, or a person who operates a truck tractor, road tractor, or a motor truck which has a gross vehicle weight rating exceeding sixteen thousand pounds. A person is not a chauffeur when the operation of the motor vehicle, other than a truck tractor, by the owner or operator is occasional and merely incidental to the owner's or operator's principal

business.

A person is not a chauffeur when the operation is by a volunteer fire fighter operating fire apparatus, or is by a volunteer ambulance or rescue squad attendant operating ambulance or rescue squad apparatus. If a volunteer fire fighter or ambulance or rescue squad operator receives nominal compensation not based upon the value of the services performed, the fire fighter or operator shall be considered to be receiving no compensation and classified as a volunteer.

If authorized to transport inmates, probationers, parolees, or work releasees by the director of the Iowa department of corrections or the director's designee, an employee of the Iowa department of corrections or a district department of correctional services is not a chauffeur when transporting the inmates, probationers, parolees, or work releasees.

A farmer or the farmer's hired help is not a chauffeur when operating a truck, other than a truck tractor, owned by the farmer and used exclusively in connection with the transportation of the farmer's own products or property.

If authorized to transport patients or clients by the director of the department of human services or the director's designee, an employee of the department of human services is not a chauffeur when transporting the patients or clients in an automobile.

A person is not a chauffeur when the operation is by a home care aide in the course of the home care aide's duties.

If authorized to transport students or clients by the superintendent of the Iowa braille and sight saving school or of the Iowa school for the deaf, or the superintendent's respective designee, an employee of the Iowa braille and sight saving school or the Iowa school for the deaf is not a chauffeur when transporting the students or clients.

9. *"Combination"* or *"combination of vehicles"* shall be construed to mean a group consisting of two or more motor vehicles, or a group consisting of a motor vehicle and one or more trailers, semi-trailers or vehicles, which are coupled or fastened together for the purpose of being moved on the highways as a unit.

10. a. *"Combined gross weight"* means the gross weight of a combination of vehicles.

b. *"Gross combination weight rating"* means the combined gross vehicle weight ratings for each vehicle in a combination of vehicles. In the absence of a weight specified by the manufacturer for a towed vehicle, the gross vehicle weight rating of the towed vehicle is its gross weight.

11. For purposes of administering and enforcing the commercial driver's license provisions:

a. “*Commercial driver*” means the operator of a commercial motor vehicle.

b. “*Commercial driver’s license*” means a driver’s license valid for the operation of a commercial motor vehicle.

c. “*Commercial driver’s license information system*” means the national information system established to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

d. “*Commercial motor carrier*” means a person responsible for the safe operation of a commercial motor vehicle.

e. “*Commercial motor vehicle*” means a motor vehicle or combination of vehicles used to transport passengers or property if any of the following apply:

(1) The combination of vehicles has a gross combination weight rating of twenty-six thousand one or more pounds provided the towed vehicle or vehicles have a gross weight rating or gross combination weight rating of ten thousand one or more pounds.

(2) The motor vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(3) The motor vehicle is designed to transport sixteen or more persons, including the operator, or is of a size and design to transport sixteen or more persons, including the operator, but is redesigned or modified to transport less than sixteen persons with disabilities.

(4) The motor vehicle is used in the transportation of hazardous material of a type or quantity requiring vehicle placarding.

f. “*Foreign jurisdiction*” means a jurisdiction outside the fifty United States, the District of Columbia, and Canada.

g. “*Nonresident commercial driver’s license*” means a commercial driver’s license issued to a person who is not a resident of the United States or Canada.

h. “*Tank vehicle*” means a commercial motor vehicle that is designed to transport liquid or gaseous materials within a tank having a rated capacity of one thousand one or more gallons that is either permanently or temporarily attached to the vehicle or chassis.

12. “*Commercial vehicle*” means a vehicle or combination of vehicles designed principally to transport passengers or property of any kind if any of the following apply:

a. The vehicle or any combination of vehicles has a gross weight or combined gross weight of ten thousand one or more pounds.

b. The vehicle or any combination of vehicles has a gross vehicle weight rating or gross combination weight rating of ten thousand one or more pounds.

c. The vehicle is designed to transport sixteen or more persons, including the driver.

d. The vehicle is used in the transportation of

hazardous material of a type or quantity requiring vehicle placarding.

13. “*Component part*” means any part of a vehicle, other than a tire, having a component part number.

14. “*Component part number*” means the vehicle identification derivative consisting of numerical and alphabetical designations affixed to a component part by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the component part.

15. “*Conviction*” means a final conviction or an unvacated forfeiture of bail or collateral deposited to secure a person’s appearance in court.

15A. “*Crane*” means a machine for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

16. “*Crosswalk*” means that portion of a roadway ordinarily included within the prolongation or connection of the lateral lines of sidewalks at intersections, or any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface.

17. “*Dealer*” means every person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered hereunder and who has an established place of business for such purpose in this state.

18. “*Demolisher*” means any agency or person whose business is to convert a vehicle to junk, processed scrap, or scrap metal, or otherwise to wreck or dismantle vehicles.

19. “*Department*” means the state department of transportation. “*Commission*” means the state transportation commission.

20. “*Director*” means the director of the state department of transportation or the director’s designee.

20A. “*Driver’s license*” means any license or permit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to a temporary restricted or temporary license and an instruction, chauffeur’s instruction, commercial driver’s instruction, or temporary permit.

For purposes of license suspension, revocation, bar, disqualification, cancellation, or denial under this chapter and chapters 321A, 321C, and 321J, “*driver’s license*” includes any privilege to operate a motor vehicle.

20B. “*Electric personal assistive mobility device*” means a self-balancing device powered by an electric propulsion system that averages seven hundred fifty watts, has two nontandem wheels, and is designed to transport one person, with a maximum speed on a paved level surface of less than twenty miles per hour. The maximum speed shall be calculated based on operation of the device by a person who weighs one hundred seventy pounds when the device is powered solely by the

electric propulsion system.

21. “*Endorsement*” means an authorization to a person’s driver’s license required to permit the person to operate certain types of motor vehicles or to transport certain types or quantities of hazardous materials.

22. “*Essential parts*” mean all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

23. “*Established place of business*” means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer’s or manufacturer’s books and records are kept and a large share of the dealer’s or manufacturer’s business is transacted.

24. “*Farm tractor*” means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

24A. “*Fence-line feeder*” means a vehicle used exclusively for the mixing and dispensing of nutrients to bovine animals at a feedlot.

24B. “*Financial liability coverage*” means any of the following:

a. An owner’s policy of liability insurance which is issued by an insurance carrier authorized to do business in Iowa to or for the benefit of the person named in the policy as insured, and insuring the person named as insured and any person using an insured motor vehicle with the express or implied permission of the named insured against loss from liability imposed by law for damages arising out of the ownership, maintenance, or use of an insured motor vehicle within the United States of America or Canada, but subject to minimum limits, exclusive of interest and costs, in the amounts specified in section 321A.21 or specified in another provision of the Code, whichever is greater.

b. A bond filed with the department pursuant to section 321A.24.

c. A valid statement issued by the treasurer of state pursuant to section 321A.25 attesting to the filing of a certificate of deposit with the treasurer of state.

d. A valid certificate of self-insurance issued by the department pursuant to section 321A.34.

25. “*Fire vehicle*” means a motor vehicle which is equipped with pumps, tanks, hoses, nozzles, ladders, generators, or other fire apparatus used to transport fire personnel, fight fires, and respond to emergencies.

26. “*Foreign vehicle*” means every vehicle of a type required to be registered hereunder brought into this state from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

27. The linear measure of the plot of ground

upon which the building is located abutting upon the highway shall be deemed “*frontage occupied by the building*”, and the phrase “*frontage on such highway for a distance of three hundred feet or more*” shall mean the total frontage on both sides of the highway for such distance.

28. “*Garage*” means every place of business where motor vehicles are received for housing, storage, or repair for compensation.

28A. “*Grain cart*” means a vehicle with a non-steerable single or tandem axle designed to move grain.

29. a. “*Gross weight*” means the empty weight of a vehicle plus the maximum load to be carried by the vehicle. The maximum load to be carried by a passenger-carrying vehicle shall be determined by multiplying one hundred fifty pounds by the number of passenger seats carried by such vehicle.

b. “*Unladen weight*” means the weight of a vehicle or vehicle combination without load.

c. “*Gross vehicle weight rating*” means the weight specified by the manufacturer as the loaded weight of a single vehicle.

30. “*Guaranteed arrest bond certificate*” means any printed, unexpired certificate issued by an automobile club or association to any of its members, or any printed, unexpired certificate issued by an insurance company authorized to write automobile liability insurance within this state, which certificate is signed by such member or insured and contains a printed statement that such automobile club, association, or insurance company and a surety company which is doing business in this state under the provisions of section 515.48, subsection 2, guarantee the appearance of the person whose signature appears on the certificate and that they will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed one thousand dollars. If such insurance company is itself qualified under the provisions of section 515.48, subsection 2, the insurance company may be its own surety. Bail in this form shall be subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases as provided by law.

31. “*Hazardous material*” means a substance or material which has been determined by the United States secretary of transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

32. “*Implement of husbandry*” means a vehicle or special mobile equipment manufactured, designed, or reconstructed for agricultural purposes and, except for incidental uses, exclusively used in the conduct of agricultural operations. “*Implements of husbandry*” includes all-terrain vehicles operated in compliance with section 321.234A, fence-line feeders, and vehicles used exclusively for the application of organic or inorganic plant food materials, organic agricultural limestone, or

agricultural chemicals. To be considered an implement of husbandry, a self-propelled implement of husbandry must be operated at speeds of thirty-five miles per hour or less. *“Reconstructed”* as used in this subsection means materially altered from the original construction by the removal, addition, or substitution of essential parts, new or used.

A vehicle covered under this subsection, if it otherwise qualifies, may be operated as special mobile equipment and under such circumstances this subsection shall not be applicable to such vehicle, and such vehicle shall not be required to comply with sections 321.384 through 321.423, when such vehicle is moved during daylight hours; however, the provisions of section 321.383 shall remain applicable to such vehicle.

33. *“Intersection”* means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

34. *“Laned highway”* means a highway the roadway of which is divided into three or more clearly marked lanes for vehicular traffic.

35. *“Light delivery truck”*, *“panel delivery truck”*, or *“pickup”* means any motor vehicle designed to carry merchandise or freight of any kind, not to exceed two thousand pounds.

36. *“Local authorities”* means every county, municipal, and other local board or body having authority to adopt local police regulations under the Constitution and laws of this state.

36A. *“Low-speed vehicle”* means a motor vehicle manufactured in compliance with the national highway and traffic safety administration standards for low-speed vehicles in 49 C.F.R. § 571.500. A low-speed vehicle which is in compliance with the equipment requirements in 49 C.F.R. § 571.500 shall be deemed to be in compliance with all equipment requirements of this chapter.

36B. *“Manufactured home”* is a factory-built structure constructed under authority of 42 U.S.C. § 5403, which is required by federal law to display a seal from the United States department of housing and urban development, and was constructed on or after June 15, 1976.

36C. a. *“Manufactured or mobile home”* means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons.

b. *“Travel trailer”* means a vehicle without motive power used, manufactured, or constructed to permit its use as a conveyance upon the public

streets and highways and designed to permit its use as a place of human habitation by one or more persons. The vehicle may be up to eight feet six inches in width and its overall length shall not exceed forty feet. The vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If the vehicle is used in this state as a place of human habitation for more than ninety consecutive days in one location it shall be classed as a manufactured or mobile home regardless of the size limitations provided in this paragraph.

c. *“Fifth-wheel travel trailer”* means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed forty feet.

d. *“Motor home”* means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four, two of which shall be systems specified in subparagraphs (1), (4), or (5) of this paragraph, of the following permanently installed systems which meet American national standards institute and national fire protection association standards in effect on the date of manufacture:

- (1) Cooking facilities.
- (2) Ice box or mechanical refrigerator.
- (3) Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.
- (4) Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.
- (5) Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system.
- (6) A one hundred ten – one hundred fifteen volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

37. *“Manufacturer”* means every person engaged in the business of fabricating or assembling vehicles of a type required to be registered. It does not include a person who converts, modifies, or alters a completed motor vehicle manufactured by another person. It includes a person who uses a completed motor vehicle manufactured by another person to construct a class “B” motor home as defined in section 321.124.

*“Completed motor vehicle”* means a motor vehicle which does not require any additional manufacturing operations to perform its intended function except the addition of readily attachable equipment, components, or minor finishing operations.

*“Final stage manufacturer”* means a person who performs such manufacturing operations on an incomplete vehicle that it becomes a completed ve-

hicle. A final stage manufacturer shall furnish to the department a document which identifies that the vehicle was incomplete prior to that manufacturing operation. The identification shall include the name of the incomplete vehicle manufacturer, the date of manufacture, and the vehicle identification number to ascertain that the document applies to a particular incomplete vehicle.

*"Incomplete vehicle"* means an assemblage, as a minimum, consisting of a frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be a part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable equipment, components, or minor finishing operations.

38. *"Metal tire"* means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

39. Reserved.

40. a. *"Motorcycle"* means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground including a motor scooter but excluding a tractor and a motorized bicycle.

b. *"Motorized bicycle"* or *"motor bicycle"* means a motor vehicle having a saddle or a seat for the use of a rider and designed to travel on not more than three wheels in contact with the ground, with an engine having a displacement no greater than fifty cubic centimeters and not capable of operating at a speed in excess of thirty miles per hour on level ground unassisted by human power.

c. *"Bicycle"* means a device having two wheels and having at least one saddle or seat for the use of a rider which is propelled by human power.

41. *"Motor truck"* means every motor vehicle designed primarily for carrying livestock, merchandise, freight of any kind, or over nine persons as passengers.

42. a. *"Motor vehicle"* means a vehicle which is self-propelled, but not including vehicles known as trackless trolleys which are propelled by electric power obtained from overhead trolley wires and are not operated upon rails.

b. *"Used motor vehicle"* or *"secondhand motor vehicle"* or *"used car"* means a motor vehicle of a type subject to registration under the laws of this state which has been sold *"at retail"* as defined in chapter 322 and previously registered in this or any other state.

c. *"New motor vehicle or new car"* means a motor vehicle subject to registration which has not been sold *"at retail"* as defined in chapter 322.

d. *"Car"* or *"automobile"* means a motor vehicle designed primarily for carrying nine passengers or less, excluding motorcycles and motorized bicycles.

43. Reserved.

44. *"Multipurpose vehicle"* means a motor ve-

hicle designed to carry not more than ten people, and constructed either on a truck chassis or with special features for occasional off-road operation.

45. *"Nonresident"* means every person who is not a resident of this state.

46. *"Official traffic-control devices"* means all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

47. *"Official traffic-control signal"* means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

48. *"Operator"* or *"driver"* means every person who is in actual physical control of a motor vehicle upon a highway.

49. *"Owner"* means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of a security agreement with an immediate right of possession vested in the debtor, then such debtor shall be deemed the owner for the purpose of this chapter.

50. *"Peace officer"* means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 801.4.

51. *"Pedestrian"* means any person afoot.

52. *"Person"* means every natural person, firm, copartnership, association, or corporation. Where the term *"person"* is used in connection with the registration of a motor vehicle, it shall include any corporation, association, copartnership, company, firm, or other aggregation of individuals which owns or controls such motor vehicle as actual owner, or for the purpose of sale or for renting, whether as agent, salesperson, or otherwise.

53. *"Pneumatic tire"* means every tire in which compressed air is designed to support the load.

54. *"Private road"* or *"driveway"* means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

54A. *"Product identification number"* or the acronym PIN means a group of unique numerical or alphabetical designations assigned to a complete fence-line feeder, grain cart, or tank wagon by the manufacturer or by the department and affixed to the vehicle, pursuant to rules adopted by the department, as a means of identifying the vehicle or the year of manufacture.

54B. *"Proof of financial liability coverage card"* means either a liability insurance card issued under section 321.20B, a bond insurance card issued under section 321A.24, a security insurance card issued under section 321A.25, or a self-insurance card issued under section 321A.34.

55. *"Railroad"* means a carrier of persons or property upon cars operated upon stationary rails.

56. *"Railroad corporation"* means any corpo-

ration organized under the laws of this state or any other state for the purpose of operating the railroad within this state.

57. “*Railroad sign*” or “*signal*” means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

58. “*Railroad train*” means an engine or locomotive with or without cars coupled thereto, operated upon rails.

59. “*Reconstructed vehicle*” means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

60. “*Registration year*” means the period of twelve consecutive months beginning on the first day of the month following the month of the birth of the owner of the vehicle for vehicles registered by the county treasurer and the calendar year for vehicles registered by the department or motor trucks and truck tractors with a combined gross weight exceeding five tons which are registered by the county treasurer. For leased vehicles registered by the county treasurer, except for motor trucks and truck tractors with a combined gross weight exceeding five tons, “*registration year*” means the period of twelve consecutive months beginning on the first day of the month following the month in which the lease expires.

61. “*Remanufactured vehicle*” means every vehicle of a type required to be registered and having a gross vehicle weight rating of at least thirty thousand pounds that has been disassembled, resulting in the total separation of the major integral parts and which has been reassembled with those parts being replaced with new or rebuilt parts. In every instance, a new diesel engine and all new tires shall be installed and shall carry manufacturers’ warranties.

Every vehicle shall include, but not be limited to, new or rebuilt component parts consisting of steering gear, clutch, transmission, differential, engine radiator, engine fan hub, engine starter, alternator, air compressor, and cab. For purposes of this subsection, “*rebuilt*” means the replacement of any element of a component part which appears to limit the serviceability of the part. A minimum of twenty thousand dollars shall be expended on each vehicle and the expense must be verifiable by invoices, work orders, or other documentation as required by the department.

The department may establish equipment requirements and a vehicle inspection procedure for remanufactured vehicles. The department may establish a fee for the inspection of remanufactured vehicles not to exceed one hundred dollars for each vehicle inspected.

62. “*Rescue vehicle*” means a motor vehicle which is equipped with rescue, fire, or life support equipment used to assist and rescue persons in

emergencies or support emergency personnel in the performance of their duties.

63. “*Residence district*” means the territory within a city contiguous to and including a highway, not comprising a business, suburban, or school district, where forty percent or more of the frontage on such highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business.

63A. “*Retractable axle*” means an axle designed with the capability of manipulation or adjustment of the weight on the axle.

64. “*Right-of-way*” means the privilege of the immediate use of the highway.

64A. “*Road tractor*” means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

65. “*Roadway*” means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

66. “*Road work zone*” means the portion of a highway which is identified by posted or moving signs as the site of construction, maintenance, survey, or utility work. The zone starts upon meeting the first sign identifying the zone and continues until a posted or moving sign indicates that the work zone has ended.

67. “*Rural residence district*” means an unincorporated area established by a county board of supervisors which is contiguous to and including a secondary highway, not comprising a business district, where forty percent or more of the frontage of the highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business. For purposes of this subsection, farm houses and farm buildings are not to be considered.

68. “*Safety zone*” means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

68A. “*Salvage pool*” means the business of selling at auction wrecked or salvage vehicles, as defined in section 321.52.

69. “*School bus*” means every vehicle operated for the transportation of children to or from school, except vehicles which are:

- a. Privately owned and not operated for compensation;
- b. Used exclusively in the transportation of the children in the immediate family of the driver;
- c. Operated by a municipally or privately owned urban transit company or a regional transit system as defined in section 324A.1 for the transportation of children as part of or in addition to their regularly scheduled service; or
- d. Designed to carry not more than nine persons as passengers, either school owned or pri-

vately owned, which are used to transport pupils to activity events in which the pupils are participants or used to transport pupils to their homes in case of illness or other emergency situations. The vehicles operated under the provisions of this paragraph shall be operated by employees of the school district who are specifically approved by the local superintendent of schools for the assignment.

70. “*School district*” means the territory contiguous to and including a highway for a distance of two hundred feet in either direction from a schoolhouse in a city.

71. “*Semitrailer*” means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Wherever the word “*trailer*” is used in this chapter, same shall be construed to also include “*semitrailer*”.

A “*semitrailer*” shall be considered in this chapter separately from its power unit.

72. “*Sidewalk*” means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for the use of pedestrians.

73. “*Solid tire*” means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

74. “*Specially constructed vehicle*” means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

75. “*Special mobile equipment*” means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including road construction or maintenance machinery and ditch-digging apparatus. This description does not exclude other vehicles which are within the general terms of this subsection.

76. “*Special truck*” means a motor truck or truck tractor not used for hire with a gross weight registration of six through thirty-two tons used by a person engaged in farming to transport commodities produced only by the owner, or to transport commodities purchased by the owner for use in the owner’s own farming operation or occasional use for charitable purposes. “*Special truck*” also means a motor truck or truck tractor not used for hire with a gross weight registration of six through thirty-two tons used by a person engaged in farming who assists another person engaged in farming through an exchange of services. A “*special truck*” does not include a truck tractor operated more than fifteen thousand miles annually.

77. “*Stinger-steered automobile transporter*” means any vehicle combination designed and used

specifically for the transport of assembled highway vehicles, recreational vehicles, or boats in which the fifth wheel is located on a drop frame located below and behind the rearmost axle of the power unit.

78. “*Street*” or “*highway*” means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

79. “*Suburban district*” means all other parts of a city not included in the business, school, or residence districts.

80. “*Tandem axle*” means any two or more consecutive axles whose centers are more than forty inches but not more than ninety-six inches apart.

80A. “*Tank wagon*” means a vehicle designed to carry liquid animal or human excrement.

81. “*Through (or thru) highway*” means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter or such entrances are controlled by a peace officer or traffic-control signal. The term “*arterial*” is synonymous with “*through*” or “*thru*” when applied to highways of this state.

82. “*Tourist attraction*” means a business, activity, service, or site where a major portion of the product or service provided is tourist oriented.

83. “*Tourist-oriented directional sign*” means a sign providing identification and directional information for a tourist attraction.

83A. “*Towing or recovery vehicle*” means a motor vehicle equipped with booms, winches, slings, or wheel lifts used to tow, recover, or transport other motor vehicles.

83B. “*Tracked implement of husbandry*” means a fence-line feeder, grain cart, or tank wagon that is mounted on a chassis attached to a pair of tracks that transfer the weight of the implement to the ground or the roadway surface.

84. “*Traffic*” means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.

85. “*Trailer*” means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

86. “*Trailer coach*” means either a trailer or semitrailer designed for carrying persons.

87. “*Transporter*” means a person engaged in the business of delivering vehicles of a type required to be registered or titled in this state who has received authority to make delivery as specified by rules adopted by the department.

88. “*Truck tractor*” means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load oth-

er than a part of the weight of the vehicle and load so drawn.

89. “*Used vehicle parts dealer*” means a person engaged in the business of selling bodies, parts of bodies, frames, or component parts of used vehicles subject to registration under this chapter.

90. “*Vehicle*” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. “*Vehicle*” does not include:

a. Any device moved by human power.

b. Any device used exclusively upon stationary rails or tracks.

c. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.

d. Any steering axle, dolly, auxiliary axle, or other integral part of another vehicle which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.

91. “*Vehicle identification number*” or the initials VIN mean the numerical and alphabetical designations affixed to a vehicle or a component part of a vehicle by the manufacturer or the department or affixed by, or caused to be affixed by, the owner pursuant to rules promulgated by the department as a means of identifying the vehicle.

92. “*Vehicle rebuilder*” means a person engaged in the business of rebuilding or restoring to operating condition vehicles subject to registration under this chapter, which have been damaged or wrecked.

93. “*Vehicle salvager*” means a person engaged in the business of scrapping vehicles, dismantling or storing wrecked or damaged vehicles or selling reusable parts of vehicles or storing vehicles not currently registered which vehicles are subject to registration under this chapter.

94. “*Where a vehicle is kept*” shall refer to the county of residence of the owner or to the county where the vehicle is mainly kept if said owner is a nonresident of the state.

2003 Acts, ch 6, §1; 2003 Acts, ch 24, §2  
Subsections 30 and 60 amended

### **321.19 Exemptions — distinguishing plates — definitions of urban transit company and regional transit system.**

1. All vehicles owned or leased for a period of sixty days or more by the government and used in the transaction of official business by the representatives of foreign governments or by officers, boards, or departments of the government of the United States, and by the state, counties, municipalities and other political subdivisions of the state including vehicles used by an urban transit company operated by a municipality or a regional

transit system, and self-propelling vehicles used neither for the conveyance of persons for hire, pleasure, or business nor for the transportation of freight other than those used by an urban transit company operated by a municipality or a regional transit system, all fire trucks, providing they are not owned and operated for a pecuniary profit, and authorized emergency vehicles used only in disaster relief owned and operated by an organization not operated for pecuniary profit, are exempted from the payment of the fees imposed by this chapter, except as provided for urban transit companies in subsection 2, but are not exempt from the penalties provided in this chapter.

The department shall furnish, on application, free of charge, distinguishing plates for vehicles thus exempted, which plates except plates on Iowa state patrol vehicles shall bear the word “official” and the department shall keep a separate record. Registration plates issued for Iowa state patrol vehicles, except unmarked patrol vehicles, shall bear two red stars on a yellow background, one before and one following the registration number on the plate, which registration number shall be the officer’s badge number. Registration plates issued for county sheriff’s patrol vehicles shall display one seven-pointed gold star followed by the letter “S” and the call number of the vehicle. However, the director of the department of administrative services or the director of transportation may order the issuance of regular registration plates for any exempted vehicle used by peace officers in the enforcement of the law, persons enforcing chapter 124 and other laws relating to controlled substances, persons in the department of justice, the alcoholic beverages division of the department of commerce, disease investigators of the Iowa department of public health, the department of inspections and appeals, and the department of revenue, who are regularly assigned to conduct investigations which cannot reasonably be conducted with a vehicle displaying “official” state registration plates, persons in the Iowa lottery authority whose regularly assigned duties relating to security or the carrying of lottery tickets cannot reasonably be conducted with a vehicle displaying “official” registration plates, and persons in the department of economic development who are regularly assigned duties relating to existing industry expansion or business attraction. For purposes of sale of exempted vehicles, the exempted governmental body, upon the sale of the exempted vehicle, may issue for in-transit purposes a pasteboard card bearing the words “Vehicle in Transit”, the name of the official body from which the vehicle was purchased, together with the date of the purchase plainly marked in at least one-inch letters, and other information required by the department. The in-transit card is valid for use only within forty-eight hours after the purchase date as indicated on the bill of sale which shall be carried by the driver.

2. “*Urban transit company*” means any person, firm, corporation, company, or municipality which operates buses or trolley cars or both, primarily upon the streets of cities over well-defined routes between certain termini, for the transportation of passengers for a uniform fare, and which accepts for passengers all who present themselves for transportation without discrimination up to the limit of the capacity of each vehicle. Included are street railways, plants, equipment, property, and rights, used and useful in the transportation of passengers. Motor carriers and interurbans subject to the jurisdiction of the state department of transportation, and taxicabs, are not included.

The department, in accordance with subsection 1, shall furnish distinguishing plates for vehicles used by urban transit companies operated by a municipality. No other provision of law providing for the payment of taxes, registration, or license fees for vehicles shall be applicable to any bus, car, or vehicle for the transportation of passengers owned and operated by any urban transit company.

Chapter 326 is not applicable to urban transit companies or systems.

3. “*Regional transit system*” means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride basis shall not be construed to be a regional transit system.

2003 Acts, ch 145, §244; 2003 Acts, ch 178, §109, 121; 2003 Acts, ch 179, §142

See also §8A.362, 321.170

See Code editor's note to §2.9

Subsection 1, unnumbered paragraph 2 amended

### **321.20 Application for registration and certificate of title.**

Except as provided in this chapter, an owner of a vehicle subject to registration shall make application to the county treasurer, of the county of the owner's residence, or if a nonresident to the county treasurer of the county where the primary users of the vehicle are located, or if a lessor of the vehicle pursuant to chapter 321F which vehicle has a gross vehicle weight of less than ten thousand pounds, to the county treasurer of the county of the lessee's residence, for the registration and issuance of a certificate of title for the vehicle upon

the appropriate form furnished by the department. However, upon the transfer of ownership, the owner of a vehicle subject to the proportional registration provisions of chapter 326 shall make application for registration and issuance of a certificate of title to either the department or the appropriate county treasurer. The application shall be accompanied by a fee of ten dollars, and shall bear the owner's signature written with pen and ink. A nonresident owner of two or more vehicles subject to registration may make application for registration and issuance of a certificate of title for all vehicles subject to registration to the county treasurer of the county where the primary user of any of the vehicles is located. The owner of a mobile home or of a manufactured home shall make application for a certificate of title under this section. The application shall contain:

1. The full legal name; social security number or, if the owner does not have a social security number but has a passport, the passport number; driver's license number, whether the license was issued by this state, another state, another country, or is an international driver's license; date of birth; bona fide residence; and mailing address of the owner and of the lessee if the vehicle is being leased. If the owner or lessee is a firm, association, or corporation, the application shall contain the business address and federal employer identification number of the owner or lessee. Up to three owners' names may be listed on the application. Information relating to the lessee of a vehicle shall not be required on an application for registration and a certificate of title for a vehicle with a gross vehicle weight rating of ten thousand pounds or more.

2. A description of the vehicle including, insofar as the specified data may exist with respect to a given vehicle, the make, model, type of body, the number of cylinders, the type of motor fuel used, the serial number of the vehicle, manufacturer's identification number, the engine or other number of the vehicle and whether new or used and if a new vehicle the date of sale by the manufacturer or dealer to the person intending to operate such vehicle. If the vehicle is a new low-speed vehicle, the manufacturer's or importer's certificate required to accompany the application under subsection 4 shall certify that the vehicle was manufactured in compliance with the national highway and traffic safety administration standards for low-speed vehicles in 49 C.F.R. § 571.500.

3. Such further information as may reasonably be required by the department.

4. A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all persons having any interest therein and the nature of every such interest. When such application refers to a new vehicle, it shall be accompanied by a manufacturer's or importer's certificate duly assigned as provided

in section 321.45.

5. The amount of tax to be paid under section 423.7.

6. If the vehicle is owned by a nonresident but is subject to issuance of an Iowa certificate of title or registration, the application shall also contain the full legal name; social security number, or, if the primary user does not have a social security number but has a passport, the passport number; driver's license number, whether the license was issued by this state, another state, another country, or is an international driver's license; date of birth; bona fide residence; and mailing address of the primary user of the vehicle. If the primary user is a firm, association, or corporation, the application shall contain the business address and federal employer identification number of the primary user. The primary user's name and address shall not be printed on the registration receipt or the certificate of title.

Notwithstanding contrary provisions of this chapter or chapter 326 regarding titling and registration by means other than electronic means, the department may develop and implement a program to test the feasibility of electronic applications, titling, registering, and electronic funds transfer for vehicles traveling in interstate commerce in order to improve the efficiency and timeliness of the processes and to reduce costs for all parties involved.

The department shall adopt rules on the method for providing signatures for applications made by electronic means.

Surcharge imposed; §321.52A  
For future amendments to subsection 5 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §163, 205  
Section not amended; footnote added

### **321.20B Proof of security against liability — driving without liability coverage.**

1. Notwithstanding chapter 321A, which requires certain persons to maintain proof of financial responsibility, a person shall not drive a motor vehicle on the highways of this state unless financial liability coverage, as defined in section 321.1, subsection 24B, is in effect for the motor vehicle and unless the driver has in the motor vehicle the proof of financial liability coverage card issued for the motor vehicle, or if the vehicle is registered in another state, other evidence that financial liability coverage is in effect for the motor vehicle.

It shall be conclusively presumed that a motor vehicle driven upon a parking lot which is available to the public without charge or which is available to customers or invitees of a business or facility without charge was driven on the highways of this state in order to enter the parking lot, and this section shall be applicable to such a motor vehicle. As used in this section, "parking lot" includes access roads, drives, lanes, aisles, entrances, and exits to and from a parking lot described in this paragraph.

This subsection does not apply to the operator of a motor vehicle owned by or leased to the United States, this state or another state, or any political subdivision of this state or of another state, or to a motor vehicle which is subject to section 325A.6 or 327B.6.

2. *a.* An insurance company transacting business in this state shall issue to its insured owners of motor vehicles registered in this state a financial liability coverage card for each motor vehicle insured. Each financial liability coverage card shall identify the registration number or vehicle identification number of the motor vehicle insured and shall indicate the expiration date of the applicable insurance coverage. The financial liability coverage card shall also contain the name and address of the insurer or the name of the insurer and the name and address of the insurance agency, the name of the insured, and an emergency telephone number of the insurer or emergency telephone number of the insurance agency.

*b.* The insurance division and the department, as appropriate, shall adopt rules regarding the contents of a financial liability coverage card to be issued pursuant to this section. Notwithstanding the provisions of this section, a fleet owner is not required to maintain in each vehicle a financial liability coverage card with the individual registration number or the vehicle identification number of the vehicle included on the card. Such fleet owner shall be required to maintain a financial liability coverage card in each vehicle in the fleet including information deemed appropriate by the commissioner of insurance or the director, as applicable.

3. If the financial liability coverage for a motor vehicle which is registered in this state is canceled or terminated effective prior to the expiration date indicated on the financial liability coverage card issued for the vehicle, the person to whom the financial liability coverage card was issued shall destroy the card.

4. *a.* If a peace officer stops a motor vehicle registered in this state and the driver is unable to provide proof of financial liability coverage, the peace officer shall do one of the following:

(1) Issue a warning memorandum to the driver.

(2) Issue a citation to the driver. If a citation is issued, the citation shall be issued under this subparagraph unless the driver has been previously charged and cited for a violation of subsection 1. A citation which is issued and subsequently dismissed shall be disregarded for purposes of determining if the driver has been previously charged and cited.

(3) Issue a citation and remove the motor vehicle's license plates and registration receipt. Upon removing the license plates and registration receipt, the peace officer shall deliver the plates for destruction, as appropriate, and forward the

registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered. The motor vehicle may be driven for a time period of up to forty-eight hours after receiving the citation solely for the purpose of removing the motor vehicle from the highways of this state, unless the driver's operating privileges are otherwise suspended.

After receiving the citation, the driver shall keep the citation in the motor vehicle at all times while driving the motor vehicle as provided in this subparagraph, as proof of the driver's privilege to drive the motor vehicle for such limited time and purpose.

(4) (a) Issue a citation, remove the motor vehicle's license plates and registration receipt, and impound the motor vehicle. The peace officer shall deliver the plates for destruction, as appropriate, and forward the registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered.

(b) A motor vehicle which is impounded may be claimed by a person if the owner provides proof of financial liability coverage and proof of payment of any applicable fine and the costs of towing and storage for the motor vehicle. If the motor vehicle is not claimed within thirty days after impoundment, the motor vehicle may be treated as an abandoned vehicle pursuant to section 321.89.

(c) The holder of a security interest in a motor vehicle which is impounded pursuant to this subparagraph shall be notified of the impoundment within seventy-two hours of the impoundment of the motor vehicle and shall have the right to claim the motor vehicle upon the payment of all fees. However, if the value of the vehicle is less than the security interest, all fees shall be divided equally between the lienholder and the political subdivision impounding the vehicle.

b. An owner or driver of a motor vehicle who is charged with a violation of subsection 1 and issued a citation under paragraph "a", subparagraph (3) or (4), is subject to the following:

(1) An owner or driver who produces to the clerk of court, prior to the date of the individual's court appearance as indicated on the citation, proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, or, if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited, in the same manner as if the motor vehicle were owned by the driver, shall be given a receipt indicating that such proof was provided and be subject to one of the following:

(a) If the person was cited pursuant to paragraph "a", subparagraph (3), the owner or driver shall provide a copy of the receipt to the county treasurer of the county in which the motor vehicle

is registered and the owner shall be assessed a fifteen dollar administrative fee by the county treasurer who shall issue new license plates and registration to the person after payment of the fee.

(b) If the person was cited pursuant to paragraph "a", subparagraph (4), the owner or driver, after the owner provides proof of financial liability coverage to the clerk of court, may claim the motor vehicle after such person pays any applicable fine and the costs of towing and storage for the motor vehicle, and the owner or driver provides a copy of the receipt and the owner pays to the county treasurer of the county in which the motor vehicle is registered a fifteen dollar administrative fee, and the county treasurer shall issue new license plates and registration to the person.

(2) An owner or driver who is charged with a violation of subsection 1 and is unable to show that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited may do either of the following:

(a) Sign an admission of violation on the citation and remit to the clerk of court a scheduled fine as provided in section 805.8A, subsection 14, paragraph "f", for a violation of subsection 1. Upon payment of the fine to the clerk of court of the county where the citation was issued, payment of a fifteen dollar administrative fee to the county treasurer of the county in which the motor vehicle is registered, and providing proof of payment of any applicable fine and proof of financial liability coverages to the county treasurer of the county in which the motor vehicle is registered, the treasurer shall issue new license plates and registration to the owner.

(b) Request an appearance before the court on the matter. If the matter goes before the court, and the owner or driver is found guilty of a violation of subsection 1, the court may impose a fine as provided in section 805.8A, subsection 14, paragraph "f", for a violation of subsection 1, or the court may order the person to perform unpaid community service instead of the fine. Upon the payment of the fine or the entry of the order for unpaid community service, the person shall provide proof of payment or entry of such order and the county treasurer of the county in which the motor vehicle is registered shall issue new license plates and registration to the owner upon the owner providing proof of financial liability coverage and paying a fifteen dollar administrative fee to the county treasurer.

c. An owner or driver cited for a violation of subsection 1, who produces to the clerk of court prior to the date of the individual's court appearance as indicated on the citation proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, shall not be convicted of such violation and the citation issued shall be dismissed.

5. If the motor vehicle is not registered in this state and the driver is a nonresident, the peace of-

ficer shall do one of the following:

- a. Issue a warning memorandum to the driver.
- b. Issue a citation. An owner or driver who produces to the clerk of court prior to the date of the individual's court appearance as indicated on the citation proof that the financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, or if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited in the same manner as if the motor vehicle were owned by the driver, shall be given a receipt indicating that proof was provided, and the citation issued shall be dismissed.

6. This section does not apply to a snowmobile or all-terrain vehicle or to a motor vehicle identified in section 321.18, subsections 1 through 6, and subsection 8.

7. This section does not apply to a lienholder who has a security interest in a motor vehicle subject to the registration requirements of this chapter, so long as such lienholder maintains financial liability coverage for any motor vehicle driven or moved by the lienholder in which the lienholder has an interest.

8. This section does not apply to a motor vehicle owned by a motor vehicle dealer or wholesaler licensed pursuant to chapter 322.

9. The director of transportation and the commissioner of insurance shall adopt rules pursuant to chapter 17A to administer this section.

2003 Acts, ch 151, §23 – 25  
Subsection 4, paragraph b, subparagraph (1), unnumbered paragraph 1 amended

Subsection 4, paragraph c amended  
Subsection 5, paragraph b amended

### **321.24 Issuance of registration and certificate of title.**

1. Upon receipt of the application for title and payment of the required fees for a motor vehicle, trailer, or semitrailer, the county treasurer or the department shall, when satisfied as to the application's genuineness and regularity, and, in the case of a mobile home or manufactured home, that taxes are not owing under chapter 435, issue a certificate of title and, except for a mobile home or manufactured home, a registration receipt, and shall file the application, the manufacturer's or importer's certificate, the certificate of title, or other evidence of ownership, as prescribed by the department. The registration receipt shall be delivered to the owner and shall contain upon its face the date issued, the name and address of the owner, the registration number assigned to the vehicle, the amount of the fee paid, the amount of tax paid pursuant to section 423.7, the type of fuel used, and a description of the vehicle as determined by the department, and upon the reverse side a form for notice of transfer of the vehicle. The name and address of any lessee of the vehicle shall

not be printed on the registration receipt or certificate of title. Up to three owners may be listed on the registration receipt and certificate of title.

2. The county treasurer shall maintain in the county record system information contained on the registration receipt. The information shall be accessible by registration number and shall be open for public inspection during reasonable business hours. Copies the department requires shall be sent to the department in the manner and at the time the department directs.

3. The certificate of title shall contain upon its face the identical information required upon the face of the registration receipt. In addition, the certificate of title shall contain a statement of the owner's title, the title number assigned to the owner or owners of the vehicle, the amount of tax paid pursuant to section 423.7, the name and address of the previous owner, and a statement of all security interests and encumbrances as shown in the application, upon the vehicle described, including the nature of the security interest, date of notation, and name and address of the secured party.

4. If the prior certificate of title is from another state and indicates that the vehicle was rebuilt, the new certificate of title shall contain the designation of "REBUILT" stamped or printed on its face together with the name of the state issuing the prior title. The designation of "REBUILT" and the name of the other state shall be retained on all subsequent Iowa certificates of title for the vehicle. If the prior certificate of title is from another state and indicates that the vehicle was rebuilt, the registration receipt shall contain the designation of "REBUILT" stamped and printed on its face. The stamped designation of "REBUILT" shall be located on the center of the right side of the registration receipt in black letters no bigger than sixteen point type. The designation shall be retained on the face of all subsequent registration receipts for the vehicle.

5. If the prior certificate of title is from another state and indicates that the vehicle was junked, an Iowa junking certificate shall be issued according to section 321.52, subsections 2 and 3. If the prior certificate of title from another state indicates that the vehicle is salvaged and not rebuilt or is a salvage certificate of title, an Iowa salvage certificate of title shall be issued and a "SALVAGE" designation shall be retained on all subsequent Iowa certificates of title and registration receipts for the vehicle, except as provided under section 321.52, subsection 4, paragraph "b". The department may require that subsequent Iowa certificates of title retain other states' designations which indicate that a vehicle had incurred prior damage. The department shall determine the manner in which other states' rebuilt, salvage, or other designations are to be indicated on Iowa titles.

6. If the prior certificate of title is from another state and indicates that the vehicle was returned to the manufacturer pursuant to a law of another

state similar to chapter 322G, the new registration receipt and certificate of title, and all subsequent registration receipts and certificates of title issued for the vehicle, shall contain a designation indicating the vehicle was returned to the manufacturer. The department shall determine the manner in which other states' designations are to be indicated on Iowa registration receipts and certificates of title. The department may determine that a "REBUILT" or "SALVAGE" designation supersedes the designation required by this subsection and include the "REBUILT" or "SALVAGE" designation on the registration receipt and certificate of title in lieu of the designation required by this subsection.

7. The certificate shall bear the seal of the county treasurer or of the department, and the signature of the county treasurer, the deputy county treasurer, or the department director or deputy designee. The certificate of title shall contain upon the reverse side a form for assignment of title or interest and warranty by the owner, for reassignments by a dealer licensed in this state or in another state if the state in which the dealer is licensed permits Iowa licensed dealers to similarly reassign certificates of title. Attached to the certificate of title shall be an application for a new certificate of title by the transferee as provided in this chapter. However, titles for mobile homes or manufactured homes shall not be reassigned by licensed dealers. All certificates of title shall be typewritten or printed by other mechanical means. Notwithstanding section 321.1, subsection 17, as used in this paragraph "*dealer*" means every person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered under this chapter.

8. The original certificate of title shall be delivered to the owner if no security interest or encumbrance appears on the certificate. Otherwise the certificate of title shall be delivered by the county treasurer or the department to the person holding the first security interest or encumbrance as shown in the certificate.

9. The county treasurer or the department shall maintain in the county or department records system information contained on the certificate of title. The information shall be accessible by title certificate number for a period of three years from the date of notification of cancellation of title or that a new title has been issued as provided in this chapter. Copies the department requires shall be sent to the department in the manner and at the time the department directs. The department shall designate a uniform system of title numbers to indicate the county of issuance.

10. A vehicle shall be registered for the registration year. A vehicle registered for the first time in this state shall be registered for the remaining unexpired months of the registration year and pay a registration fee prorated for the remaining unex-

pired months of the registration year. Except for a vehicle registered under chapter 326, a vehicle registered for the first time during the eleventh month of the owner's registration year may be registered for the remaining unexpired months of the registration year as provided in this paragraph or for the remaining unexpired months of the registration year and for the next registration year, upon payment of the applicable registration fees.

11. If the county treasurer or department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, or a junking certificate has been issued for the vehicle but a certificate of title will not be reissued under section 321.52, subsection 3, and the vehicle qualifies as an antique vehicle under section 321.115, subsection 1, the county treasurer or department may register the vehicle but shall as a condition of issuing a certificate of title and registration receipt, require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The bond shall be in an amount equal to one and one-half times the current value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

Certain trailers exempt, see §321.123

For future amendment to this section effective July 1, 2004, see 2003 Acts, ch 8, §9, 29, and 2003 Acts, 1st Ex, ch 2, §164, 205

Section not amended; footnote added

### **321.30 Grounds for refusing registration or title.**

The department or the county treasurer shall refuse registration and issuance of a certificate of title or any transfer of title and registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has

failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration and issuance of a certificate of title of the vehicle under this chapter.

2. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways, providing such condition is revealed by a member of this department, or any peace officer.

3. That the department or the county treasurer has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration and issuance of a certificate of title would constitute a fraud against the rightful owner.

4. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.

5. That the required fee has not been paid except as provided in section 321.48.

6. That the required use tax has not been paid.

7. If application for registration and certificate of title for a new vehicle is not accompanied by a manufacturer's or importer's certificate duly assigned.

8. If application for a transfer of registration and issuance of a certificate of title for a used vehicle registered in this state is not accompanied by a certificate of title duly assigned.

9. If application and supporting documents are insufficient to authorize the issuance of a certificate of title as provided by this chapter, except that an initial registration or transfer of registration may be issued as provided in section 321.23.

10. In the case of a mobile home or manufactured home, that taxes are owing under chapter 435 for a previous year.

11. In the case of a mobile home or manufactured home converted from real estate, real estate taxes which are delinquent.

12. If a commercial motor vehicle has been assigned to be operated by a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.

13. The department or the county treasurer knows that an applicant for renewal of a registration has a delinquent account, charge, fee, loan, taxes, or other indebtedness owed to or being collected by the state, from information received pursuant to sections 8A.504 and 421.17. An applicant may contest this action by requesting a contested case proceeding from the agency that referred the debt for collection pursuant to section 8A.504. This subsection shall apply only to a renewal of registration and shall not apply to the issuance of an original registration or to the issuance of a certificate of title.

14. The department or the county treasurer shall refuse registration of a vehicle if the applicant is under the age of eighteen years, unless the applicant has an Iowa driver's license or the application is being made by more than one applicant

and one of the applicants is at least eighteen years of age.

The department or the county treasurer shall also refuse registration of a vehicle if the applicant for registration of the vehicle has failed to pay the required registration fees of any vehicle owned or previously owned when the registration fee was required to be paid by the applicant, and for which vehicle the registration was suspended or revoked under section 321.101, subsection 1, paragraph "d", or section 321.101A, until the fees are paid together with any accrued penalties.

2003 Acts, ch 145, §245  
Subsection 13 amended

### 321.31 Records system.

A state and county records system shall be maintained in the following manner:

1. *State records system.* The department shall install and maintain a records system which shall contain the name and address of the vehicle owner, current and previous registration number, vehicle identification number, make, model, style, date of purchase, registration certificate number, maximum gross weight, weight, list price or value of the vehicle as fixed by the department, fees paid and date of payment. The records system shall also contain a record of the certificate of title including such information as the department deems necessary. The information to be kept in the records system shall be entered within forty-eight hours after receipt insofar as is practical. The records system shall constitute the permanent record of ownership of each vehicle titled under the laws of this state.

The department may make photostatic, microfilm, or other photographic copies of certificates of title, registration receipts, or other records, reports or documents which are required to be retained by the department. When copies have been made, the department may destroy the original records in such manner as prescribed by the director. The photostatic, microfilm, or other photographic copies, when no longer of use, may be destroyed in the manner prescribed by the director, subject to the approval of the state records commission. Photostatic, microfilm, or other photographic copies of records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of the copies of records. Records of vehicle certificates of title may be destroyed seven years after the date of issue.

The director shall maintain a records system of delinquent accounts owed to the state using information provided through the computerized data bank established in section 421.17. The department and county treasurers shall use the information maintained in the records system to determine if applicants for renewal of registration have delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by

the state as provided pursuant to section 8A.504. The director, the director of the department of administrative services, and the director of revenue shall establish procedures for updating the delinquent accounts records to add and remove accounts, as applicable.

2. *County records system.* Each county treasurer's office shall maintain a county records system for vehicle registration and certificate of title documents. The records system shall consist of information from the certificate of title including the notation and cancellation of security interests, and information from the registration receipt. The information shall be maintained in a manner approved by the department.

Records of vehicle certificates of title for vehicles that are delinquent for five or more consecutive years may be destroyed by the county treasurer. Automated files, optical disks, microfiche records, and photostatic, microfilm or other photographic copies of records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of the records.

2003 Acts, ch 145, §246  
Subsection 1, unnumbered paragraph 3 amended

**321.34 Plates or validation sticker furnished — retained by owner — special plates.**

1. *Plates issued.* The county treasurer upon receiving application, accompanied by proper fee, for registration of a vehicle shall issue to the owner one registration plate for a motorcycle, motorized bicycle, truck tractor, trailer, or semitrailer and two registration plates for every other motor vehicle. The registration plates, including special registration plates, shall be assigned to the owner of a vehicle. When the owner of a registered vehicle transfers or assigns ownership of the vehicle to another person, the owner shall remove the registration plates from the vehicle. The owner shall forward the plates to the county treasurer where the vehicle is registered or the owner may have the plates assigned to another vehicle within thirty days after transfer, upon payment of the fees required by law. The owner shall immediately affix registration plates retained by the owner to another vehicle owned or acquired by the owner, providing the owner complies with section 321.46. The department shall adopt rules providing for the assignment of registration plates to the transferee of a vehicle for which a credit is allowed under section 321.46, subsection 6.

2. *Validation stickers.* In lieu of issuing new registration plates each registration year for a vehicle renewing registration, the department may reassign the registration plates previously issued to the vehicle and may adopt and prescribe an annual validation sticker indicating payment of registration fees. The department shall issue one validation sticker for each set of registration plates. The sticker shall specify the month and

year of expiration of the registration plates. The sticker shall be displayed only on the rear registration plate, except that the sticker shall be displayed on the front registration plate of a truck-tractor.

The state department of transportation shall adopt rules to provide for the placement of the motor vehicle registration validation sticker.

3. *Radio operators plates.* The owner of an automobile, motorcycle, trailer, or motor truck who holds an amateur radio license issued by the federal communications commission may, upon written application to the county treasurer accompanied by a fee of five dollars, order special registration plates bearing the call letters authorized the radio station covered by the person's amateur radio license. When received by the county treasurer, such special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. Not more than one set of special registration plates may be issued to an applicant. Said fee shall be in addition to and not in lieu of the fee for regular registration plates. Special registration plates must be surrendered upon expiration of the owner's amateur radio license and the owner shall thereupon be entitled to the owner's regular registration plates. The county treasurer shall validate special plates in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

4. *Multiyear plates.* In lieu of issuing annual registration plates for trailers, semitrailers, motor trucks, and truck tractors, the department may issue a multiyear registration plate for a three-year period or a permanent registration plate for trailers and semitrailers licensed under chapter 326, and a permanent registration plate for motor trucks and truck tractors licensed under chapter 326, upon payment of the appropriate registration fee. Payment of fees for trailers and semitrailers for a permanent registration plate shall, at the option of the registrant, be made at five-year intervals or on an annual basis. Fees from three-year and five-year payments shall not be reduced or prorated. Payment of fees for motor trucks and truck tractors shall be made on an annual basis.

5. *Personalized registration plates.*

a. Upon application and the payment of a fee of twenty-five dollars, the director may issue to the owner of a motor vehicle registered in this state or a trailer or travel trailer registered in this state, personalized registration plates marked with up to seven initials, letters, or combination of numerals and letters requested by the owner. However, personalized registration plates for motorcycles and motorized bicycles shall be marked with no more than six initials, letters, or combinations of numerals and letters. Upon receipt of the personalized registration plates, the applicant shall surrender the regular registration plates to the

county treasurer. The fee for issuance of the personalized registration plates shall be in addition to the regular annual registration fee.

b. The county treasurer shall validate personalized registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee. A person renewing a personalized registration plate within one month following the time requirements under section 321.40 may renew the personalized plate without paying the additional registration fee under paragraph "a" but shall pay the five-dollar fee in addition to the regular registration fee and any penalties subject to regular registration plate holders for late renewal.

c. The fees collected by the director under this section shall be paid to the treasurer of state and credited by the treasurer of state as provided in section 321.145.

6. *Sample vehicle registration plates.* Vehicle registration plates displaying the general design of regular registration plates, with the word "sample" displayed on the plate, may be furnished to any person upon payment of a fee of three dollars, except that such plates may be furnished to governmental agencies without cost. Sample registration plates shall not be attached to a vehicle moved on the highways of this state.

7. *Collegiate plates.*

a. Upon application and payment of the proper fees, the director may issue to the owner of a motor vehicle, trailer, or travel trailer registered in this state, collegiate registration plates. Upon receipt of the collegiate registration plates, the applicant shall surrender the regular registration plates to the county treasurer.

b. Collegiate registration plates shall be designed for each of the three state universities. The collegiate registration plates shall be designated as follows:

(1) The letters "ISU" followed by a four-digit number all in cardinal on a gold background for Iowa state university of science and technology.

(2) The letters "UNI" followed by a four-digit number all in purple on a gold background for the university of northern Iowa.

(3) The letters "UI" followed by a four-digit number all in black on a gold background for the state university of Iowa.

(4) In lieu of the letter number designation provided under subparagraphs (1) through (3), the collegiate registration plates may be designated in the manner provided for personalized registration plates under subsection 5, paragraph "a", in the colors designated for the respective universities under subparagraphs (1) through (3).

c. The fees for a collegiate registration plate are as follows:

(1) A registration fee of twenty-five dollars.

(2) A special collegiate registration fee of twenty-five dollars.

These fees are in addition to the regular annual registration fee. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited by the treasurer of state to the road use tax fund. Notwithstanding section 423.24 and prior to the revenues being credited to the road use tax fund under section 423.24, subsection 1, paragraph "b", the treasurer of state shall credit monthly from those revenues respectively, to Iowa state university of science and technology, the university of northern Iowa, and the state university of Iowa, the amount of the special collegiate registration fees collected in the previous month for collegiate registration plates designed for the university. The moneys credited are appropriated to the respective universities to be used for scholarships for students attending the universities.

d. The county treasurer shall validate collegiate registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee.

e. A collegiate registration plate shall not be issued if its combination of alphanumeric characters are identical to those contained on a current personalized registration plate issued under subsection 5. However, the owner of a motor vehicle who has a personalized registration plate issued for the motor vehicle may, after proper application and payment of fees, be issued a collegiate registration plate containing the same alphanumeric characters as those on the personalized plate. Upon receipt of the collegiate registration plates, the owner shall surrender the personalized registration plates to the county treasurer.

8. *Congressional medal of honor plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, motorcycle, trailer, or motor truck who has been awarded the congressional medal of honor may, upon written application to the department, order special registration plates which shall be red, white, and blue in color and shall bear an emblem of the congressional medal of honor and an identifying number. Each applicant applying for special registration plates under this subsection may purchase only one set of registration plates under this subsection. The application is subject to approval by the department and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The special plates are subject to an annual registration fee of fifteen dollars. The department shall validate the special plates in the same manner as regular registration plates are validated under this section. The department shall not issue special registration plates until service organizations in the state have furnished the department either the special dies or the cost of the special dies necessary for the manufacture of the special registration plate.

The surviving spouse of a person who was issued special plates under this subsection may continue to use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the fifteen dollar annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

8A. *Ex-prisoner of war special plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, motorcycle, trailer, or motor truck who was a prisoner of war during the Second World War at any time between December 7, 1941, and December 31, 1946, the Korean Conflict at any time between June 25, 1950, and January 31, 1955, or the Vietnam Conflict at any time between August 5, 1964, and June 30, 1973, all dates inclusive, may, upon written application to the department, order only one set of special registration plates with an ex-prisoner of war processed emblem. The emblem shall be designed by the department in cooperation with the adjutant general and shall signify that the owner was a prisoner of war as described in this subsection. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

9. *Leased vehicles.* Registration plates under this section, including disabled veteran plates specified in section 321.105, may be issued to the lessee of a motor vehicle if the lessee provides evidence of a lease for a period of more than sixty days and if the lessee complies with the requirements, under this section, for issuance of the specific registration plates.

10. *Fire fighter plates.*

a. An owner referred to in subsection 12 who is a current or retired member of a paid or volunteer fire department may, upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa fire fighters' associations, which signify that the applicant is a current or retired member of a paid or volunteer fire department.

b. The application shall be approved by the department in consultation with representatives designated by the Iowa fire fighters' associations, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates is twenty-five dollars which shall be paid in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee.

c. The special fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the Paul Ryan memorial fire fighter safety training fund created pursuant to section 100B.12 the amount of the special fees collected in the previous month for the fire fighter plates.

d. For purposes of this subsection, a person is considered to be retired if the person is recognized by the chief of the fire department where the individual served, and on record, as officially retired from the fire department. Special registration plates with a fire fighter emblem shall be surrendered, as provided in subsection 12, in exchange for regular registration plates upon termination of the motor vehicle owner's membership in the paid or volunteer fire department, unless the person is a retired member in good standing.

10A. *Emergency medical services plates.* The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer who is a current member of a paid or volunteer emergency medical services agency may, upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa emergency medical services association, which plates signify that the applicant is a current member of a paid or volunteer emergency medical services agency. The application shall be approved by the department, in consultation with representatives designated by the Iowa emergency medical services association, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates shall be twenty-five dollars which shall be in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee.

11. *Natural resources plates.*

a. Upon application and payment of the proper fees, the director may issue natural resources plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Natural resources plates shall be designed by the department in cooperation with the department of natural resources which design shall include on the plate the name of the county where the vehicle is registered.

c. The special natural resources fee for letter number designated natural resources plates is thirty-five dollars. The fee for personalized natural resources plates is forty-five dollars which shall be paid in addition to the special natural resources fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph "b", the treasurer of state shall credit monthly from those revenues to the Iowa resources enhancement and protection fund created pursuant to section 455A.18, the amount of the special natural resources fees collected in the previous month for the natural resources plates.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration receipt and plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special natural resources fee for letter number designated plates is ten dollars which shall be paid in addition to the regular annual registration fee. The annual fee for personalized natural resources plates is five dollars which shall be paid in addition to the annual special natural resources fee and the regular annual registration fee. The annual special natural resources fee shall be credited as provided under paragraph "c".

11A. *Love our kids plates.*

a. Upon application and payment of the proper fees, the director may issue "love our kids" plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Love our kids plates shall be designed by the department in cooperation with the Iowa department of public health.

c. The special fee for letter number designated love our kids plates is thirty-five dollars. The fee for personalized love our kids plates is twenty-five dollars, which shall be paid in addition to the special love our kids fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and

credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the Iowa department of public health the amount of the special fees collected in the previous month for the love our kids plates. Notwithstanding section 8.33, moneys transferred under this subsection shall not revert to the general fund of the state.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration receipt and plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special love our kids fee for letter number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual fee for personalized love our kids plates is five dollars, which shall be paid in addition to the annual special love our kids fee and the regular annual registration fee. The annual love our kids fee shall be credited as provided under paragraph "c".

11B. *Motorcycle rider education plates.*

a. Upon application and payment of the proper fees, the director may issue "motorcycle rider education" plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Motorcycle rider education plates shall be designed by the department.

c. The special fee for letter number designated motorcycle rider education plates is thirty-five dollars. The fee for personalized motorcycle rider education plates is twenty-five dollars, which shall be paid in addition to the special motorcycle rider education fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the department for use in accordance with section 321.180B, subsection 6, the amount of the special fees collected in the previous month for the motorcycle rider education plates.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration receipt and plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special motorcycle rider education fee for letter number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual fee

for personalized motorcycle rider education plates is five dollars, which shall be paid in addition to the annual special motorcycle rider education fee and the regular annual registration fee. The annual motorcycle rider education fee shall be credited as provided under paragraph “c”.

12. *Special registration plates — general provisions.*

a. The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer may, upon written application to the department, order special registration plates with a distinguishing processed emblem as authorized by this section or as approved by the department. The fee for the issuance of special registration plates is twenty-five dollars for each vehicle, unless otherwise provided by this section, which fee is in addition to the regular annual registration fee. The county treasurer shall validate special registration plates with a distinguishing processed emblem in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

b. Upon receipt of a special registration plate with a distinguishing processed emblem as authorized by this section or as approved by the department, the applicant shall surrender the regular registration plates to the county treasurer. An applicant no longer eligible for a special registration plate shall surrender the special vehicle registration plates to the county treasurer for issuance of regular registration plates.

c. An applicant may, upon payment of the additional fee for a personalized plate as provided in subsection 5, obtain a personalized special registration plate with a processed emblem. Personalized plates authorized by this section with the processed emblem shall be limited to no more than five initials, letters, or combinations of numerals and letters.

d. A special registration plate issued for a motorcycle or motorized bicycle under this section shall be designated in the manner provided for personalized registration plates under subsection 5, paragraph “a”.

12A. *Special registration plates — armed forces services.* An owner of a vehicle referred to in subsection 12 who applies for any type of special registration plates associated with service in the United States armed forces shall be issued one set of the special registration plates at no charge, but shall be subject to the annual registration fee of fifteen dollars, if all of the following conditions are met:

a. The owner is eligible for, but has relinquished to the department or the county treasurer or has not been issued, congressional medal of honor, ex-prisoner of war, or legion of merit special registration plates under this section, or disabled veteran registration plates under section 321.105.

b. The owner provides the appropriate information regarding the owner’s eligibility for any of the special registration plates described in paragraph “a”, and regarding the owner’s eligibility for the special registration plates for which the owner has applied, as required by the department.

A disabled veteran shall be exempt from payment of the fifteen dollar annual registration fee as provided in section 321.105.

Upon the death of the vehicle owner entitled to the special registration plates, the special registration plates shall be surrendered to the department or the county treasurer.

13. *New special registration plates — department review.*

a. Any person may submit a request to the department to recommend a new special registration plate with a processed emblem. The request shall provide a proposed design for the processed emblem, the purpose of the special registration plate with the processed emblem, any eligibility requirements for purchase or receipt of the special registration plate with the processed emblem, and evidence there is sufficient interest in the special registration plate with the processed emblem to pay implementation costs. The department shall consider the request and make a recommendation based upon criteria established by the department which shall include consideration of the information included in the request, the number of special registration plates with processed emblems currently authorized, and any other relevant factors.

b. If a request for a proposed special registration plate with a processed emblem meets the criteria established by the department, the department shall, in consultation with the persons seeking the special registration plate with the processed emblem, approve a recommended design for the processed emblem, and propose eligibility requirements for the special registration plate with the processed emblem.

c. The department shall adopt rules pursuant to chapter 17A regarding the approval and issuance of special registration plates.

d. A state agency may submit a request to the department recommending a special registration plate. The alternate fee for letter number designated plates is thirty-five dollars with a ten dollar annual special renewal fee. The fee for personalized plates is twenty-five dollars which is in addition to the alternative fee of thirty-five dollars with an annual personalized plate renewal fee of five dollars which is in addition to the special renewal fee of ten dollars. The alternate fees are in addition to the regular annual registration fee. The alternate fees collected under this paragraph shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24 and prior to the crediting of the revenues to the road use tax fund under section 423.24, subsection 1, paragraph “b”, the treasurer of state shall credit monthly the amount of the al-

ternate fees collected in the previous month to the state agency that recommended the special registration plate.

14. *Persons with disabilities special plates.* An owner referred to in subsection 12 or an owner of a trailer used to transport a wheelchair who is a person with a disability, or who is the parent or guardian of a child who resides with the parent or guardian owner and who is a person with a disability, as defined in section 321L.1, may, upon written application to the department, order special registration plates with a persons with disabilities processed emblem designed by the department bearing the international symbol of accessibility. The special registration plates with a persons with disabilities processed emblem shall only be issued if the application is accompanied with a statement from a physician licensed under chapter 148, 149, 150, or 150A, a physician assistant licensed under chapter 148C, an advanced registered nurse practitioner licensed under chapter 152, or a chiropractor licensed under chapter 151, written on the physician's, physician assistant's, nurse practitioner's, or chiropractor's stationery, stating the nature of the applicant's or the applicant's child's disability and such additional information as required by rules adopted by the department, including proof of residency of a child who is a person with a disability. If the application is approved by the department, the special registration plates with a persons with disabilities processed emblem shall be issued to the applicant. There shall be no fee in addition to the regular annual registration fee for the special registration plates with a persons with disabilities processed emblem. The authorization for special registration plates with a persons with disabilities processed emblem shall not be renewed without the applicant furnishing evidence to the department that the owner of the vehicle or the owner's child is still a person with a disability as defined in section 321L.1. An owner who has a child who is a person with a disability shall provide satisfactory evidence to the department that the child with a disability continues to reside with the owner. The registration plates with a persons with disabilities processed emblem shall be surrendered in exchange for regular registration plates as provided in subsection 12 when the owner of the vehicle or the owner's child no longer qualifies as a person with a disability as defined in section 321L.1 or when the owner's child who is a person with a disability no longer resides with the owner.

15. *Legion of merit special plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, motorcycle, trailer, or motor truck, who has been awarded the legion of merit may, upon written application to the department and presentation of satisfactory proof of the award of the legion of merit as established by the Congress of the United States, order special registration plates with a legion of merit pro-

cessed emblem. The emblem shall be designed by the department in cooperation with the adjutant general and shall signify that the owner was awarded the legion of merit. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

16. *National guard special plates.* An owner referred to in subsection 12 who is a member of the national guard, as defined in chapter 29A, may, upon written application to the department, order special registration plates with a national guard processed emblem with the emblem designed by the department in cooperation with the adjutant general which emblem signifies that the applicant is a member of the national guard. The application shall be approved by the department in consultation with the adjutant general. Special registration plates with a national guard processed emblem shall be surrendered, as provided in subsection 12, in exchange for regular registration plates upon termination of the owner's membership in the active national guard.

17. *Pearl Harbor special plates.* An owner referred to in subsection 12 who was at Pearl Harbor, Hawaii, as a member of the armed services of the United States on December 7, 1941, may, upon written application to the department, order special registration plates with a Pearl Harbor processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department.

18. *Purple heart special plates.* An owner referred to in subsection 12 who was awarded a purple heart medal by the United States government for wounds received in military or naval combat against an armed enemy of the United States may, upon written application to the department and presentation of satisfactory proof of the award of the purple heart medal, order special registration plates with a purple heart processed emblem. The design of the emblem shall include a representation of a purple heart medal and ribbon. The application is subject to approval by the department in consultation with the adjutant general.

19. *United States armed forces retired special plates.* An owner referred to in subsection 12

who is a retired member of the United States armed forces may, upon written application to the department and upon presentation of satisfactory proof of membership, order special registration plates with a United States armed forces retired processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department. For purposes of this subsection, a person is considered to be retired if the person is recognized by the United States armed forces as retired from the United States armed forces.

20. *Silver or bronze star plates.* An owner referred to in subsection 12 who was awarded a silver or a bronze star by the United States government, may, upon written application to the department and presentation of satisfactory proof of the award of the silver or bronze star, order special registration plates with a silver or bronze star processed emblem. The emblem shall be designed by the department in consultation with the adjutant general.

21. *Iowa heritage special plates.*

a. An owner referred to in subsection 12 may, upon written application to the department, order special registration plates with an Iowa heritage emblem. The emblem shall contain a picture of the American gothic house and the words "Iowa Heritage" and shall be designed by the department in consultation with the state historical society of Iowa.

b. The special Iowa heritage fee for letter number designated plates is thirty-five dollars. The special fee for personalized Iowa heritage plates is twenty-five dollars which shall be paid in addition to the special fee of thirty-five dollars. The annual special Iowa heritage fee is ten dollars for letter number designated registration plates and is fifteen dollars for personalized registration plates which shall be paid in addition to the regular annual registration fee.

c. The special fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph "b", the treasurer of state shall credit monthly to the Iowa heritage fund created under section 303.9A the amount of the special fees collected in the previous month for the Iowa heritage plates.

22. *Education plates.*

a. An owner referred to in subsection 12, upon written application to the department, may order special registration plates with an education emblem. The education emblem shall be designed by the department in cooperation with the department of education.

b. The special school transportation fee for letter number designated education plates is thirty-

five dollars. The fee for personalized education plates is twenty-five dollars, which shall be paid in addition to the special school transportation fee of thirty-five dollars. The annual special school transportation fee is ten dollars for letter number designated registration plates and is fifteen dollars for personalized registration plates which shall be paid in addition to the regular annual registration fee. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the school budget review committee in accordance with section 257.31, subsection 17, the amount of the special school transportation fees collected in the previous month for the education plates.

23. *Breast cancer awareness plates.*

a. Upon application and payment of the proper fees, the director may issue breast cancer awareness plates to an owner of a motor vehicle referred to in subsection 12.

b. Breast cancer awareness plates shall contain an image of a pink ribbon and shall be designed by the department in consultation with the Susan G. Komen foundation.

c. The special fee for letter number designated breast cancer awareness plates is thirty-five dollars. The fee for personalized breast cancer awareness plates is twenty-five dollars, which shall be paid in addition to the special breast cancer awareness fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.24, and prior to the crediting of revenues to the road use tax fund under section 423.24, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the Iowa department of public health the amount of the special fees collected in the previous month for the breast cancer awareness plates and such funds are appropriated to the Iowa department of public health. The Iowa department of public health shall distribute one hundred percent of the funds received monthly in the form of grants to support breast cancer screenings for both men and women who meet eligibility requirements like those established by the Susan G. Komen foundation. In the awarding of grants, the Iowa department of public health shall give first consideration to affiliates of the Susan G. Komen foundation and similar nonprofit organizations providing for breast cancer screenings at no cost in Iowa. Notwithstanding section 8.33, moneys transferred under this subsection shall not revert to the general fund of the state.

d. Upon receipt of the special registration plates, the applicant shall surrender the current

registration receipt and plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special breast cancer awareness fee for letter number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual special fee for personalized breast cancer awareness plates is five dollars, which shall be paid in addition to the annual special breast cancer awareness fee and the regular annual registration fee. The annual special breast cancer awareness fee shall be credited and transferred as provided under paragraph "c".

2003 Acts, ch 3, §1; 2003 Acts, ch 7, §1 – 9; 2003 Acts, ch 105, §2  
Veterans license fee fund, see §35A.11  
For applicable scheduled fines, see §805.8A, subsection 2, paragraph a  
For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §165 – 171, 205  
See Code editor's note  
Subsection 3 amended  
Subsection 8, unnumbered paragraph 1 amended  
Subsection 8A, unnumbered paragraph 1 amended  
Subsections 10 and 10A amended  
Subsection 11, paragraph a amended  
Subsection 11A, paragraph a amended  
Subsection 11B, paragraph a amended  
Subsection 12, paragraph a amended  
Subsection 15, unnumbered paragraph 1 amended  
NEW subsection 23

### **321.35 Plates — reflective material — bidding procedures.**

All motor vehicle registration plates shall be treated with a reflective material according to specifications proposed by the director and approved by the commission.

The department shall not enter into any contract requiring an expenditure of at least five hundred thousand dollars for the manufacture of motor vehicle registration plates to be reissued to owners under this chapter unless competitive bidding procedures as provided in chapter 8A, subchapter III, are followed.

2003 Acts, ch 145, §247  
Unnumbered paragraph 2 amended

### **321.39 Expiration of registration.**

Except as provided in this chapter every vehicle registration, registration card, and registration plate shall expire as follows:

1. For vehicles registered under chapter 326 and any motor truck, truck tractor, or road tractor registered for a combined gross weight exceeding five tons, at midnight on the last day of December of each year.
2. For vehicles registered by the county treasurer, at midnight on the last day of the registration year. A person shall not be considered to be driving a motor vehicle with an expired registration for a period of one month following the expiration date of the vehicle registration. The one-month period shall be the same as the period defined in section 321.134, subsection 1.
3. For vehicles on which the first installment

of an annual fee has been paid, at midnight on the last day of June or the first business day of July when June 30 falls on Saturday, Sunday, or a holiday; for vehicles on which the second installment of an annual fee has been paid, at midnight on the last day of December or the first business day of January when December 31 falls on Saturday, Sunday, or a holiday.

4. For vehicles registered without payment of fees as provided in section 321.19, when designated by the department.

Registration for every vehicle registered by the county treasurer shall expire upon transfer of ownership.

2003 Acts, ch 24, §3  
Subsections 2 and 3 amended

### **321.40 Application for renewal — notification — reasons for refusal.**

Application for renewal of a vehicle registration shall be made on or after the first day of the month prior to the month of expiration of registration and up to and including the last day of the month following the month of expiration of registration. The registration shall be renewed upon payment of the appropriate registration fee. Application for renewal for a vehicle registered under chapter 326 shall be made on or after the first day of the month of expiration of registration and up to and including the last day of the month following the month of expiration of registration.

On or before the fifteenth day of the eleventh month of a vehicle's registration year, the department shall create an electronic file and the county treasurer shall send a statement of fees due to the appropriate owner of record. After the department has generated the electronic file used to produce statements for a registration month, and before the fifteenth day of the month following expiration of a vehicle's registration year, the department shall create a subsequent electronic file and the county treasurer shall send a statement of fees due to the appropriate owner of record for any vehicle subsequently registered for that registration month. The statement shall be mailed or electronically transmitted to the most current address of record, showing information sufficient to identify the vehicle and a listing of the various fees as appropriate. Failure to receive a statement shall have no effect upon the accrual of penalty at the appropriate date.

Registration receipts issued for renewals shall have the word "renewal" imprinted thereon and, if the owner making a renewal application has been issued a certificate of title, the title number shall appear on the registration receipt. All registration receipts for renewals shall be typewritten or printed by other mechanical means. The applicant shall receive a registration receipt.

The county treasurer shall refuse to renew the registration of a vehicle registered to a person when notified by the department through the dis-

tributed teleprocessing network that the person has not paid restitution as defined under section 910.1, subsection 4, to a clerk of the court located within the state. Each clerk of court shall, on a daily basis, notify the department through the Iowa court information system of the full name and social security number of all persons who owe delinquent restitution and whose restitution obligation has been satisfied or canceled. This paragraph does not apply to the transfer of a registration or the issuance of a new registration.

The county treasurer shall refuse to renew the registration of a vehicle registered to the applicant for renewal of registration if the applicant has failed to pay any local vehicle taxes due in that county on that vehicle or any other vehicle owned or previously owned by the applicant until such local vehicle taxes are paid.

The county treasurer shall refuse to renew the registration of a vehicle registered to the applicant if the county treasurer knows that the applicant has a delinquent account, charge, fee, loan, taxes, or other indebtedness owed to or being collected by the state, from information provided pursuant to sections 8A.504 and 421.17. An applicant may contest this action by requesting a contested case proceeding from the agency that referred the debt for collection pursuant to section 8A.504.

When application is made for the renewal of a motor vehicle registration on or after December 1, 1982, the person in whose name the registration is recorded shall notify the county treasurer of the type of fuel used by the vehicle if the type of fuel used is different from that which is shown on the registration receipt. If a motor vehicle registration indicates that the vehicle uses or may use a special fuel as defined in chapter 452A the county treasurer shall issue a special fuel user identification sticker. The person who owns or controls the vehicle shall affix the sticker in a prominent place on the vehicle adjacent to the place where the special fuel is delivered into the motor vehicle fuel supply tank.

2003 Acts, ch 145, §248  
Unnumbered paragraph 6 amended

### **321.41 Change of address or name or fuel type.**

1. Whenever any person after making application for or obtaining the registration of a vehicle shall move from the address named in the application or shown upon a registration card such person shall within ten days thereafter notify the county treasurer of the county in which the registration of said vehicle is of record, in writing of the person's old and new addresses.

2. Whenever the name of any person who has made application for or obtained the registration of a vehicle is thereafter legally changed such person shall within ten days notify the county treasurer of the county in which the title of said vehicle is of record, of such former and new name.

3. A person who has registered a vehicle in a county, other than the county designated on the vehicle registration plate, may apply to the county treasurer where the vehicle is registered for new registration plates upon payment of a fee of five dollars and the return of the former county registration plates.

4. When a motor vehicle is modified to use a different fuel type or to use more than one fuel type the person in whose name the vehicle is registered shall within thirty days notify the county treasurer of the county in which the registration of the vehicle is of record of the new fuel type or alternative fuel types. The county treasurer shall make the record of such changes available to the department of revenue. If the vehicle uses or may use a special fuel the county treasurer shall issue a special fuel identification sticker.

2003 Acts, ch 145, §286  
For applicable scheduled fine, see §805.8A, subsection 2, paragraph a  
Terminology change applied

### **321.45 Title must be transferred with vehicle.**

1. No manufacturer, importer, dealer or other person shall sell or otherwise dispose of a new vehicle subject to registration under the provisions of this chapter to a dealer to be used by such dealer for purposes of display and lease or resale without delivering to such dealer a manufacturer's or importer's certificate duly executed and with such assignments thereon as may be necessary to show title in the purchaser thereof; nor shall such dealer purchase or acquire a new vehicle that is subject to registration without obtaining from the seller thereof such manufacturer's or importer's certificate. In addition to the assignments stated herein, such manufacturer's or importer's certificate shall contain thereon the identification and description of the vehicle delivered and the name and address of the dealer to whom said vehicle was originally sold over the signature of an authorized official of the manufacturer or importer who made the original delivery.

For each new mobile home, manufactured home, travel trailer and camping trailer said manufacturer's or importer's certificate shall also contain thereon the exterior length and exterior width of said vehicle not including any area occupied by any hitching device, and the manufacturer's shipping weight.

Completed motor vehicles, other than class "B" motor homes, which are converted, modified or altered shall retain the identity and model year of the original manufacturer of the vehicle. Motor homes and all other motor vehicles manufactured from chassis or incomplete motor vehicles manufactured by another may have the identity and model year assigned by the final manufacturer.

2. No person shall acquire any right, title, claim or interest in or to any vehicle subject to registration under this chapter from the owner there-

of except by virtue of a certificate of title issued or assigned to the person for such vehicle or by virtue of a manufacturer's or importer's certificate delivered to the person for such vehicle; nor shall any waiver or estoppel operate in favor of any person claiming title to or interest in any vehicle against a person having possession of the certificate of title or manufacturer's or importer's certificate for such vehicle for a valuable consideration except in case of:

a. The perfection of a lien or security interest by notation on the certificate of title as provided in section 321.50, or

b. The perfection of a security interest in new or used vehicles held as inventory for sale as provided in Uniform Commercial Code, chapter 554, Article 9, or

c. A dispute between a buyer and the selling dealer who has failed to deliver or procure the certificate of title as promised, or

d. Except for the purposes of section 321.493. Except in the above enumerated cases, no court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title or manufacturer's or importer's certificate duly issued or assigned in accordance with the provisions of this chapter.

3. Upon the transfer of any registered vehicle, the owner, except as otherwise provided in this chapter, shall endorse an assignment and warranty of title upon the certificate of title for such vehicle with a statement of all liens and encumbrances thereon, and the owner shall deliver the certificate of title to the purchaser or transferee at the time of delivering the vehicle except as otherwise provided in this chapter. The owner shall indicate to the transferee the name of the county in which the vehicle was last registered and the registration expiration date.

4. After acquiring a used mobile home or manufactured home to be titled in Iowa, a manufacturer or mobile home retailer, as defined in section 322B.2 shall within thirty days apply for and obtain from the county treasurer of the retailer's county of residence a new certificate of title for the mobile home or manufactured home. In the event that there is a prior lien or encumbrance to be released, as required by section 321.50, subsection 4, the thirty-day time period in this subsection does not begin to run until the lien or encumbrance is released.

For applicable scheduled fines, see §805.8A, subsection 2, paragraph c  
For future amendments to subsection 2, paragraph a effective July 1, 2004, see 2003 Acts, ch 8, §10, 29  
Section not amended; footnote added

#### **321.48 Vehicles acquired for resale.**

1. When the transferee of a vehicle is a dealer who holds the vehicle for resale and operates the vehicle only for purposes incident to a resale and

displays a dealer plate on the vehicle or does not drive such vehicle or permit it to be driven upon the highways, such transferee shall not be required to obtain a new registration or a new certificate of title but upon transferring title or interest to another person shall execute and acknowledge an assignment and warranty of title upon the certificate of title assigned to the person and deliver the same to the person to whom such transfer is made.

A dealer licensed pursuant to chapter 322 or chapter 322C who has acquired a vehicle for resale which is subject to a security interest as provided in section 321.50 and who has forwarded to the secured party the sum necessary to discharge the security interest may offer the vehicle for sale prior to the receipt from the county treasurer of the certificate of title for the vehicle with the lien discharged for a period of not more than thirty days from the date the vehicle was acquired and the provisions of section 321.104, subsection 2, shall not apply.

2. A foreign registered vehicle purchased or otherwise acquired by a dealer for the purpose of resale shall be issued a certificate of title for the vehicle by the county treasurer of the dealer's residence upon proper application as provided in this chapter and upon payment of a fee of five dollars and the dealer is exempt from the payment of any and all registration fees for the vehicle. The application for certificate of title shall be made within thirty days after the vehicle comes within the border of the state. However, a dealer acquiring a vehicle registered in another state which permits Iowa dealers to reassign that state's certificates of title shall not be required to obtain a new registration or a new certificate of title and upon transferring title or interest to another person shall execute an assignment upon the certificate of title for the vehicle to the person to whom the transfer is made and deliver the assigned certificate of title to the person.

3. In a transaction in which a vehicle is traded to a dealer as defined in chapter 322 or chapter 322C toward the purchase price of another vehicle and each vehicle is owned in whole or in part by the same person, the person acquiring the vehicle from the dealer shall be entitled to a credit under section 321.46.

4. Nothing in this section shall be construed to prohibit a dealer from obtaining a new certificate of title or new registration in the same manner as other purchasers.

2003 Acts, ch 8, §11  
Surcharge imposed; §321.52A  
For applicable scheduled fines, see §805.8A, subsection 2, paragraph c  
Subsection 2 amended

#### **321.50 Security interest provisions.**

1. A security interest in a vehicle subject to registration under the laws of this state or a mobile home or manufactured home, except trailers

whose empty weight is two thousand pounds or less, and except new or used vehicles held by a dealer or manufacturer as inventory for sale, is perfected by the delivery to the county treasurer of the county where the certificate of title was issued or, in the case of a new certificate, to the county treasurer where the certificate will be issued, of an application for certificate of title which lists the security interest, or an application for notation of security interest signed by the owner, or by one owner of a vehicle owned jointly by more than one person, or a certificate of title from another jurisdiction which shows the security interest, and a fee of five dollars for each security interest shown. Up to three security interests may be perfected against a vehicle and shown on an Iowa certificate of title. If the owner or secured party is in possession of the certificate of title, it must also be delivered at this time in order to perfect the security interest. If a vehicle is subject to a security interest when brought into this state, the validity of the security interest and the date of perfection is determined by section 554.9303. Delivery as provided in this subsection is an indication of a security interest on a certificate of title for purposes of chapter 554.

2. Upon receipt of the application and the required fee, the county treasurer shall notify the holder of the certificate of title to deliver to the county treasurer, within five days from the receipt of notice, the certificate of title to permit notation of the security interest. If the holder of the certificate of title shall fail to deliver it within the said five days, the holder shall be liable to anyone harmed by the holder's failure.

3. Upon receipt of the application, the certificate of title, if any, and the required fee, the county treasurer shall note such security interest, and the date thereof, on the certificate over the signature of such officer or deputy and the seal of office. The county treasurer shall also note such security interest and the date thereof in the county records system. The county treasurer shall then mail the certificate of title to the first secured party as shown thereon.

4. When a security interest is discharged, the holder shall note a cancellation of same on the face of the certificate of title over the holder's signature, and deliver the certificate of title to the county treasurer where title was issued. The county treasurer shall immediately note the cancellation of the security interest on the face of the certificate of title and in the county records system. The county treasurer shall on the same day deliver the certificate of title to the then first secured party or, if there is no such person, to the person as directed by the owner, in writing, on a form prescribed by the department or, if there is no person designated, then to the owner. The cancellation of the security interest shall be noted on the certificate of title by the county treasurer without charge. The holder of a security interest dis-

charged by payment who fails to release the security interest within fifteen days after being requested in writing to do so shall forfeit to the person making the payment the sum of twenty-five dollars.

If a lien has been released by the lienholder but has not been sent to the county of record for clearance of the lien, any county may note the release on the face of the title and shall notify the county of record that the lien has been released as of the specified date, and shall make entry upon the computer system. Notification to the county of record shall be made by an automated statewide system, or by sending a photocopy of the released title to the county of record.

When a security interest is discharged, the lienholder shall note the cancellation of the security interest on the face of the title and may note the cancellation of the security interest on a form prescribed by the department and deliver a copy of the form in lieu of the title to the department or to the treasurer of the county in which the title was issued. The department or county treasurer shall note the release of the security interest upon the statewide computer system and the county's records. A copy of the form, if used, shall be attached to the title by the lienholder and shall be evidence of the release of the security interest. The lienholder shall deliver the title to the first lienholder, or if there is no such person, to the person as designated by the owner, or if there is no such person designated, to the owner.

5. The Uniform Commercial Code, chapter 554, Article 9, shall apply to all transactions intended to create a security interest in vehicles except as provided in this chapter.

6. Any person obtaining possession of a certificate of title for a vehicle not already subject to a perfected security interest, except new or used vehicles held by a dealer or manufacturer as inventory for sale, who purports to have a security interest in such vehicle shall, within three hundred sixty-five days from the receipt of the certificate of title, deliver such certificate of title to the county treasurer of the county where it was issued to note such security interest and, if such person fails to do so, the person's purported security interest in the vehicle shall be void and unenforceable and such person shall forthwith deliver the certificate of title to the county treasurer of the county where it was issued. If no security interest has been filed for notation on the certificate of title, the certificate shall be mailed by the treasurer to the owner of the vehicle. For purposes of determining the commencement date of the three-hundred-sixty-five-day period provided by this subsection, it shall be presumed that the purported security interest holder received the certificate of title on the date of the creation of the holder's purported security interest in the vehicle or the date of the issuance of the certificate of title, whichever is the latter. Any person collecting a fee from the owner

of the vehicle for the purpose of perfecting a security interest in such vehicle who does not cause such security interest to be noted on the certificate of title by the county treasurer shall remit such fee to the department of revenue of this state.

This subsection is repealed effective July 1, 2004.

7. Upon request of any person, the county treasurer shall issue a certificate showing whether there are, on the date and hour stated therein, any security interests noted on a particular vehicle's certificate of title, and the name and address of each secured party whose security interest is noted thereon. The uniform fee for a written certificate shall be two dollars if the request for the certificate is on a form conforming to standards prescribed by the secretary of state; otherwise, three dollars. Upon request and payment of the appropriate fee, the county treasurer shall furnish a certified copy of any security interest notations for a uniform fee of one dollar per page.

2003 Acts, ch 8, §13; 2003 Acts, ch 145, §286

Surcharge imposed; §321.52A

For future amendments to subsections 1 – 3 effective July 1, 2004, see 2003 Acts, ch 8, §12, 29

Terminology change applied

Subsection 6 amended

### **321.69 Damage disclosure statement.**

1. A certificate of title shall not be issued for a motor vehicle unless a damage disclosure statement has been made by the transferor of the vehicle and is furnished with the application for certificate of title. A damage disclosure statement must be provided by the transferor to the transferee in a transfer of ownership of a motor vehicle. The new certificate of title and registration receipt shall state on the face of the title the total cumulative dollar amount of damage reported by owners prior to the owner listed on the front of the title.

2. The damage disclosure statement required by this section shall, at a minimum, state the total retail dollar amount of all damage to the vehicle during the period of the transferor's ownership of the vehicle and whether the transferor knows if the vehicle was titled as a salvage or flood vehicle in this or any other state prior to the transferor's ownership of the vehicle. For the purposes of this section, "damage" refers to damage to the vehicle caused by fire, vandalism, collision, weather, falling objects, submersion in water, or flood, where the cost of repair is six thousand dollars or more per incident, but does not include normal wear and tear, glass damage, mechanical repairs or electrical repairs that have not been caused by fire, vandalism, collision, weather, falling objects, submersion in water, or flood. "Damage" does not include the cost of repairing, replacing, or reinstalling tires, lights, batteries, windshields, windows, a sound system, or an inflatable restraint system. A determination of the amount of damage to a vehicle shall be based on estimates of the retail cost of repairing the vehicle, including labor, parts, and

other materials, if the vehicle has not been repaired or on the actual retail cost of repair, including labor, parts, and other materials, if the vehicle has been repaired. Only individual incidents in which the retail cost of repairs is six thousand dollars or more are required to be disclosed by this section. If the vehicle has incurred damage of six thousand dollars or more per incident in more than one incident, the damage amounts must be combined and disclosed as the total of all separate incidents.

3. The damage disclosure statement shall be provided by the transferor to the transferee at or before the time of sale. However, if the transferor has a salvage certificate of title for the vehicle, the transferor is not required to disclose under this section the total retail cost of repairs to the vehicle during the period of the transferor's ownership of the vehicle. If the transferee is not a resident of this state or if the transferee acquired the vehicle by operation of law as provided in section 321.47, the transferee shall not be required to submit a damage disclosure statement from the transferor with the transferee's application for title unless the state of the transferor's residence requires a damage disclosure statement. However, the transferee shall submit a damage disclosure statement with the transferee's application for title indicating whether a salvage or rebuilt title had ever existed for the vehicle, whether the vehicle had incurred prior damage of six thousand dollars or more per incident, and the year, make, and vehicle identification number of the motor vehicle. The transferee shall not be required to indicate whether the vehicle had incurred prior damage of six thousand dollars or more per incident under this subsection if the transferor's certificate of title is from another state and if it indicates that the vehicle is salvaged and not rebuilt or is another state's salvage certificate of title.

4. A lessee who has executed a lease as defined in section 321F.1 shall provide a damage disclosure statement to the lessor at the termination of the lease. The damage disclosure statement shall be made on a separate disclosure document and shall state the total dollar amount of all damage to the vehicle which occurred during the term of the lease. The lessee's damage disclosure statement shall not be submitted with the application for title, but the lessor shall retain the lessee's damage disclosure statement for five years following the date of the statement.

5. The department shall retain each damage disclosure statement received and copies shall be available to the public and the attorney general upon request.

6. Authorized vehicle recyclers licensed under chapter 321H and motor vehicle dealers licensed under chapter 322 shall maintain copies of all damage disclosure statements where the recycler or dealer is either the transferor or the transferee

for five years following the date of the statement. The copies shall be made available to the department or the attorney general upon request.

7. The damage disclosure statements shall be made on the back of the certificate of title if the title is available to the transferor at the time of sale. If the title is not available at the time of sale or if the face of the transferor's Iowa title contains no indication that the vehicle was previously salvaged or titled as salvaged or rebuilt and the transferor knows or reasonably should know that the vehicle was previously salvaged or titled as salvaged or rebuilt in another state, the transferor shall make the disclosure on a separate disclosure document. The damage disclosure statement forms shall be as approved by the department. The treasurer shall not accept a damage disclosure statement and issue a title unless the back of the title or separate disclosure document has been fully completed and signed and dated by the transferee and the transferor, if applicable. If a separate damage disclosure document from a prior owner is required to be furnished with the application for title, the transferor must provide a copy of the separate damage disclosure document to the transferee at or before the time of sale.

In addition to the information required in subsection 2, a separate disclosure document shall state whether the vehicle's certificate of title indicates the existence of damage prior to the period of the transferor's ownership of the vehicle, and the amount of that damage if the transferor knows or reasonably should know of the prior damage, and whether the vehicle was titled as a salvage vehicle during the period of the transferor's ownership of the vehicle.

8. A person, authorized vehicle recycler licensed under chapter 321H, or motor vehicle dealer licensed under chapter 322 shall not be liable to a subsequent owner, driver, or passenger of a vehicle because a prior owner or lessee gave a false or inaccurate damage disclosure statement or failed to disclose that the vehicle had previously been damaged and repaired or had been titled on a salvage or rebuilt certificate of title unless the person, recycler, or dealer knew or reasonably should have known that the prior owner or lessee gave a false or inaccurate damage disclosure statement or failed to disclose that the vehicle had been damaged and repaired or had been titled on a salvage or rebuilt certificate of title.

9. Except for subsection 10, this section does not apply to motor trucks and truck tractors with a gross vehicle weight rating of sixteen thousand pounds or more, vehicles more than nine model years old, motorcycles, motorized bicycles, and special mobile equipment. This section does apply to motor homes. The requirement in subsection 1 that the new certificate of title and registration receipt shall state on the face of the title the total cumulative dollar amount of damage does not apply

to a vehicle with a certificate of title bearing a designation that the vehicle was previously titled on a salvage certificate of title pursuant to section 321.52, subsection 4, paragraph "b", or to a vehicle with a certificate of title bearing a "REBUILT" or "SALVAGE" designation pursuant to section 321.24, subsection 4 or 5. Except for subsection 10, this section does not apply to new motor vehicles with a true mileage, as defined in section 321.71, of one thousand miles or less, unless such vehicle has incurred damage as defined in subsection 2.

10. A person shall not sell, lease, or trade a motor vehicle if the person knows or reasonably should know that the motor vehicle contains a nonoperative airbag that is part of an inflatable restraint system, or that the motor vehicle has had an airbag removed and not replaced, unless the person clearly discloses, in writing, to the person to whom the person is selling, leasing, or trading the vehicle, prior to the sale, lease, or trade, that the airbag is missing or nonoperative. In addition, a lessee who has executed a lease as defined in section 321F.1 shall provide the disclosure statement required in this subsection to the lessor upon termination of the lease.

The written disclosure required by this subsection shall be deemed to be a damage disclosure statement for the purposes of subsections 6, 8, and 11.

11. A person who knowingly makes a false damage disclosure statement or fails to make a damage disclosure statement required by this section commits a fraudulent practice. Failure of a person, authorized vehicle recycler licensed under chapter 321H, or motor vehicle dealer licensed under chapter 322 to comply with any duty imposed by this section constitutes a violation of section 714.16, subsection 2, paragraph "a".

12. The department shall adopt rules as necessary to implement this section.

2003 Acts, ch 56, §1 - 5; 2003 Acts, ch 179, §71  
 Subsections 2 and 3 amended  
 Subsection 7, unnumbered paragraph 1 amended  
 Subsections 8 and 9 amended  
 NEW subsection 10 and former subsections 10 and 11 renumbered as 11 and 12  
 Subsection 11 amended

### 321.149 Blanks.

The department shall not later than November 15 of each year prepare and furnish the treasurer of each county all blank books, blank forms, and all supplies required for the administration of this chapter, including applications for registration and transfer of vehicles, quintuple receipts, and original remittance sheets to be used in remitting fees to the department, in such form as the department may prescribe. Contracts for the blank books, blank forms, and supplies shall be awarded by the director of the department of administrative services to persons, firms, partnerships, or corporations engaged in the business of printing in Iowa unless, or through them, the persons, firms,

partnerships or corporations cannot provide the required printing set forth in this section. In lieu of purchasing under competitive bids, the director of the department of administrative services shall have authority to arrange with the director of the department of corrections to furnish the supplies as can be made in the state institutions.

2003 Acts, ch 145, §249  
Section amended

### 321.170 Plates for exempt vehicles.

The department shall furnish, on application, free of charge, distinguishing plates for motor vehicles exempted from a registration fee and shall keep a separate record thereof.

See also §8A.362, 321.19  
Section not amended; footnote revised

### 321.177 Persons not to be licensed.

The department shall not issue a driver's license:

1. To any person who is under the age of eighteen years except as provided in section 321.180B. However, the department may issue a driver's license to certain minors as provided in section 321.178 or 321.194, or a driver's license restricted to motorized bicycles as provided in section 321.189.
2. To any person holding any other driver's license.
3. To any person whose driver's license or driving privilege is suspended or revoked.
4. To any person who is a chronic alcoholic, or is addicted to the use of an illegal narcotic drug.
5. To any person who has previously been adjudged to be incompetent by reason of mental illness and who has not at the time of application been restored to competency by the methods provided by law.
6. To any person who fails to pass an examination required by this chapter.
7. To any person when the director has good cause to believe the person by reason of physical or mental disability would not be able to operate a motor vehicle safely.
8. To any person to operate a commercial motor vehicle unless the person is eighteen years of age or older and the person qualifies under federal and state law to be issued a commercial driver's license in this state.
9. To any person, as a chauffeur, who is under the age of eighteen.
10. To any person who has a delinquent account owed to the state according to records provided to the state department of transportation by the department of revenue pursuant to section 421.17, unless the person provides to the state department of transportation evidence of approval for issuance from the department of revenue. The department of revenue shall approve issuance if the applicant has made arrangements for pay-

ment of the debt with the agency, which is owed or is collecting the debt, to the satisfaction of the agency. This subsection is only applicable to those persons who are applying for issuance of a license in a county which is participating in the driver's license indebtedness clearance pilot project.

2003 Acts, ch 145, §286  
For provisions establishing a driver's license indebtedness clearance pilot project effective May 19, 1997, see 97 Acts, ch 153, §2, 4  
Terminology change applied

### 321.178 Driver education — restricted license — reciprocity.

1. *Approved course.* An approved driver education course as programmed by the department shall consist of at least thirty clock hours of classroom instruction, of which no more than one hundred eighty minutes shall be provided to a student in a single day, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving. Classroom instruction shall include all of the following:

- a. A minimum of four hours of instruction concerning substance abuse.
- b. A minimum of twenty minutes of instruction concerning railroad crossing safety.
- c. Instruction relating to becoming an organ donor under the uniform anatomical gift Act as provided in chapter 142C.

To be qualified as a classroom driver education instructor, a person shall have satisfied the educational requirements for a teaching license at the elementary or secondary level and hold a valid license to teach driver education in the public schools of this state.

Every public school district in Iowa shall offer or make available to all students residing in the school district or Iowa students attending a nonpublic school in the district an approved course in driver education. The courses may be offered at sites other than at the public school, including nonpublic school facilities within the public school districts. An approved course offered during the summer months, on Saturdays, after regular school hours during the regular terms or partly in one term or summer vacation period and partly in the succeeding term or summer vacation period, as the case may be, shall satisfy the requirements of this section to the same extent as an approved course offered during the regular school hours of the school term. A student who successfully completes and obtains certification in an approved course in driver education or an approved course in motorcycle education may, upon proof of such fact, be excused from any field test which the student would otherwise be required to take in demonstrating the student's ability to operate a motor vehicle. A student shall not be excused from any field test if a parent, guardian, or instructor requests that a test be administered. Street or high-

way driving instruction may be provided by a person qualified as a classroom driver education instructor or a person certified by the department and authorized by the board of educational examiners. A person shall not be required to hold a current Iowa teacher or administrator license at the elementary or secondary level or to have satisfied the educational requirements for an Iowa teacher license at the elementary or secondary level in order to be certified by the department or authorized by the board of educational examiners to provide street or highway driving instruction. A final field test prior to a student's completion of an approved course shall be administered by a person qualified as a classroom driver education instructor. The department shall adopt rules pursuant to chapter 17A to provide for certification of persons qualified to provide street or highway driving instruction. The board of educational examiners shall adopt rules pursuant to chapter 17A to provide for authorization of persons certified by the department to provide street or highway driving instruction.

"Student", for purposes of this section, means a person between the ages of fourteen years and twenty-one years who satisfies the preliminary licensing requirements of the department.

Any person who successfully completes an approved driver education course at a private or commercial driver education school licensed by the department shall likewise be eligible for a driver's license as provided in section 321.180B or 321.194.

2. *Restricted license.*

a. A person between sixteen and eighteen years of age who is not in attendance at school or who is in attendance in a public or private school where an approved driver's education course is not offered or available, may be issued a restricted license only for travel to and from work or to transport dependents to and from temporary care facilities, if necessary for the person to maintain the person's present employment, without having completed an approved driver's education course. The restricted license shall be issued by the department only upon confirmation of the person's employment and need for a restricted license to travel to and from work or to transport dependents to and from temporary care facilities if necessary to maintain the person's employment and upon receipt of a written statement from the public or private school that an approved course in driver's education was not offered or available to the person, if applicable. The employer shall notify the department if the employment of the person is terminated before the person attains the age of eighteen. The person shall not have a restricted license revoked or suspended upon reentering school prior to age eighteen if the student enrolls in and completes the classroom portion of an approved driver's education course as soon as a course is available.

b. The department may suspend a restricted license issued under this section upon receiving a record of the person's conviction for one violation and shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the operation of motor vehicles on highways, other than parking violations as defined in section 321.210. After revoking a license under this section the department shall not grant an application for a new license or permit until the expiration of one year or until the person attains the age of eighteen whichever is the longer period.

3. *Driver's license reciprocity.*

a. The department may issue a class C or M driver's license to a person who is sixteen or seventeen years of age and who is a current resident of the state, but who has been driving as a resident of another state for at least one year prior to residency within the state.

b. The following criteria must be met prior to issuance of a driver's license pursuant to this subsection:

(1) The minor must reside with a parent or guardian.

(2) The minor must have driven under a valid driver's license for at least one year in the prior state of residence. Six months of the one year computation may include driving with an instruction permit.

(3) The minor must have had no moving traffic violations on the minor's driving record.

(4) The minor must pass the written and driving skills tests as required by the department, but is not required to have taken a driver's education class.

2003 Acts, ch 108, §55

Driver education courses to include instruction relating to energy efficiency and safety; 90 Acts, ch 1252, §54

Department of public health to cooperate to provide materials and information relating to becoming an organ donor; 94 Acts, ch 1102, §3

Subsection 1, paragraph c amended

**321.183 Application for driver's license or nonoperator's identification card — selective service registration.**

1. A person who applies for a driver's license or nonoperator's identification card or for renewal of a driver's license or nonoperator's identification card, and who is required by 50 U.S.C. app. § 451 et seq. to register with the United States selective service system, shall be registered by the department with the selective service system. The department shall forward to the selective service system in an electronic format the necessary personal information of such applicant, notwithstanding provisions to the contrary in section 321.11, subsection 3.

2. An applicant's submission of an application for a driver's license or nonoperator's identification card or for renewal of a driver's license or nonoperator's identification card shall indicate that

the applicant has already registered with the selective service system or that the applicant authorizes the department to forward the applicant's personal information to the selective service system for registration. The department shall notify the applicant on the application that submission of the application shall serve as consent to registration with the selective service system, if the applicant is required by 50 U.S.C. app. § 451 et seq. to register.

3. Notwithstanding subsections 1 and 2, an applicant for a driver's license or nonoperator's identification card or for renewal of a driver's license or nonoperator's identification card who is required to register with the United States selective service system shall not be registered by the department if, after being given information on the penalties for failure to register, the applicant declines to be registered. The department shall forward to the selective service system in an electronic format the applicable personal information of such applicant indicating the applicant refused to be registered.

2003 Acts, ch 41, §1  
NEW section

### 321.189 Driver's license — content.

1. *Classification and issuance.* Upon payment of the required fee, the department shall issue to every qualified applicant a driver's license. Driver's licenses shall be classified as follows:

a. Class A — Valid for the operation of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds if the towed vehicle or vehicles have a gross vehicle weight rating or gross combination weight rating of ten thousand one or more pounds, and also valid for the operation of vehicles with lower gross combination weight ratings and other vehicles except motorcycles.

b. Class B — Valid for the operation of a vehicle with a gross vehicle weight rating of twenty-six thousand one or more pounds or a combination of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds if the towing vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds and the towed vehicle or vehicles have a gross vehicle weight rating or gross combination weight rating of less than ten thousand one pounds, and also valid for the operation of vehicles with lower gross vehicle weight ratings or gross combination weight ratings except motorcycles.

c. Class C — Valid for the operation of a vehicle, other than a motorcycle, or a combination of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds provided the towing vehicle has a gross vehicle weight rating of less than twenty-six thousand one pounds and each towed vehicle has a gross vehicle weight rating of less than ten thousand one pounds, or a combination of vehicles with a gross vehicle

weight rating or gross combination weight rating of less than twenty-six thousand one pounds and also valid for the operation of any vehicle, other than a motorcycle, for which the operator is exempt from commercial driver's license requirements under section 321.176A.

d. Class D — Valid for the operation of a motor vehicle as a chauffeur.

e. Class M — Valid for the operation of a motorcycle.

A driver's license may be issued for more than one class. Class A and B driver's licenses shall only be issued as commercial driver's licenses. Class C and M driver's licenses may be issued as commercial driver's licenses. A driver's license is not valid for the operation of a vehicle requiring an endorsement unless the driver's license is endorsed for the vehicle. A class D driver's license is also valid as a noncommercial class C driver's license. The holder of a commercial driver's license is not required to obtain a class D driver's license to operate a motor vehicle as a chauffeur. When necessary, the department shall by rule create additional classes or modify existing classes of driver's licenses, however, the rule shall be temporary and if within sixty days after the next regular session of the general assembly convenes the general assembly has not made corresponding changes in this chapter, the temporary classification or modification shall be nullified.

#### 2. *Content of license.*

a. Appearing on the driver's license shall be a distinguishing number assigned to the licensee; the licensee's full name, date of birth, sex, and residence address; a colored photograph; a physical description of the licensee; the name of the state; the dates of issuance and expiration; and the usual signature of the licensee. The license shall identify the class of vehicle the licensee may operate and the applicable endorsements and restrictions which the department shall require by rule.

b. A commercial driver's license shall include the licensee's address as required under federal regulations, and the words "commercial driver's license" or "CDL" shall appear prominently on the face of the license. If the applicant is a nonresident, the license must conspicuously display the word "nonresident".

c. The department shall assign an applicant for a driver's license a distinguishing driver's license number other than the applicant's social security number, unless the applicant requests that the applicant's social security number be so assigned.

d. The license may contain other information as required under the department's rules.

3. *Replacement.* If prior to the renewal date, a person desires to obtain a driver's license in the form authorized by this section, a license may be issued as a voluntary replacement upon payment of the required fee as set by the department by rule. A person shall return a driver's license and

be issued a new license when the first license contains inaccurate information upon payment of the required fee as set by the department by rule.

4. *Symbols.* Upon the request of a licensee, the department shall indicate on the license the presence of a medical condition, that the licensee is a donor under the uniform anatomical gift Act as provided in chapter 142C, or that the licensee has in effect a medical advance directive. For purposes of this subsection, a medical advance directive includes, but is not limited to, a valid durable power of attorney for health care as defined in section 144B.1. The license may contain such other information as the department may require by rule.

5. *Tamperproofing.* The department shall issue a driver's license by a method or process which prevents as nearly as possible the alteration, reproduction, or superimposition of a photograph on the license without ready detection.

6. *Licenses issued to persons under age twenty-one.* A driver's license issued to a person under eighteen years of age shall contain the same information as any other driver's license except that the words "under eighteen" shall appear prominently on the face of the license. A driver's license issued to a person eighteen years of age or older but less than twenty-one years of age shall contain the same information as any other driver's license except that the words "under twenty-one" shall appear prominently on the face of the license. Upon attaining the age of eighteen or upon attaining the age of twenty-one, and upon payment of a one dollar fee, the person shall be entitled to a new driver's license or nonoperator's identification card for the unexpired months of the driver's license or card. An instruction permit or intermediate license issued under section 321.180B, subsection 1 or 2, shall include a distinctive color bar. An intermediate license issued under section 321.180B, subsection 2, shall include the words "intermediate license" printed prominently on the face of the license.

7. *Motorized bicycle.*

a. The department may issue a driver's license valid only for operation of a motorized bicycle to a person fourteen years of age or older who has passed a vision test or who files a vision report as provided in section 321.186A which shows that the applicant's visual acuity level meets or exceeds those required by the department and who passes a written examination on the rules of the road. A person under the age of sixteen applying for a driver's license valid only for operation of a motorized bicycle shall also be required to successfully complete a motorized bicycle education course approved and established by the department or successfully complete an approved motorized bicycle education course at a private or commercial driver education school licensed by the department. A public school district shall charge a student a fee

which shall not exceed the actual cost of instruction. A driver's license valid only for operation of a motorized bicycle entitles the licensee to operate a motorized bicycle upon the highway while having the license in the licensee's immediate possession. The license is valid for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance, subject to termination or cancellation as provided in this section.

b. A driver's license valid only for operation of a motorized bicycle shall be canceled upon a conviction for a moving traffic violation and reapplication may be made thirty days after the date of cancellation. The cancellation of the license upon conviction for a moving traffic violation shall not result in requiring the applicant to maintain proof of financial responsibility under section 321A.17, unless the conviction would otherwise result in a suspension or revocation of a person's driver's license.

c. As used in this section, "moving traffic violation" does not include a parking violation as defined in section 321.210 or a violation of a section of the Code or municipal ordinance pertaining to standards to be maintained for motor vehicle equipment except sections 321.430 and 321.431, or except a municipal ordinance pertaining to motor vehicle brake requirements as applicable to motorized bicycles.

d. The holder of any class of driver's license may operate a motorized bicycle.

2003 Acts, ch 108, §56  
Fee, see §321.191  
Subsection 4 amended

### **321.190 Issuance of nonoperator's identification cards — fee.**

1. *Application for and contents of card.*

a. The department shall, upon application and payment of the required fee, issue to an applicant a nonoperator's identification card. To be valid the card shall bear a distinguishing number assigned to the card holder, the full name, date of birth, sex, residence address, a physical description and a colored photograph of the card holder, the usual signature of the card holder, and such other information as the department may require by rule. An applicant for a nonoperator's identification card shall apply for the card in the manner provided in section 321.182, subsections 1 through 3. The card shall be issued to the applicant at the time of application pursuant to procedures established by rule. An applicant for a nonoperator's identification card who is required by 50 U.S.C. app. § 451 et seq. to register with the United States selective service system shall be registered by the department with the selective service system as provided in section 321.183.

b. The department shall not issue a card to a person holding a driver's license. However, a card may be issued to a person holding a temporary permit under section 321.181. The card shall be iden-

tical in form to a driver's license issued under section 321.189 except the word "nonoperator" shall appear prominently on the face of the card. A nonoperator's identification card issued to a person under eighteen years of age shall contain the same information as any other nonoperator's identification card except that the words "under eighteen" shall appear prominently on the face of the card. A nonoperator's identification card issued to a person eighteen years of age or older but under twenty-one years of age shall contain the same information as any other nonoperator's identification card except that the words "under twenty-one" shall appear prominently on the face of the card.

c. The department shall use a process or processes for issuance of a nonoperator's identification card, that prevent, as nearly as possible, the opportunity for alteration or reproduction of, and the superimposition of a photograph on the nonoperator's identification card without ready detection.

d. The fee for a nonoperator's identification card shall be five dollars and the card shall be valid for a period of five years from the date of issuance. A nonoperator's identification card shall be issued without expiration to anyone age seventy or over. If an applicant for a nonoperator's identification card is a foreign national who is temporarily present in this state, the nonoperator's identification card shall be issued only for the length of time the foreign national is authorized to be present as determined by the department, not to exceed two years. An issuance fee shall not be charged for a person whose driver's license or driving privilege has been suspended under section 321.210, subsection 1, paragraph "c".

The nonoperator's identification card fees shall be transmitted by the department to the treasurer of state who shall credit the fees to the road use tax fund.

2. *Cancellation.* The department shall cancel a person's nonoperator's identification card upon determining the person was not entitled to be issued the card, did not provide correct information, committed fraud in applying for the card, or unlawfully used a nonoperator's identification card.

2003 Acts, ch 41, §2  
Voter registration, see §48A.18  
Subsection 1, paragraph a amended

### 321.191 Fees for driver's licenses.

1. *Instruction permits.* The fee for an instruction permit, other than a special instruction permit, chauffeur's instruction permit, or commercial driver's instruction permit, is six dollars. The fee for a special instruction permit is ten dollars. The fee for a chauffeur's instruction permit or commercial driver's instruction permit is twelve dollars.

2. *Noncommercial driver's licenses.* The fee

for a noncommercial driver's license, other than a class D driver's license or any type of instruction permit, is four dollars per year of license validity.

3. *Licenses for chauffeurs.* The fee for a noncommercial class D driver's license is eight dollars per year of license validity.

4. *Commercial driver's licenses.* The fee for a commercial driver's license, other than an instruction permit, for the operation of a commercial motor vehicle is eight dollars per year of license validity.

5. *Licenses valid for motorcycles.* An additional fee of one dollar per year of license validity is required to issue a license valid to operate a motorcycle.

6. *Special minors' licenses.* Notwithstanding subsection 2, the fee for a driver's license issued to a minor under section 321.194 or a restricted license issued to a minor under section 321.178, subsection 2, is eight dollars.

7. *Endorsements and removal of air brake restrictions.* The fee for a double/triple trailer endorsement, tank vehicle endorsement, and hazardous materials endorsement is five dollars for each endorsement. The fee for a passenger endorsement is ten dollars. The fee for removal of an air brake restriction on a commercial driver's license is ten dollars. Fees imposed under this subsection for endorsements or removal of restrictions are valid for the period of the license. Upon renewal of a commercial driver's license no fee is payable for retaining endorsements or the removal of the air brake restriction for those endorsements or restrictions which do not require the taking of either a knowledge or a driving skills test for renewal.

8. *Driver's license reinstatements.* The fee for reinstatement of a driver's license shall be twenty dollars for a license which is, after notice and opportunity for hearing, canceled, suspended, revoked, or barred. However, reinstatement of the privilege suspended under section 321.210, subsection 1, paragraph "c", shall be without fee. The fee for reinstatement of the privilege to operate a commercial motor vehicle after a period of disqualification shall be twenty dollars.

9. *Upgrading a license class privilege — fee adjustment.* If an applicant wishes to upgrade a license class privilege, the fee charged shall be prorated on full-year fee increments of the new license in accordance with rules adopted by the department. The expiration date of the new license shall be the expiration date of the currently held driver's license. The fee for a commercial driver's license endorsement, the removal of an air brake restriction, or a commercial driver's license instruction permit shall not be prorated.

As used in this subsection "to upgrade a license class privilege" means to add any privilege to a valid driver's license. The addition of a privilege includes converting from a noncommercial to a com-

mercial license, converting from a noncommercial class C to a class D license, converting an instruction permit to a class license, adding any privilege to a section 321.189, subsection 7, license, adding an instruction permit privilege, adding a section 321.189, subsection 7, license to an instruction permit, and adding any privilege relating to a driver's license issued to a minor under section 321.194 or section 321.178, subsection 2.

10. *One-time surcharge — appropriation.*

a. Notwithstanding any other provisions of this section, during the period beginning July 1, 2003, and ending June 30, 2008, a person applying for a new driver's license or for renewal of a driver's license subject to a fee under subsection 2, 3, or 4 shall be charged a one-time surcharge of three dollars in addition to the license fee. A person shall not be required to pay the surcharge more than once during the five-year period.

b. Moneys collected from the one-time surcharge under paragraph "a" are appropriated to the state department of transportation to be used for costs associated with the rewrite of the driver's license issuance and records system. Moneys in excess of the amount needed to fund the rewrite of the system shall be deposited in the road use tax fund.

2003 Acts, ch 8, §14  
For future repeal of subsection 10 effective July 1, 2008, see 2003 Acts, ch 8, §26  
NEW subsection 10

**321.192 Waivers or refunds of fees.**

1. Notwithstanding the fee requirements for issuance of a driver's license or nonoperator's identification card pursuant to section 321.190 or 321.191, the department may waive or refund fees pursuant to rules adopted by the department. The department may waive payment of, or refund to an applicant, all or a portion of the fees for renewal of a license or identification card or for a duplicate license or identification card if the department determines that the service standard for timely issuance has not been met or an error on the license or identification card requires the applicant to return to the driver's license station. The decision of the department not to waive or refund a fee is final agency action and not subject to review under chapter 17A.

2. Subsection 1 does not apply to licenses or identification cards issued by a county pursuant to chapter 321M.

2003 Acts, ch 8, §15  
NEW section

**321.210B Nonrenewal or suspension for failure to pay indebtedness owed to the state.**

The department shall suspend or refuse to renew the driver's license of a person who has a delinquent account owed to the state according to records provided by the department of revenue pursuant to section 421.17. A license shall be sus-

pending or shall not be renewed until such time as the department of administrative services notifies the state department of transportation that the licensee has made arrangements for payment of the debt with the agency which is owed or is collecting the debt. This section is only applicable to those persons residing in a county which is participating in the driver's license indebtedness clearance pilot project.

2003 Acts, ch 145, §250  
For provisions establishing a driver's license indebtedness clearance pilot project effective May 19, 1997, see 97 Acts, ch 153, §2, 4  
Section amended

**321.236 Powers of local authorities.**

Local authorities shall have no power to enact, enforce, or maintain any ordinance, rule or regulation in any way in conflict with, contrary to or inconsistent with the provisions of this chapter, and no such ordinance, rule or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect, however the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles.

Parking meter, snow route, and overtime parking violations which are denied shall be charged and proceed before a court the same as other traffic violations. Filing fees and court costs shall be assessed as provided in section 602.8106, subsection 1 and section 805.6, subsection 1, paragraph "a" for parking violation cases. Parking violations which are admitted:

a. May be charged and collected upon a simple notice of a fine payable to the city clerk or clerk of the district court, if authorized by ordinance. The fine for each violation charged under a simple notice of a fine shall be established by ordinance. The fine may be increased by five dollars if the parking violation is not paid within thirty days of the date upon which the violation occurred, if authorized by ordinance. Violations of section 321L.4, subsection 2, may be charged and collected upon a simple notice of a one hundred dollar fine payable to the city clerk or clerk of the district court, if authorized by ordinance. No costs or other charges shall be assessed. All fines collected by a city pursuant to this paragraph shall be retained by the city and all fines collected by a county pursuant to this paragraph shall be retained by the county.

b. Notwithstanding any such ordinance, may be prosecuted under the provisions of sections 805.7 to 805.13 or as any other traffic violation.

c. If the local authority regulating the standing or parking of vehicles under this subsection is located in a county where the renewal of registration of a vehicle shall be refused for unpaid restitution under section 321.40, the simple notice of fine under paragraph "a" shall contain the following statement:

“FAILURE TO PAY RESTITUTION OWED BY YOU CAN BE GROUNDS FOR REFUSING TO RENEW YOUR MOTOR VEHICLE'S REGISTRATION.”

This paragraph does not invalidate forms for notice of parking violations in existence prior to July 1, 1980. Existing forms may be used until supplies are exhausted.

2. Regulating traffic by means of police officers or traffic-control signals.

3. Regulating or prohibiting processions or assemblages on the highways.

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.

5. Regulating the speed of vehicles in public parks.

6. Designating any highway as a through highway and requiring that all vehicles stop or yield the right of way before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections.

7. Licensing and regulating the operation of vehicles offered to the public for hire and used principally in intracity operation.

8. Restricting the use of highways as authorized in sections 321.471 to 321.473.

9. Regulating or prohibiting the turning of vehicles at and between intersections.

10. Regulating the operation of bicycles and requiring the registration and licensing of the same, including the requirement of a registration fee. However, the regulations shall not conflict with the provisions of section 321.234.

11. Establishing speed limits in public alleys and providing the penalty for violation thereof.

12. Designating highways or portions of highways as snow routes. When conditions of snow or ice exist on the traffic surface of a designated snow route, it is unlawful for the driver of a vehicle to impede or block traffic if the driving wheels of the vehicle are not equipped with snow tires, tire chains, or a nonslip differential.

A person charged with impeding or blocking traffic for lack of snow tires, chains, or nonslip differential shall have the charge dismissed upon a showing to the court that the person's motor vehicle was equipped with snow tires, chains, or a nonslip differential.

13. Establishing a rural residence district. The board of supervisors of a county with respect to highways under its jurisdiction may establish, by ordinance or resolution, rural residence districts and may, by ordinance or resolution, regulate the speed and parking of vehicles within the rural residence district consistent with sections 321.239, 321.285, and 321.293. Before establishing a rural residence district, the board of supervisors shall hold a public hearing on the proposal, notice of which shall be published in a newspaper

having a general circulation in the area where the proposed district is located at least twenty days before the date of hearing. The notice shall state the time and place of the hearing, the proposed location of the district, and other data considered pertinent by the board of supervisors.

14. Regulating or prohibiting the operation of electric personal assistive mobility devices authorized pursuant to section 321.235A.

2003 Acts, ch 178, §14  
For fines applicable to offenses charged as scheduled violations, see §805.8A

Subsection 1, paragraph a amended

### **321.271 Reports confidential — without prejudice — exceptions.**

1. All accident reports filed by a driver of a vehicle involved in an accident as required under section 321.266 shall be in writing. The report shall be without prejudice to the individual so reporting and shall be for the confidential use of the department, except that upon the request of any person involved in the accident, the person's insurance company or its agent, or the attorney for such person, the department shall disclose the identity and address of other persons involved in the accident and may disclose the name of the insurance companies with whom the other persons have liability insurance. The department, upon written request of the person making the report, shall provide the person with a copy of that person's report. The written report filed with the department shall not be admissible in or used in evidence in any civil or criminal case arising out of the facts on which the report is based.

2. All written reports filed by a law enforcement officer as required under section 321.266 shall be made available to any party to an accident, the party's insurance company or its agent, the party's attorney, the federal motor carrier safety administration, or the attorney general, on written request to the department and the payment of a fee of four dollars for each copy. If a copy of an investigating officer's report of a motor vehicle accident filed with the department is retained by the law enforcement agency of the officer who filed the report, a copy shall be made available to any party to the accident, the party's insurance company or its agent, the party's attorney, the federal motor carrier safety administration, or the attorney general, on written request and the payment of a fee. However, the attorney general and the federal motor carrier safety administration shall not be required by the department or the law enforcement agency to pay a fee for a copy of a report filed by a law enforcement or investigating officer.

3. Notwithstanding subsections 1 and 2, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where

disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

2003 Acts, ch 8, §16  
Section amended

### **321.302 Overtaking and passing.**

1. Unless otherwise prohibited by law, the driver of a vehicle on a roadway with unobstructed pavement of sufficient width for two or more lines of traffic moving in the same direction as the vehicle being passed may overtake and pass upon the right of another vehicle which is making or about to make a left turn when such movement can be made in safety.

2. Unless otherwise prohibited by law, the driver of a vehicle may overtake and, allowing sufficient clearance, pass another vehicle proceeding in the same direction either upon the left or upon the right on a roadway with unobstructed pavement of sufficient width for four or more lines of moving traffic when such movement can be made in safety.

3. The driver of a vehicle shall not drive off the pavement or upon the shoulder of the roadway or upon the apron or roadway of an intersecting roadway in overtaking or passing on the right or the left.

4. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 6, paragraph “d”.

2003 Acts, ch 6, §2  
Section amended

### **321.323A Approaching certain stationary vehicles.**

1. The operator of a motor vehicle approaching a stationary authorized emergency vehicle that is displaying flashing yellow, amber, white, red, or red and blue lights shall approach the authorized emergency vehicle with due caution and shall proceed in one of the following manners, absent any other direction by a peace officer:

*a.* Make a lane change into a lane not adjacent to the authorized emergency vehicle if possible in the existing safety and traffic conditions.

*b.* If a lane change under paragraph “a” would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

2. The operator of a motor vehicle approaching a stationary towing or recovery vehicle, a stationary utility maintenance vehicle, a stationary municipal maintenance vehicle, or a stationary highway maintenance vehicle, that is displaying flashing yellow, amber, or red lights, shall approach the vehicle with due caution and shall proceed in one of the following manners, absent any other direc-

tion by a peace officer:

*a.* Make a lane change into a lane not adjacent to the towing, recovery, utility maintenance, municipal maintenance, or highway maintenance vehicle if possible in the existing safety and traffic conditions.

*b.* If a lane change under paragraph “a” would be impossible, prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and proper speed for the existing road and traffic conditions, which speed shall be less than the posted speed limit, and be prepared to stop.

2003 Acts, ch 2, §1  
For applicable scheduled fines, see §805.8A, subsection 11, paragraph b  
Subsection 2 amended

### **321.375 School bus drivers — qualifications — grounds for suspension.**

1. A driver of a school bus must meet all of the following requirements:

*a.* Be at least eighteen years of age.

*b.* Be physically and mentally competent.

*c.* Not possess personal or moral habits which would be detrimental to the best interests of the safety and welfare of the children transported.

*d.* Possess a current certificate of qualification for operation of a commercial motor vehicle issued by a physician licensed pursuant to chapter 148 or 150A, physician’s assistant, advanced registered nurse practitioner, or chiropractor or any other person identified by federal and state law as authorized to perform physical examinations.

2. Any of the following shall constitute grounds for a school bus driver’s immediate suspension from duties, pending a termination hearing by the board of directors of a public school district or the authorities in charge in a nonpublic school if the bus driver is under contract, pending confirmation of the grounds by the school district or accredited nonpublic school if the bus driver is a part-time or substitute bus driver who is not under contract, or pending confirmation of the grounds by the employer of the school bus driver if the employer is not a school district or accredited nonpublic school by the board:

*a.* Use of nonprescription controlled substances or alcoholic beverages during working hours.

*b.* Operating a school bus while under the influence of nonprescription controlled substances or alcoholic beverages.

*c.* Fraud in the procurement or renewal of a school bus driver’s authorization to operate a school bus.

*d.* The commission of or conviction for a public offense as defined by the Iowa criminal code, if the offense is relevant to and affects driving ability, or if the offense includes sexual involvement with a minor student with the intent to commit acts and practices proscribed under sections 709.2 through 709.4, section 709.8, and sections 725.1 through

725.3, or is a violation of the rules of the department of education adopted to implement section 280.17.

*e.* A change in circumstances indicating that the driver is no longer physically or mentally competent. For the purpose of an insulin-dependent diabetic, a change in circumstances includes the following:

(1) Results of a glycosylated hemoglobin test indicating values less than 6.0 percent or greater than 9.5 percent unless accompanied by the required medical opinion that the event was incidental and not an indication of failure to control glucose levels.

(2) Results of self-monitoring indicate glucose levels less than one hundred milligrams per deciliter or greater than three hundred milligrams per deciliter, until self-monitoring indicates compliance with specifications.

(3) Experiencing a loss of consciousness or control relating to diabetes.

(4) Failing to maintain or falsifying the required reports.

3. *a.* Notwithstanding any provision to the contrary, an insulin-dependent diabetic may qualify under subsection 1, paragraph “d”, for purposes of operating a school bus under this section if a person identified by federal or state law as authorized to perform physical examinations annually provides a signed statement indicating that based upon an annual physical examination the individual is physically able to perform the required functions despite insulin dependency. The insulin-dependent diabetic shall not qualify to operate a school bus if, at minimum, the individual results of a glycosylated hemoglobin test indicate values less than 6.0 percent or greater than 9.5 percent on other than an incidental basis and not as a result of failure to control glucose levels. The statement shall also indicate that within the past three years the insulin-dependent diabetic has completed instruction to address diabetes management and driving safety, signs and symptoms of hypoglycemia and hyperglycemia, and what procedures must be followed if complications arise.

*b.* A school district or authorities in charge of the nonpublic school that employs or otherwise secures the services of an individual with an authorization who is an insulin-dependent diabetic shall monitor the insulin-dependent diabetic to determine that they are in compliance with all of the following:

(1) Self-monitoring blood glucose and demonstrating conformance with requirements, more than one hundred milligrams per deciliter and less than three hundred milligrams per deciliter, within one hour before driving a school bus and approximately every four hours while on duty using a United States food and drug administration

approved device.

(2) Reporting immediately to the school district or school any failure to comply with specific glucose level requirements as listed in subparagraph (1) or loss of consciousness or control.

(3) Carrying a source of readily absorbable, fast-acting glucose while on duty.

(4) Maintaining a daily log of all glucose test results for the previous six-month period and providing copies to the school district or school, the examining physician, and the department of education upon request.

(5) Submitting all required department of education forms within the prescribed timelines.

2002 Acts, ch 1140, §34, 48; 2003 Acts, ch 180, §57 – 59  
2002 amendment to subsection 1, paragraph d is effective July 1, 2003;  
2002 Acts, ch 1140, §48  
Subsection 1, paragraph d stricken and rewritten  
Subsection 2, unnumbered paragraph 1 amended  
Subsection 2, NEW paragraph e  
NEW subsection 3

### **321.376 License — authorization — instruction requirement.**

1. The driver of a school bus shall hold a driver’s license issued by the department of transportation valid for the operation of the school bus and a certificate of qualification for operation of a commercial motor vehicle issued by a physician licensed pursuant to chapter 148 or 150A, physician’s assistant, advanced registered nurse practitioner, or chiropractor or any other person identified by federal and state law as authorized to perform physical examinations, and shall successfully complete an approved course of instruction in accordance with subsection 2. A person holding a temporary restricted license issued under chapter 321J shall be prohibited from operating a school bus. The department of education shall revoke or refuse to issue an authorization to operate a school bus to any person who, after notice and opportunity for hearing, is determined to have committed any of the acts proscribed under section 321.375, subsection 2. The department of education shall recommend, and the state board of education shall adopt under chapter 17A, rules and procedures for issuing and revoking authorization to operate a school bus in this state. Rules and procedures adopted shall include, but are not limited to, provisions for the revocation of, or refusal to issue, authorization to persons who are determined to have committed any of the acts proscribed under section 321.375, subsection 2.

2. A person applying for employment or employed as a school bus driver shall successfully complete a department of education approved course of instruction for school bus drivers before or within the first six months of employment and at least every twenty-four months thereafter. If an employee fails to provide an employer with a certificate of completion of the required school bus driver’s course, the driver’s employer shall report

the failure to the department of education and the employee's authorization to operate a school bus shall be revoked. The department of education shall send notice of the revocation to both the employee and the employer. A person whose school bus authorization has been revoked under this section shall not be issued another authorization until certification of the completion of an approved school bus driver's course is received by the department of education.

Section not amended; asterisk and footnote deleted

### 321.449 Motor carrier safety rules.

1. A person shall not operate a commercial vehicle on the highways of this state except in compliance with rules adopted by the department under chapter 17A. The rules shall be consistent with the federal motor carrier safety regulations promulgated under United States Code, Title 49, and found in 49 C.F.R. pts. 385, 390 – 399 and adopted under chapter 17A.

The department shall also adopt rules concerning hours of service for drivers of vehicles operated for hire and designed to transport seven or more persons, including the driver. The rules shall not apply to vehicles offered to the public for hire that are used principally in intracity operation and that are regulated by local authorities pursuant to section 321.236.

2. Rules adopted under this section concerning driver qualifications, hours of service, and recordkeeping requirements do not apply to the operators of public utility trucks, trucks hauling gravel, construction trucks and equipment, trucks moving implements of husbandry, and special trucks, other than a truck tractor, operating intrastate. Except as otherwise provided in this section, trucks for hire on construction projects are not exempt from this section.

3. Rules adopted under this section concerning driver age qualifications do not apply to drivers for private and for-hire motor carriers which operate solely intrastate except when the vehicle being driven is transporting a hazardous material in a quantity which requires placarding. The minimum age for the exempted intrastate operations is eighteen years of age.

4. Notwithstanding other provisions of this section, rules adopted under this section for drivers of commercial vehicles shall not apply to a driver of a commercial vehicle who is engaged exclusively in intrastate commerce, when the commercial vehicle's gross vehicle weight rating is twenty-six thousand pounds or less, unless the vehicle is used to transport hazardous materials requiring a placard or if the vehicle is designed to transport more than fifteen passengers, including the driver. For the purpose of complying with the hours of service recordkeeping requirements under 49

C.F.R. § 395.1(e)(5), a driver's report of daily beginning and ending on-duty time submitted to the motor carrier at the end of each workweek shall be considered acceptable motor carrier time records. In addition, rules adopted under this section shall not apply to a driver operating intrastate for a farm operation as defined in section 352.2, or for an agricultural interest when the commercial vehicle is operated between the farm as defined in section 352.2 and another farm, between the farm and a market for farm products, or between the farm and an agribusiness location. A driver or a driver-salesperson for a private carrier, who is not for hire and who is engaged exclusively in intrastate commerce, may drive twelve hours, be on duty sixteen hours in a twenty-four-hour period and be on duty seventy hours in seven consecutive days or eighty hours in eight consecutive days. For-hire drivers who are engaged exclusively in intrastate commerce and who operate trucks and truck-tractors exclusively for the movement of construction materials and equipment to and from construction projects may also drive twelve hours, be on duty sixteen hours in a twenty-four-hour period, and be on duty seventy hours in seven consecutive days or eighty hours in eight consecutive days. A "driver-salesperson" means as defined in 49 C.F.R. § 395.2, as adopted by the department by rule.

5. *a.* Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for drivers of commercial vehicles engaged in intrastate commerce shall not be construed as disqualifying any individual who was employed as a driver of commercial vehicles engaged in intrastate commerce whose physical or medical condition existed prior to July 29, 1996.

*b.* Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for a driver shall not apply to a farmer or a farmer's hired help when operating a vehicle owned by the farmer while it is being used in connection with the intrastate transportation of fertilizers and chemicals used in the farmer's crop production.

*c.* Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for a driver shall not apply to a farmer or a farmer's hired help when operating a vehicle owned by the farmer while it is being used in connection with the intrastate transportation of agricultural commodities or feed.

6. Notwithstanding other provisions of this section, rules adopted under this section shall not impose any requirements which impose any restrictions upon a person operating an implement of husbandry or pickup to transport fertilizers and pesticides in that person's agricultural operations.

7. Rules adopted under this section concerning periodic inspections shall not apply to special trucks as defined in section 321.1, subsection 76, and registered under section 321.121.

8. Rules adopted under this section shall not apply to vehicles engaged in intrastate commerce and used in combination, provided the gross vehicle weight rating of the towing unit is ten thousand pounds or less and the gross combination weight rating is twenty-six thousand pounds or less.

2003 Acts, ch 8, §17, 18  
For applicable scheduled fines, see §805.8A, subsection 13, paragraph b  
Subsection 1, unnumbered paragraph 1 amended  
Subsections 4 and 8 amended

### **321.450 Hazardous materials transportation regulations.**

1. A person shall not transport or have transported or shipped within this state any hazardous material except in compliance with rules adopted by the department under chapter 17A. The rules shall be consistent with the federal hazardous materials regulations adopted under United States Code, Title 49, and found in 49 C.F.R. § 107, 171 to 173, 177, 178, and 180.

2. Notwithstanding other provisions of this section, rules adopted under this section concerning physical and medical qualifications for drivers of commercial vehicles engaged in intrastate commerce shall not be construed as disqualifying any individual who was employed as a driver of commercial vehicles engaged in intrastate commerce, and whose physical or medical condition existed, prior to July 29, 1996.

3. Notwithstanding other provisions of this section, or the age requirements under section 321.449, the age requirements under section 321.449 and the rules adopted under this section pertaining to compliance with regulations adopted under United States Code, Title 49, and found in 49 C.F.R. § 177.804, shall not apply to retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products, and pesticides to farm customers within a one-hundred-mile radius of their retail place of business.

4. Notwithstanding other provisions of this section, rules adopted under this section shall not apply to a farmer or employees of a farmer when transporting an agricultural hazardous material, except class 2 material, between the sites in the farmer's agricultural operations unless the material is being transported on the interstate highway system. As used in this subsection, "farmer" means a person engaged in the production or raising of crops, poultry, or livestock; "farmer" does not include a person who is a commercial applicator of agricultural chemicals or fertilizers.

5. Notwithstanding other provisions of this section to the contrary, a driver who is engaged ex-

clusively in intrastate commerce and who operates a truck or truck-tractor exclusively for the movement of refined oil products may drive twelve hours, be on duty sixteen hours in a twenty-four-hour period, and be on duty seventy hours in seven consecutive days, or eighty hours in eight consecutive days.

2003 Acts, ch 8, §19  
For applicable scheduled fines, see §805.8A, subsection 13, paragraph c  
Subsection 4 amended

### **321.484 Offenses by owners.**

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

The owner of a vehicle shall not be held responsible for a violation of a provision regulating the stopping, standing, or parking of a vehicle, whether the provision is contained in this chapter, or chapter 321L, or an ordinance or other regulation or rule, if the owner establishes that at the time of the violation the vehicle was in the custody of an identified person other than the owner pursuant to a lease as defined in chapter 321F or pursuant to a rental agreement as defined in section 516D.3. The furnishing to the county attorney where the charge is pending of a copy of the lease prescribed by section 321F.6 or rental agreement that was in effect for the vehicle at the time of the alleged violation shall be prima facie evidence that the vehicle was in the custody of an identified person other than the owner within the meaning of this paragraph.

If a peace officer as defined in section 801.4 has reasonable cause to believe the driver of a motor vehicle has violated section 321.261, 321.262, 321.264, 321.341, 321.342, 321.343, 321.344, or 321.372, the officer may request any owner of the motor vehicle to supply information identifying the driver. When requested, the owner of the vehicle shall identify the driver to the best of the owner's ability. However, the owner of the vehicle is not required to supply identification information to the officer if the owner believes the information is self-incriminating.

2003 Acts, ch 151, §26  
Unnumbered paragraph 2 amended

### **321.486 Authorized bond forms.**

When bond or bail is required under section 811.2 to guarantee appearance for any offense charged under this chapter, the following nonexclusive forms shall be permitted subject to the following limitations:

1. A current guaranteed arrest bond certificate as defined in section 321.1, subsection 30, shall be considered sufficient surety if the defendant is charged with an offense where the penalty does not exceed one thousand dollars.

2. A valid credit card, as defined in section 537.1301, subsection 16, may be used and is sufficient surety when the defendant is charged with a scheduled offense under section 805.8A, 805.8B, or 805.8C. The defendant may use a credit card for

bail purposes only in accordance with rules of the department of public safety adopted pursuant to chapter 17A.

2003 Acts, ch 6, §3  
Subsection 1 amended

## CHAPTER 321E

### VEHICLES OF EXCESSIVE SIZE AND WEIGHT

#### 321E.7 Load limits per axle.

1. The gross weight on any axle of any vehicle or combination of vehicles traveling under a permit issued in accordance with the provisions of this chapter shall not exceed the maximum axle load prescribed in section 321.463; except that cranes being temporarily moved on streets, roads, or highways may have a gross weight of twenty-four thousand pounds on any single axle; and construction machinery being temporarily moved on streets, roads, or highways may have a gross weight of thirty-six thousand pounds on any single axle equipped with a minimum size twenty-six point five-inch by twenty-five-inch flotation pneumatic tires and a maximum gross weight of twenty thousand pounds on any single axle equipped with minimum size eighteen-inch by twenty-five-inch flotation pneumatic tires, with the department authorized to adopt rules to permit the use of tire sizes and weights within the minimum and maximum specifications provided in this section, provided that the total gross weight of the vehicle or a combination of vehicles does not exceed a maximum of one hundred twenty-six thousand pounds; and except that a manufacturer of machinery or equipment manufactured or assembled in Iowa may be granted a permit for the movement of such machinery or equipment mounted on pneumatic tires with axle loads exceeding the maximum axle load prescribed in section 321.463 for distances not to exceed twenty-five miles at a speed not greater than twenty miles per hour. The movement of such machinery or equipment shall be over a specified route between the place of assembly or manufacture and a storage area, shipping point, proving ground, experimental area, weighing station, or another manufacturing plant.

2. The gross weight on any one axle of any vehicle or combination of vehicles traveling under a permit issued in accordance with this chapter shall not exceed the maximum axle load prescribed in section 321.463; except that any one axle on a vehicle or combination of vehicles transporting construction machinery shall be allowed a one thousand pound weight tolerance, provided the total gross weight of the vehicle or combination of vehicles does not exceed the gross weight allowed by the permit.

3. Special mobile equipment, as defined in sec-

tion 321.1, subsection 75, is not subject to the requirements for distance in feet between the extremes of any group of axles or the extreme axles of the vehicle or combination of vehicles as required by this chapter when being moved upon the highways if the operator has a permit issued under this chapter.

2003 Acts, ch 8, §20, 29  
NEW subsection 2 and former subsection 2 renumbered as 3

#### 321E.8 Annual permits.

Subject to the discretion and judgment provided for in section 321E.1, annual permits shall be issued in accordance with the following provisions:

1. Vehicles with indivisible loads, or manufactured or mobile homes including appurtenances, having an overall width not to exceed sixteen feet zero inches, an overall length not to exceed one hundred twenty feet zero inches, an overall height not to exceed fifteen feet five inches, and a total gross weight not to exceed eighty thousand pounds, may be moved as follows:

a. Vehicles with indivisible loads, or manufactured or mobile homes including appurtenances, having an overall width not to exceed twelve feet five inches, an overall length not to exceed one hundred twenty feet zero inches, and an overall height not to exceed thirteen feet ten inches may be moved for unlimited distances without route approval from the permitting authority.

b. Vehicles with indivisible loads, or manufactured or mobile homes including appurtenances, having an overall width not to exceed fourteen feet six inches, an overall length not to exceed one hundred twenty feet zero inches, and an overall height not to exceed fifteen feet five inches may be moved on the interstate highway system and primary highways with more than one lane traveling in each direction for unlimited distances and no more than fifty miles from the point of origin on all other highways without route approval from the permit issuing authority.

c. All other vehicles with indivisible loads operating under this subsection shall obtain route approval from the permitting authority.

d. Vehicles with indivisible loads may operate under an all-systems permit in compliance with paragraph "a", "b", or "c".

2. Vehicles with indivisible loads, or manufac-

tured or mobile homes including appurtenances, having an overall width not to exceed thirteen feet five inches and an overall length not to exceed one hundred twenty feet zero inches may be moved on highways specified by the permitting authority for unlimited distances if the height of the vehicle and load does not exceed fifteen feet five inches and the total gross weight of the vehicle does not exceed one hundred fifty-six thousand pounds. The vehicle owner or operator shall verify with the permitting authority prior to movement of the load that highway conditions have not changed so as to prohibit movement of the vehicle. Any cost to repair damage to highways or highway structures shall be borne by the owner or operator of the vehicle causing the damage. Permitted vehicles under this subsection shall not be allowed to travel on any portion of the interstate highway system. Vehicles with indivisible loads operating under the permit provisions of this subsection may operate under the permit provisions of subsection 1 provided the vehicle and load comply with the limitations described in subsection 1.

2003 Acts, ch 44, §59  
Section amended

#### **321E.14 Fees for permits.**

The department or local authorities issuing permits shall charge a fee of twenty-five dollars for an annual permit issued under section 321E.8, subsection 1, a fee of three hundred dollars for an annual permit issued under section 321E.8, subsection 2, a fee of two hundred dollars for a multi-trip permit, and a fee of ten dollars for a single-trip

permit, and shall determine charges for special permits issued pursuant to section 321E.29 by rules adopted pursuant to chapter 17A. Fees for the movement of buildings, parts of buildings, or unusual vehicles or loads may be increased to cover the costs of inspections by the issuing authority. A fee not to exceed two hundred fifty dollars per day or a prorated fraction of that fee per person and car for escort service may be charged when requested or when required under this chapter. Proration of escort fees between state and local authorities when more than one governmental authority provides or is required to provide escort for a movement during the period of a day shall be determined by rule under section 321E.15. The department and local authorities may charge a permit applicant for the cost of trimming trees and removal and replacement of natural obstructions or official signs and signals or other public or private property required to be removed during the movement of a vehicle and load. In addition to the fees provided in this section, the annual fee for a permit for special mobile equipment, as defined in section 321.1, subsection 75, operated pursuant to section 321E.7, subsection 3, with a combined gross weight up to and including eighty thousand pounds shall be twenty-five dollars and for a combined gross weight exceeding eighty thousand pounds, fifty dollars.

The annual fee for an all-system permit is one hundred twenty dollars which shall be deposited in the road use tax fund.

Section not amended; internal reference change applied

## CHAPTER 321F

### LEASING AND RENTING OF VEHICLES

#### **321F.9 Option to purchase — dealer's license.**

Any person engaged in business in this state shall not enter into any agreement for the use of a motor vehicle under the terms of which such person grants to another an option to purchase such motor vehicle without first having obtained a motor vehicle dealer's license under the provisions of chapter 322, and all sales of motor vehicles under

such options shall be subject to sales or use taxes imposed under the provisions of chapters 422 and 423. Nothing contained in this section shall require such person to have a place of business as provided by section 322.6, subsection 8.

For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §172, 205

Section not amended; footnote added

## CHAPTER 321G

### SNOWMOBILES AND ALL-TERRAIN VEHICLES

#### **321G.4 Registration with county recorder — fee.**

The owner of each all-terrain vehicle or snowmobile required to be numbered shall register it every two years with the county recorder of the

county in which the owner resides or, if the owner is a nonresident, the owner shall register it in the county in which the all-terrain vehicle or snowmobile is principally used. The commission has supervisory responsibility over the registration of

all-terrain vehicles and snowmobiles and shall provide each county recorder with registration forms and certificates and shall allocate registration numbers to each county.

The owner of the all-terrain vehicle or snowmobile shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the all-terrain vehicle or snowmobile and shall be accompanied by a fee of twenty-five dollars and a writing fee. An all-terrain vehicle or a snowmobile shall not be registered by the county recorder until the county recorder is presented with receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the all-terrain vehicle or snowmobile or that the owner is exempt from paying the tax. However, an owner of an all-terrain vehicle, except an all-terrain vehicle purchased new on or after January 1, 1990, may apply for registration without proof of sales or use tax paid until one year after January 1, 1990. An all-terrain vehicle or snowmobile that has an expired registration certificate from another state may be registered in this state upon proper application, payment of all applicable registration and writing fees, and payment of a penalty of five dollars.

Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to the all-terrain vehicle or snowmobile and the name and address of the owner. The registration certificate shall be carried either in the all-terrain vehicle or snowmobile or on the person of the operator of the machine when in use. The operator of an all-terrain vehicle or snowmobile shall exhibit the registration certificate to a peace officer upon request, to a person injured in an accident involving an all-terrain vehicle or snowmobile, or to the owner or operator of another all-terrain vehicle or snowmobile or the owner of personal or real property when the all-terrain vehicle or snowmobile is involved in a collision or accident of any nature with another all-terrain vehicle or snowmobile or the property of another person or to the property owner or tenant when the all-terrain vehicle or snowmobile is being operated on private property without permission from the property owner or tenant.

If an all-terrain vehicle or snowmobile is placed in storage, the owner shall return the current registration certificate to the county recorder with an affidavit stating that the all-terrain vehicle or snowmobile is placed in storage and the effective date of storage. The county recorder shall notify

the commission of each all-terrain vehicle or snowmobile placed in storage. When the owner of a stored all-terrain vehicle or snowmobile desires to renew the registration, the owner shall make application to the county recorder and pay the registration and writing fees without penalty. A refund of the registration fee shall not be allowed for a stored all-terrain vehicle or snowmobile.

2003 Acts, ch 44, §60  
Unnumbered paragraph 1 amended

#### **321G.19 Rented snowmobiles and all-terrain vehicles.**

1. The owner of a rented all-terrain vehicle or snowmobile shall keep a record of the name and address of each person renting the all-terrain vehicle or snowmobile, its registration number, the departure date and time, and the expected time of return. The records shall be preserved for six months.

2. The owner of an all-terrain vehicle or snowmobile operated for hire shall not permit the use or operation of a rented all-terrain vehicle or snowmobile unless it has been provided with all equipment required by this chapter or rules of the commission or the director of transportation, properly installed and in good working order.

2003 Acts, ch 44, §61  
For applicable scheduled fines, see §805.8B, subsection 2, paragraph d  
Subsection 1 amended

#### **321G.22A Recreational riding area — limitation of liability of prior landowners.**

Prior owners of land on which an all-terrain vehicle recreational riding area is established, maintained, or operated owe no duty of care to keep the land safe for entry or use by persons operating an all-terrain vehicle or to give any warning of a dangerous condition, use, structure, or activity on such premises that would make the land unsafe for all-terrain vehicle usage.

2003 Acts, ch 162, §1  
NEW section

#### **321G.33 Vehicle identification number.**

1. The department may assign a distinguishing number to an all-terrain vehicle or snowmobile when the serial number on the all-terrain vehicle or snowmobile is destroyed or obliterated and issue to the owner a special plate bearing the distinguishing number which shall be affixed to the all-terrain vehicle or snowmobile in a position to be determined by the department. The all-terrain vehicle or snowmobile shall be registered and titled under the distinguishing number in lieu of the former serial number. Every all-terrain vehicle or snowmobile shall have a vehicle identification number assigned and affixed as required by the department.

2. The commission shall adopt, by rule, the procedures for application and for issuance of a vehicle identification number for homebuilt all-terrain vehicles or snowmobiles.

3. A person shall not destroy, remove, alter,

cover, or deface the manufacturer's vehicle identification number, the plate bearing it, or any vehicle identification number the department assigns to an all-terrain vehicle or snowmobile without the department's permission.

4. A person other than a manufacturer who constructs or rebuilds an all-terrain vehicle or snowmobile for which there is no legible vehicle identification number shall submit to the department an affidavit which describes the all-terrain vehicle or snowmobile. In cooperation with the

county recorder, the department shall assign a vehicle identification number to the all-terrain vehicle or snowmobile. The applicant shall permanently affix the vehicle identification number to the all-terrain vehicle or snowmobile in a manner that such alteration, removal, or replacement of the vehicle identification number would be obvious.

2003 Acts, ch 44, §62  
Subsections 1, 2, and 4 amended

## CHAPTER 321J

### OPERATING WHILE INTOXICATED

#### **321J.2 Operating while under the influence of alcohol or a drug or while having an alcohol concentration of .08 or more (OWI).**

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:

*a.* While under the influence of an alcoholic beverage or other drug or a combination of such substances.

*b.* While having an alcohol concentration of .08 or more.

*c.* While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:

*a.* A serious misdemeanor for the first offense, punishable by all of the following:

(1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest or for any time the person spent in a court-ordered operating-while-intoxicated program that provides law enforcement security. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

(2) Assessment of a fine of one thousand dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, the court may waive up to five hundred dollars of the fine when the defendant presents to the court at the end of the minimum period of ineligibility, a temporary restricted license issued pursuant to section 321J.20. As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service.

(3) Revocation of the person's driver's license pursuant to section 321J.4, subsection 1, section 321J.9, or section 321J.12, subsection 2, which in-

cludes a minimum revocation period of one hundred eighty days, and may involve a revocation period of one year. A revocation under section 321J.9 includes a minimum period of ineligibility for a temporary restricted license of ninety days.

(a) A defendant whose alcohol concentration is .08 or more but not more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license. There shall be no such period of ineligibility if no such accident occurred, and the defendant shall not be ordered to install an ignition interlock device.

(b) A defendant whose alcohol concentration is more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained, and an accident resulting in personal injury or property damage occurred or the defendant's alcohol concentration exceeded .15. There shall be no such period of ineligibility if no such accident occurred and the defendant's alcohol concentration did not exceed .15. In either case, where a defendant's alcohol concentration is more than .10, the defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license.

(4) Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to subsection 3.

*b.* An aggravated misdemeanor for a second offense, and shall be imprisoned in the county jail or community-based correctional facility not less than seven days, and assessed a fine of not less

than one thousand five hundred dollars nor more than five thousand dollars.

c. A class “D” felony for a third offense and each subsequent offense, and shall be committed to the custody of the director of the department of corrections for an indeterminate term not to exceed five years, shall be confined for a mandatory minimum term of thirty days, and shall be assessed a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars.

(1) If the court does not suspend a person’s sentence of commitment to the custody of the director of the department of corrections under this paragraph “c”, the person shall be assigned to a facility pursuant to section 904.513.

(2) If the court suspends a person’s sentence of commitment to the custody of the director of the department of corrections under this paragraph “c”, the court shall order the person to serve not less than thirty days nor more than one year in the county jail, and the person may be committed to treatment in the community under section 907.6.

3. a. Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

(1) If the defendant’s alcohol concentration established by the results of an analysis of a specimen of the defendant’s blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

b. All persons convicted of an offense under subsection 2 shall be ordered, at the person’s expense, to undergo, prior to sentencing, a substance abuse evaluation.

c. Where the program is available and is appropriate for the convicted person, a person convicted of an offense under subsection 2 shall be ordered to participate in a reality education sub-

stance abuse prevention program as provided in section 321J.24.

d. A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under subsection 2 shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

4. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license revocation under this chapter:

a. Any conviction or revocation deleted from motor vehicle operating records pursuant to section 321.12 shall not be considered as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the one defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

5. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1.

6. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.

7. a. This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of

pharmacy examiners, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.

b. When charged with a violation of subsection 1, paragraph “c”, a person may assert, as an affirmative defense, that the controlled substance present in the person’s blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant’s blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant’s blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant’s blood or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to show the presence of such controlled substance or other drug in the defendant at the time of driving or being in physical control of the motor vehicle.

c. The department of public safety shall adopt nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation’s initial laboratory screening test for controlled substances.

9. a. In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, “*emergency response*” means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A

public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

10. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph “b” or “c”, if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1, paragraph “b” or “c”.

2003 Acts, ch 60, §1, 2; 2003 Acts, ch 179, §120; 2003 Acts, 1st Ex, ch 2, §48, 209

For provisions relating to third offense OWI driver’s license revocations and restoration of driving privileges, see 99 Acts, ch 153, §25

Subsection 1, paragraph b amended

Subsection 2, paragraph a, subparagraphs (1) and (3) amended

#### **321J.4 Revocation of license — ignition interlock devices — conditional temporary restricted license.**

1. If a defendant is convicted of a violation of section 321J.2 and the defendant’s driver’s license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant’s driver’s license or nonresident operating privilege for one hundred eighty days if the defendant has had no previous conviction or revocation under this chapter. The defendant shall not be eligible for any temporary restricted license for at least ninety days if a test was refused under section 321J.9.

a. A defendant whose alcohol concentration is .08 or more but not more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license. There shall be no such period of ineligibility if no such accident occurred, and the defendant shall not be ordered to install an ignition interlock device.

b. A defendant whose alcohol concentration is more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred or the defendant’s alcohol concentration exceeded .15. There shall be no such period of ineligibility if no such accident occurred and the defendant’s alcohol concentration did not exceed .15. In either case, where a defendant’s alcohol concentration is more than .10, the defendant shall be ordered to

install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license.

c. If the defendant is under the age of twenty-one, the defendant shall not be eligible for a temporary restricted license for at least sixty days after the effective date of revocation.

2. If a defendant is convicted of a violation of section 321J.2, and the defendant's driver's license or nonresident operating privilege has not already been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant's driver's license or nonresident operating privilege for two years if the defendant has had a previous conviction or revocation under this chapter. The defendant shall not be eligible for any temporary restricted license for one year after the effective date of revocation. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

3. If the court defers judgment pursuant to section 907.3 for a violation of section 321J.2, and if the defendant's driver's license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12, or has not otherwise been revoked for the occurrence from which the arrest arose, the department shall revoke the defendant's driver's license or nonresident operating privilege for a period of not less than thirty days nor more than ninety days. The defendant shall not be eligible for any temporary restricted license for at least ninety days if a test was refused.

a. A defendant whose alcohol concentration is .08 or more but not more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license. There shall be no such period of ineligibility if no such accident occurred, and the defendant shall not be ordered to install an ignition interlock device.

b. A defendant whose alcohol concentration is more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred or the defendant's alcohol concentration exceeded .15. There shall be no such period of ineligibility if no such accident occurred and the defendant's alco-

hol concentration did not exceed .15. In either case, where a defendant's alcohol concentration is more than .10, the defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license.

c. If the defendant is under the age of twenty-one, the defendant shall not be eligible for a temporary restricted license for at least sixty days after the effective date of the revocation.

4. Upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for a temporary restricted license for at least one year after the effective date of the revocation. The court shall require the defendant to surrender to it all Iowa licenses or permits held by the defendant, which the court shall forward to the department with a copy of the order for revocation. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

5. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a personal injury, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a serious injury was sustained by any person other than the defendant and, if so, whether the defendant's conduct in violation of section 321J.2 caused the serious injury. If the court so determines, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a period of one year in addition to any other period of suspension or revocation. The defendant shall not be eligible for any temporary restricted license until the minimum period of ineligibility has expired under this section or section 321J.9, 321J.12, or 321J.20. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

6. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a death, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a death occurred and, if so, whether the defendant's conduct in violation of section 321J.2 caused the death. If the court so determines, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a peri-

od of six years. The defendant shall not be eligible for any temporary restricted license for at least two years after the revocation. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

7. If a license or permit to operate a motor vehicle is revoked or denied under this section or section 321J.9 or 321J.12, the period of revocation or denial shall be the period provided for such a revocation or until the defendant reaches the age of eighteen whichever period is longer.

8. *a.* On a conviction for or as a condition of a deferred judgment for a violation of section 321J.2, the court may order the defendant to install ignition interlock devices of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the defendant which, without tampering or the intervention of another person, would prevent the defendant from operating the motor vehicle with an alcohol concentration greater than a level set by rule of the commissioner of public safety.

*b.* The commissioner of public safety shall adopt rules to approve certain ignition interlock devices and the means of installation of the devices, and shall establish the level of alcohol concentration beyond which an ignition interlock device will not allow operation of the motor vehicle in which it is installed.

*c.* The order to install ignition interlock devices shall remain in effect for a period of time as determined by the court which shall not exceed the maximum term of imprisonment which the court could have imposed according to the nature of the violation. While the order is in effect, the defendant shall not operate a motor vehicle which does not have an approved ignition interlock device installed.

*d.* If the defendant's driver's license or nonresident operating privilege has been revoked, the department shall not issue a temporary permit or a driver's license to the person without certification that approved ignition interlock devices have been installed in all motor vehicles owned or operated by the defendant while the order is in effect.

*e.* A defendant who fails within a reasonable time to comply with an order to install an approved ignition interlock device may be declared in contempt of court and punished accordingly.

*f.* A person who tampers with or circumvents an ignition interlock device installed under a court order while an order is in effect commits a serious misdemeanor.

9. *a.* A person whose noncommercial driver's license has either been revoked under this chapter, or revoked or suspended under chapter 321 solely for violations of this chapter, or who has been determined to be a habitual offender under chapter 321 based solely on violations of this chapter or on violations listed in section 321.560, subsection 1, paragraph "b", and who is not eligible for

a temporary restricted license under this chapter may petition the court upon the expiration of the minimum period of ineligibility for a temporary restricted license provided for under this section, section 321J.9, 321J.12, 321J.20, or 321.560, for an order to the department to require the department to issue a temporary restricted license to the person notwithstanding section 321.560.

*b.* The petition shall include a current certified copy of the petitioner's official driving record issued by the department.

*c.* Upon the filing of a petition for a temporary restricted license under this section, the clerk of the district court in the county where the violation that resulted in the revocation occurred shall send notice of the petition to the department and the prosecuting attorney. The department and the prosecuting attorney shall each be given an opportunity to respond to and request a hearing on the petition.

*d.* The court shall determine if the temporary restricted license is necessary for the person to maintain the person's present employment. However, a temporary restricted license shall not be ordered or issued for a violation of section 321J.2A or to a person under the age of twenty-one whose license is revoked under this section or section 321J.9 or 321J.12. If the court determines that the temporary restricted license is necessary for the person to maintain the person's present employment, and that the minimum period of ineligibility for receipt of a temporary license has expired, the court shall order the department to issue to the person a temporary restricted license conditioned upon the person's certification to the court of the installation of approved ignition interlock devices in all motor vehicles that it is necessary for the person to operate to maintain the person's present employment.

*e.* Section 321.561 does not apply to a person operating a motor vehicle in the manner permitted under this subsection.

*f.* If the person operates a motor vehicle which does not have an approved ignition interlock device or if the person tampers with or circumvents an ignition interlock device, in addition to other penalties provided, the person's temporary restricted license shall be revoked.

*g.* A person holding a temporary restricted license issued under this subsection shall not operate a commercial motor vehicle, as defined in section 321.1, on a highway if a commercial driver's license is required for the person to operate the commercial motor vehicle.

*h.* Notwithstanding any provision of this chapter to the contrary, the court may order the department to issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this subsection, whose period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's noncommercial driv-

er's license or nonresident operating privileges.

2003 Acts, ch 60, §3; 2003 Acts, ch 179, §121, 122

For provisions relating to third offense OWI driver's license revocations and restoration of driving privileges, see 99 Acts, ch 153, §25  
Subsections 1 and 3 amended

### 321J.6 Implied consent to test.

1. A person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person has been operating a motor vehicle in violation of section 321J.2 or 321J.2A is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of a controlled substance or other drugs, subject to this section. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A, and if any of the following conditions exist:

*a.* A peace officer has lawfully placed the person under arrest for violation of section 321J.2.

*b.* The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.

*c.* The person has refused to take a preliminary breath screening test provided by this chapter.

*d.* The preliminary breath screening test was administered and it indicated an alcohol concentration equal to or in excess of the level prohibited by section 321J.2.

*e.* The preliminary breath screening test was administered to a person operating a commercial motor vehicle as defined in section 321.1 and it indicated an alcohol concentration of 0.04 or more.

*f.* The preliminary breath screening test was administered and it indicated an alcohol concentration less than the level prohibited by section 321J.2, and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

*g.* The preliminary breath screening test was administered and it indicated an alcohol concentration of .02 or more but less than .08 and the person is under the age of twenty-one.

2. The peace officer shall determine which of the three substances, breath, blood, or urine, shall be tested. Refusal to submit to a chemical test of urine or breath is deemed a refusal to submit, and section 321J.9 applies. A refusal to submit to a chemical test of blood is not deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other two substances shall be tested and shall offer the test. If the peace officer fails to offer a test within two

hours after the preliminary screening test is administered or refused or the arrest is made, whichever occurs first, a test is not required, and there shall be no revocation under section 321J.9.

3. Notwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a blood or urine test shall be required even after another type of test has been administered. Section 321J.9 applies to a refusal to submit to a chemical test of urine or blood requested under this subsection.

2003 Acts, ch 60, §4

Subsection 1, paragraph g amended

### 321J.12 Test result revocation.

1. Upon certification, subject to penalty for perjury, by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2, that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, and that the person submitted to chemical testing and the test results indicated the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2, or a combination of alcohol and another drug in violation of section 321J.2, the department shall revoke the person's driver's license or nonresident operating privilege for the following periods of time:

*a.* One hundred eighty days if the person has had no revocation under this chapter.

*b.* One year if the person has had a previous revocation under this chapter.

2. *a.* A person whose driver's license or nonresident operating privileges have been revoked under subsection 1, paragraph "a", whose alcohol concentration is .08 or more but not more than .10 shall not be eligible for any temporary restricted license for at least thirty days after the effective date of the revocation if a test was obtained and an accident resulting in personal injury or property damage occurred. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary license. There shall be no such period of ineligibility if no such accident occurred, and the defendant shall not be ordered to install an ignition interlock device.

*b.* A defendant whose alcohol concentration is more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred or the defendant's alcohol concentration exceeded .15. There shall be no such period of ineligibility if no such accident occurred and the defendant's alcohol concentration did not exceed .15. In either

case, where a defendant's alcohol concentration is more than .10, the defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license.

c. If the person is under the age of twenty-one, the person shall not be eligible for a temporary restricted license for at least sixty days after the effective date of the revocation.

d. A person whose license or privileges have been revoked under subsection 1, paragraph "b", for one year shall not be eligible for any temporary restricted license for one year after the effective date of the revocation, and the person shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

3. The effective date of the revocation shall be ten days after the department has mailed notice of revocation to the person by first class mail, notwithstanding chapter 17A. The peace officer who requested or directed the administration of the chemical test may, on behalf of the department, serve immediate notice of revocation on a person whose test results indicated the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2, or a combination of alcohol and another controlled substance or drug in violation of section 321J.2.

4. If the peace officer serves that immediate notice, the peace officer shall take the person's Iowa license or permit, if any, and issue a temporary license valid only for ten days. The peace officer shall immediately send the person's driver's license to the department along with the officer's certificate indicating that the test results indicated the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2.

5. Upon certification, subject to penalty of perjury, by the peace officer that there existed reasonable grounds to believe that the person had been operating a motor vehicle in violation of section 321J.2A, that there existed one or more of the necessary conditions for chemical testing described in section 321J.6, subsection 1, and that the person submitted to chemical testing and the test results indicated an alcohol concentration of .02 or more but less than .08, the department shall revoke the person's driver's license or operating privilege for a period of sixty days if the person has had no previous revocation under this chapter, and for a period of ninety days if the person has had a previous revocation under this chapter.

6. The results of a chemical test may not be

used as the basis for a revocation of a person's driver's license or nonresident operating privilege if the alcohol or drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test is not equal to or in excess of the level prohibited by section 321J.2 or 321J.2A.

2003 Acts, ch 60, §5, 6; 2003 Acts, ch 179, §123  
Subsections 2 and 5 amended

### **321J.20 Temporary restricted license.**

1. The department may, on application, issue a temporary restricted license to a person whose noncommercial driver's license is revoked under this chapter allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by the person's full-time or part-time employment, continuing health care or the continuing health care of another who is dependent upon the person, continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion, substance abuse treatment, and court-ordered community service responsibilities if the person's driver's license has not been revoked previously under section 321J.4, 321J.9, or 321J.12 and if any of the following apply:

a. The person's noncommercial driver's license is revoked under section 321J.4 and the minimum period of ineligibility for issuance of a temporary restricted license has expired. This subsection shall not apply to a revocation ordered under section 321J.4 resulting from a plea or verdict of guilty of a violation of section 321J.2 that involved a death.

b. The person's noncommercial driver's license is revoked under section 321J.9 and the person has entered a plea of guilty on a charge of a violation of section 321J.2 which arose from the same set of circumstances which resulted in the person's driver's license revocation under section 321J.9 and the guilty plea is not withdrawn at the time of or after application for the temporary restricted license, and the minimum period of ineligibility for issuance of a temporary restricted license has expired.

c. The person's noncommercial driver's license is revoked under section 321J.12, and the minimum period of ineligibility for issuance of a temporary restricted license has expired.

However, a temporary restricted license may be issued if the person's noncommercial driver's license is revoked under section 321J.9, and the revocation is a second revocation under this chapter, and the first three hundred sixty-five days of the revocation have expired.

2. This section does not apply to a person whose license was revoked under section 321J.2A

or section 321J.4, subsection 4 or 6, or to a person whose license is suspended or revoked for another reason.

3. A person holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.

4. A person holding a temporary restricted license issued by the department under this section shall not operate a commercial motor vehicle on a highway if a commercial driver's license is required for the person's operation of the commercial motor vehicle.

5. A person holding a temporary license issued by the department under this chapter shall be prohibited from operating a school bus.

6. Following certain minimum periods of ineligibility, a temporary restricted license under this section shall not be issued until such time as the applicant installs an ignition interlock device of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the applicant, in accordance with section 321J.2, 321J.4, 321J.9, or 321J.12. Installation of an ignition interlock device under this section shall be required for the period of time for which the temporary restricted license is issued.

7. Notwithstanding any provision of this chapter to the contrary, the department may issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this section, whose period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's driver's license or nonresident operating privileges.

2003 Acts, ch 60, §7  
Subsection 6 amended

### **321J.22 Drinking drivers course.**

1. As used in this section, unless the context otherwise requires:

*a. "Course for drinking drivers"* means an approved course designed to inform the offender about drinking and driving and encourage the offender to assess the offender's own drinking and driving behavior in order to select practical alternatives.

*b. "Satisfactory completion of a course"* means receiving at the completion of a course a grade from the course instructor of "C" or "2.0," or better.

2. *a.* The course provided according to this section shall be offered on a regular basis at each community college as defined in section 260C.2, or by substance abuse treatment programs licensed under chapter 125. However, a community college shall not be required to offer the course if a substance abuse treatment program licensed under chapter 125 offers the course within the merged area served by the community college.

*b.* Enrollment in the courses is not limited to

persons ordered to enroll, attend, and successfully complete the course required under sections 321J.2 and 321J.17, subsection 2. However, any person under age eighteen who is required to attend the courses for violation of section 321J.2 or 321J.17 must attend a course offered by a substance abuse treatment program licensed under chapter 125.

*c.* The course required by this section shall be:

(1) Taught by a community college under the supervision of the department of education or by a substance abuse treatment program licensed under chapter 125.

(2) Approved by the department of education, in consultation with the community colleges and substance abuse treatment programs licensed under chapter 125.

*d.* The department of education shall establish reasonable fees to defray the expense of obtaining classroom space, instructor salaries, and class materials for courses offered both by community colleges and by substance abuse treatment programs licensed under chapter 125, and for administrative expenses incurred by the department of education in implementing subsection 5 on behalf of in-state and out-of-state offenders.

*e.* A person shall not be denied enrollment in a course by reason of the person's indigency.

3. An employer shall not discharge a person from employment solely for the reason of work absence to attend a course required by this section. Any employer who violates this section is liable for damages which include but are not limited to actual damages, court costs, and reasonable attorney fees. The person may also petition the court for imposition of a cease and desist order against the person's employer and for reinstatement to the person's previous position of employment.

4. The department of education and substance abuse treatment programs licensed under chapter 125 shall prepare for their respective courses a list of the locations of the courses taught under this section, the dates and times taught, the procedure for enrollment, and the schedule of course fees. The list shall be kept current and a copy of the list shall be sent to each court having jurisdiction over offenses provided in this chapter.

5. The department of education and substance abuse treatment programs licensed under chapter 125 shall maintain enrollment, attendance, successful and unsuccessful completion data for their respective courses on the persons ordered to enroll, attend, and successfully complete a course for drinking drivers. This data shall be forwarded to the court by both the department of education and substance abuse treatment programs licensed under chapter 125.

2003 Acts, ch 180, §60  
Subsection 2, paragraph d amended

## CHAPTER 321K

### VEHICLE ROADBLOCKS

#### 321K.1 Roadblocks conducted by law enforcement agencies.

1. The law enforcement agencies of this state may conduct emergency vehicle roadblocks in response to immediate threats to the health, safety, and welfare of the public; and otherwise may conduct routine vehicle roadblocks only as provided in this section. Routine vehicle roadblocks may be conducted to enforce compliance with the law regarding any of the following:

- a. The licensing of operators of motor vehicles.
- b. The registration of motor vehicles.
- c. The safety equipment required on motor vehicles.
- d. The provisions of chapters 481A and 483A.

2. Any routine vehicle roadblock conducted under this section shall meet the following requirements:

- a. The location of the roadblock, the time during which the roadblock will be conducted, and the procedure to be used while conducting the roadblock, shall be determined by policymaking administrative officers of the law enforcement

agency.

b. The roadblock location shall be selected for its safety and visibility to oncoming motorists, and adequate advance warning signs, illuminated at night or under conditions of poor visibility, shall be erected to provide timely information to approaching motorists of the roadblock and its nature.

c. There shall be uniformed officers and marked official vehicles of the law enforcement agency or agencies involved, in sufficient quantity and visibility to demonstrate the official nature of the roadblock.

d. The selection of motor vehicles to be stopped shall not be arbitrary.

e. The roadblock shall be conducted to assure the safety of and to minimize the inconvenience of the motorists involved.

3. A law enforcement agency conducting a roadblock in accordance with this section may require the driver to provide proof of financial liability coverage required under section 321.20B.

2003 Acts, ch 6, §4  
NEW subsection 3

## CHAPTER 321M

### COUNTY ISSUANCE OF DRIVER'S LICENSES

#### 321M.9 Financial responsibility.

1. *Fees to counties.* Notwithstanding any other provision in the Code to the contrary, the county treasurer of any county authorized to issue driver's licenses under this chapter shall retain for deposit in the county general fund five dollars of fees received for each issuance or renewal of driver's licenses and nonoperator identification cards, but shall not retain any moneys for the issuance of any persons with disabilities identification devices. The county treasurer shall remit the balance of fees to the department.

2. *Digitized photolicensing equipment.*

a. The department shall pay for all digitized photolicensing equipment, including that used by the department and authorized for use by issuing counties under this subsection. Moneys from the road use tax fund shall be used, subject to appropriation by the general assembly, for payment of costs associated with the purchase or lease of digitized photolicensing equipment.

b. An issuing county shall be entitled to one set of digitized photolicensing equipment, unless the county was served at multiple sites by the department, in which case the county shall be entitled to two sets of digitized photolicensing equipment.

3. *Other equipment.* The department shall pay for all other equipment needed by a county to participate in county issuance, comparable to the equipment provided for issuance activities by a department itinerant team, with the exception of the following:

a. Office furniture.

b. Computer hardware needed to access department computer databases, facsimile machines used to transmit documents between the department and the county, and similar office equipment of a general nature that is not dedicated solely or primarily to the issuance process.

2003 Acts, ch 8, §21  
For future repeal of 2003 amendments to subsection 1 effective July 1, 2005, see 2003 Acts, ch 8, §21, 27  
Subsection 1 amended

## CHAPTER 322

### MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS

#### 322.19 Finance charges — amount.

1. Notwithstanding the provisions of any other existing law, a retail installment transaction may include a finance charge not in excess of the following rates:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, an amount equivalent to one and three-fourths percent per month simple interest on the declining balance of the amount financed.

Class 2. Any new motor vehicle not in Class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made, an amount equivalent to two percent per month simple interest on the declining balance of the amount financed.

Class 3. Any used motor vehicle not in Class 2 and designated by the manufacturer by a year model more than two years prior to the year in

which the sale is made, an amount equivalent to two and one-fourth percent per month simple interest on the declining balance of the amount financed.

2. For purposes of this chapter, “*amount financed*” means as defined in section 537.1301. However, notwithstanding section 322.33, subsection 3, the amount financed may also include additional charges for the following, which shall not be included in the finance charge:

a. A motor vehicle service contract as defined in section 516E.1.

b. Voluntary debt cancellation coverage, whether insurance or debt waiver, which may be excluded from the finance charge under the federal Truth in Lending Act as defined in section 537.1302.

2003 Acts, ch 8, §22  
Former unnumbered paragraphs 1 – 4 editorially redesignated as subsection 1

Unnumbered paragraph 5 amended and editorially redesignated as subsection 2, unnumbered paragraph 1 and paragraphs a and b

## CHAPTER 322D

### FARM IMPLEMENT, MOTORCYCLE, SNOWMOBILE, AND ALL-TERRAIN VEHICLE FRANCHISES

For provisions applicable to certain agricultural equipment dealership agreements, see chapter 322F, §322F.9

#### 322D.1 Definitions.

When used in this chapter, unless the context otherwise requires:

1. “*All-terrain vehicle*” means the same as defined in section 321G.1.

2. “*Attachment*” means a machine or part of a machine designed to be used on and in conjunction with a farm implement, motorcycle, all-terrain vehicle, or snowmobile.

3. “*Farm implement*” means a machine designed or adapted and used exclusively for agricultural or horticultural operations or livestock raising.

4. “*Franchise*” means a contract between two or more persons when all of the following conditions are included:

a. A commercial relationship of definite duration or continuing indefinite duration is involved.

b. The franchisee is granted the right to offer and sell farm implements, motorcycles, all-terrain vehicles, snowmobiles, or related parts or attachments manufactured or distributed by the franchiser.

c. The franchisee, as an independent business,

constitutes a component of the franchiser’s distribution system.

d. The operation of the franchisee’s business is substantially associated with the franchiser’s trademark, service mark, trade name, advertising, or other commercial symbol designating the franchiser.

e. The operation of the franchisee’s business is substantially reliant on the franchiser for the continued supply of farm implements, motorcycles, all-terrain vehicles, snowmobiles, or related parts or attachments.

5. “*Franchisee*” means a person who receives farm implements, motorcycles, all-terrain vehicles, snowmobiles, or related parts or attachments from the franchiser under a franchise and who offers and sells the farm implements, motorcycles, all-terrain vehicles, snowmobiles, or related parts or attachments to the general public.

6. “*Franchiser*” means a person who manufactures, wholesales, or distributes farm implements, motorcycles, all-terrain vehicles, snowmobiles, or related parts or attachments, and who enters into a franchise.

7. “*Motorcycle*” means a motor vehicle as defined in section 321.1 other than an all-terrain vehicle, which has a saddle or seat for the use of a rider and that is designed to travel on not more than two wheels in contact with the ground, but excluding a motorized bicycle as defined in section 321.1.

8. “*Net cost*” means the price the franchisee actually paid for the merchandise to the franchiser less any applicable trade, volume, cash or bonus discounts.

9. “*Net price*” means the price listed in the franchiser’s price list in effect at the time the franchise is canceled, less any applicable trade, volume or cash discounts.

10. “*Person*” means a sole proprietor, partnership, corporation, or any other form of business organization.

11. “*Snowmobile*” means the same as defined in section 321G.1.

2003 Acts, ch 28, §1 – 4, 8  
2003 amendments to this section take effect April 11, 2003, and apply retroactively to January 1, 2003; 2003 Acts, ch 28, §8  
Subsection 2 amended  
Subsection 4, paragraphs b and e amended  
Subsections 5 and 6 amended  
NEW subsection 11

### 322D.2 Franchisee’s rights to payment.

1. A franchisee who enters into a written franchise with a franchiser to maintain a stock of farm implements, motorcycles, all-terrain vehicles, snowmobiles, or related parts or attachments has the following rights to payment, at the option of the franchisee, if the franchise is terminated:

a. One hundred percent of the net cost of new, unused, complete farm implements, motorcycles, all-terrain vehicles, snowmobiles, or related attachments, which were purchased from the franchiser. In addition, the franchisee shall have a right of payment for transportation charges on the farm implements, motorcycles, all-terrain vehicles, or snowmobiles, which have been paid by the franchisee.

b. Eighty-five percent of the net prices of any repair parts, including superseded parts, which were purchased from the franchiser and held by the franchisee on the date that the franchise terminated.

c. Five percent of the net prices of parts resold under paragraph “b” for handling, packing, and loading of the parts. However, this payment shall not be due to the franchisee if the franchiser elects to perform the handling, packing, and loading.

2. Upon receipt of the payments due under subsection 1, the franchiser is entitled to possession of and title to the farm implements, motorcycles, all-terrain vehicles, snowmobiles, or related parts or attachments.

3. The cost of farm implements, motorcycles, all-terrain vehicles, snowmobiles, or related attachments and the price of repair parts shall be determined by reference to the franchiser’s price list

or catalog in effect at the time of the franchise termination.

2003 Acts, ch 28, §5, 8  
2003 amendments to this section take effect April 11, 2003, and apply retroactively to January 1, 2003; 2003 Acts, ch 28, §8  
Section amended

### 322D.3 Exceptions.

This chapter does not require repurchase from a franchisee of:

1. A repair part which has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets or batteries.

2. A repair part which is in a broken or damaged package.

3. A single repair part which is priced as a set of two or more items.

4. A repair part which because of its condition is not resalable as a new part without repackaging or reconditioning.

5. Any inventory for which the franchisee is unable to furnish evidence of title and ownership in the franchisee that is free and clear of all claims, liens and encumbrances to the satisfaction of the franchiser.

6. Any inventory which a franchisee desires to keep, provided the franchisee has a contractual right in the franchise agreement to do so.

7. A farm implement, motorcycle, all-terrain vehicle, or snowmobile which is not in new, unused, undamaged, or complete condition.

8. A repair part which is not in new, unused, or undamaged condition.

9. A farm implement, motorcycle, all-terrain vehicle, or snowmobile which was purchased twenty-four months or more prior to the termination of the franchise.

10. Any inventory which was ordered by the franchisee on or after the date of notification of termination of the franchise.

11. Any inventory which was acquired by the franchisee from a source other than the franchiser with whom the franchise is being terminated.

12. A repair part not listed in the franchiser’s current price list in effect on the date of notice of termination or classified as nonreturnable or obsolete by the franchiser as of the date of termination. However, this exception to the repurchase requirement applies only if the franchiser provided the franchisee with an opportunity to return the exempted part prior to notice of termination of the franchise.

2003 Acts, ch 28, §6, 8  
2003 amendments to subsections 7 and 9 take effect April 11, 2003, and apply retroactively to January 1, 2003; 2003 Acts, ch 28, §8  
Subsections 7 and 9 amended

### 322D.10 Application — snowmobile franchise agreements.

The rights under section 322D.2, subsection 1, apply to snowmobile franchises in effect on Janu-

ary 1, 2003, which have no expiration date and are continuing franchises, and to franchises executed or renewed on or after January 1, 2003, but only to snowmobiles and related parts or attachments

purchased on or after January 1, 2003.

2003 Acts, ch 28, §7, 8  
Section is effective April 11, 2003, and applies retroactively to January 1, 2003; 2003 Acts, ch 28, §8  
NEW section

## CHAPTER 322F

### EQUIPMENT DEALERSHIP AGREEMENTS

#### 322F.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agricultural equipment"* means a device, part of a device, or an attachment of a device designed to be principally used for an agricultural purpose. *"Agricultural equipment"* includes but is not limited to equipment associated with livestock or crop production, horticulture, or floriculture. *"Agricultural equipment"* includes but is not limited to tractors; trailers; combines; tillage, planting, and cultivating implements; bailers; irrigation implements; and all-terrain vehicles.

2. *"All-terrain vehicle"* means the same as defined in section 321G.1.

3. *"Construction equipment"*, *"industrial equipment"*, or *"utility equipment"* means a device, part of a device, or an attachment to a device designed to be principally used for a construction or industrial purpose. *"Construction equipment"*, *"industrial equipment"*, or *"utility equipment"* includes equipment associated with earthmoving, industrial material handling, mining, forestry, highway construction or maintenance, and landscaping. *"Construction equipment"*, *"industrial equipment"*, or *"utility equipment"* includes but is not limited to tractors, graders, excavators, loaders, and backhoes.

4. *"Dealer"* or *"dealership"* means a person engaged in the retail sale of equipment.

5. *"Dealership agreement"* means an oral or written agreement, either express or implied, between a supplier and a dealer which provides that the dealer is granted the right to sell, distribute, or service the supplier's equipment, regardless of whether the equipment carries a trade name, trademark, service mark, logotype, advertisement, or other commercial symbol, and which provides evidence of a continuing commercial relationship between the supplier and the dealer.

6. *"Equipment"* means agricultural equipment, construction equipment, industrial equipment, utility equipment, or outdoor power equipment. However, *"equipment"* does not include self-propelled machines designed primarily for the transportation of persons or property on a street or highway.

7. *"Good cause"* means a condition which occurs under any of the following circumstances:

a. The dealer fails to substantially comply

with an essential and reasonable requirement imposed upon the dealer by the dealership agreement, but only if that requirement is also generally imposed upon similarly situated dealers.

b. The dealer has made a material misrepresentation or falsification of any record, contract, report, or other document which the dealer has submitted to the supplier.

c. The dealer transfers an interest in the dealership; a person with a substantial interest in the ownership or control of the dealership withdraws from the dealership, including an individual proprietor, partner, major shareholder, or manager; or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership. However, good cause does not exist if the supplier consents to an action described in this paragraph.

d. The dealer has filed a voluntary petition in bankruptcy.

e. An involuntary petition in bankruptcy has been filed against the dealership and has not been discharged within thirty days after the filing.

f. The dealership is subject to a closeout or sale of a substantial part of the dealership equipment or assets related to the equipment.

g. A dissolution or liquidation of dealership assets has commenced.

h. The dealer's principal place of business is relocated, unless the supplier consents to the change in location.

i. The dealer has defaulted under a security agreement, including but not limited to a chattel mortgage, between the dealer and the supplier or any subsidiary or affiliate of the supplier.

j. A guarantee of the dealer's present or future obligations to the supplier is revoked or discontinued.

k. The dealer has failed to operate in the normal course of business for seven consecutive business days or has otherwise abandoned business operations.

l. The dealer has pleaded guilty to or has been convicted of a felony.

m. The dealer has engaged in conduct which is injurious or detrimental to the dealer's customers or to the public welfare, including but not limited to, misleading advertising, failing to provide reasonable service or replacement parts, or failing to honor warranty obligations.

n. The dealer consistently fails to comply with

applicable state licensing requirements relating to the products and services represented on behalf of the supplier.

*o.* The dealer has inadequately represented the manufacturer's product relating to sales when compared to similarly situated dealers.

8. "*Net cost*" means the price the dealer paid to the supplier for the equipment, less applicable discounts.

9. "*Net price*" means the current price listed in the supplier's effective price list or catalog, less any applicable trade or cash discount.

10. "*Outdoor power equipment*" means equipment using small motors or engines, if the equipment is used principally for outside service, including but not limited to aerators, augers, blowers, brush clearers, brush cutters, chain saws, dethatchers, edgers, hedge trimmers, lawn mowers, pole saws, power rakes, snowblowers, and tillers.

11. "*Supplier*" means the manufacturer, wholesaler, or distributor of equipment sold by a dealer.

2003 Acts, ch 55, §1 – 3  
NEW subsection 1 and former subsection 1 renumbered as 2  
NEW subsection 3 and former subsections 2 – 7 renumbered as 4 – 9  
Subsections 4 and 6 amended  
NEW subsection 10 and former subsection 8 renumbered as 11

### 322F.2 Notice of termination.

1. *a.* A supplier shall terminate a dealership agreement for equipment other than outdoor power equipment by cancellation, nonrenewal, or a substantial change in competitive circumstances only upon good cause and upon at least ninety days' prior written notice delivered to the dealer by certified mail or restricted certified mail. A supplier shall terminate a dealership agreement for outdoor power equipment by cancellation or nonrenewal only upon good cause and upon at least ninety days' prior written notice delivered to the dealer by restricted certified mail or hand delivered by a representative of the supplier to the dealer or a designated representative of the dealer.

*b.* A written termination notice must specify each deficiency constituting good cause for the action. The notice must also state that the dealer has sixty days to cure a specified deficiency. If the deficiency is cured within sixty days from the date that the notice is delivered, the notice is void. However, if the deficiency is based on a dealer's inadequate representation of a manufacturer's product relating to sales, as provided in section 322F.1, the notice must state that the dealer has eighteen months to cure the deficiency. If the deficiency based on inadequate representation of a manufacturer's product relating to sales is cured within eighteen months from the date that notice is delivered, the notice is void.

2. The supplier shall have the right to terminate immediately without notice in the event the action is for good cause as defined in section

322F.1, subsection 7, paragraphs "b" through "m".

2003 Acts, ch 55, §4  
Internal reference change applied  
Subsection 1 amended

### 322F.3 Termination of agreement — repurchase of equipment.

1. If a dealership agreement is terminated by cancellation or nonrenewal, the supplier must repurchase equipment and parts in the dealer's inventory and must repurchase special tools and computer hardware or software required for the dealership. The repurchase is subject to the following conditions:

*a.* The supplier must pay to the dealer or credit the dealer's account with one hundred percent of the net cost of all unused complete equipment including attachments. The equipment must be in new condition and purchased by the dealership from the supplier within twenty-four months preceding notification by either party of an intent to terminate the contract.

*b.* The supplier must pay to the dealer or credit the dealer's account with ninety percent of the net price for repair parts, including superseded parts listed in the price lists or catalogs in use by the supplier on the date of termination. The supplier shall also pay the dealer or credit the dealer's account with five percent of the net price on the date of termination on all parts returned for the dealer's handling, packing, and loading of the parts to be returned to the supplier. However, the supplier is not required to pay or credit the five percent if the supplier elects to perform the handling, packing, and loading.

*c.* The supplier shall pay to the dealer or credit the dealer's account with the amortized value of any specific computer hardware or software that the supplier required the dealer to purchase within the five years immediately preceding notification by either party of an intent to terminate the contract.

*d.* The supplier shall pay to the dealer or credit the dealer's account with the following amounts for special repair tools that were unique to the supplier's product line and that are in complete and resalable condition:

(1) Seventy-five percent of the net cost of special repair tools purchased within the three years immediately preceding notification by either party of an intent to terminate the contract.

(2) Fifty percent of the net cost of special repair tools purchased within the four to six years immediately preceding notification by either party of an intent to terminate the contract.

*e.* The supplier shall only be required to repurchase the items described in paragraphs "c" and "d" if the items are free and clear of all claims, liens, and encumbrances, to the satisfaction of the supplier.

*f.* The supplier must pay to the dealer or credit the dealer's account with one hundred percent of

the net cost of all equipment used in demonstrations, including equipment leased primarily for demonstration or lease, at the equipment's agreed-upon depreciated value, provided that such equipment is in new condition and has not been abused.

2. Upon payment or allowance of a credit to the dealer's account as required in this section, the title to the repurchased equipment is transferred to the supplier making the repurchase, and the supplier may take immediate possession of the repurchased equipment.

3. The supplier must make payment or allowance of a credit as required under this section not later than ninety days from the date that the supplier takes possession of the repurchased equipment.

4. This section does not require repurchase from the dealer of repair parts which have a limited storage life or are otherwise subject to deterioration, including but not limited to rubber items, gaskets, and batteries. This section also does not require repurchase from the dealer of parts in broken or damaged packages, single repair parts priced as a set of two or more items, or repair parts which because of their condition are not resalable as new parts without new packaging or reconditioning.

2003 Acts, ch 55, §5  
Subsection 1, NEW paragraph f

### **322F.5 Death or incapacity of dealer.**

If a dealer or a person holding a majority interest in a business entity operating a dealership dies or is incapacitated, the rights under this chapter may be exercised as an option by the heirs at law if the dealer or majority interest holder died intestate, or by the executor under the terms of the dealer's or majority interest holder's will. If the heirs or the executor do not exercise this option within twelve months from the date of death of the dealer or majority interest holder, the supplier must repurchase the equipment as if the supplier had terminated the dealership agreement pursuant to section 322F.3. However, this section does not entitle an heir, executor, administrator, legatee, or devisee of a deceased dealer or majority interest holder to continue to operate the dealership without the consent of the supplier.

2003 Acts, ch 55, §6  
Section amended

### **322F.7 Violations.**

A supplier violates this chapter if the supplier does any of the following:

1. Requires a dealer to accept delivery of equipment that the dealer has not ordered.

2. Requires a dealer to order or accept delivery of equipment with special features or accessories not included in the base price list of equipment as publicly advertised by the supplier.

3. Requires a dealer to enter into any agreement, whether written or oral, which amends or

supplements an existing dealership agreement with the supplier, unless the supplementary or amendatory agreement is imposed on other similarly situated dealers.

4. Requires as a condition of renewal or extension of a dealership agreement that the dealer complete substantial renovation of the dealer's place of business, or acquire new or additional space to serve as the dealer's place of business, unless the supplier provides at least one year's written notice of the condition which states all grounds supporting the condition. The supplier must provide a reasonable time for the dealer to complete the renovation or acquisition.

5. Requires a dealer to refuse to purchase equipment distributed by another supplier.

6. Discriminates in the prices charged for equipment of like grade and quality sold by the supplier to similarly situated dealers. This subsection does not prevent the use of differentials which make only due allowance for costs related to the manufacture, sale, or delivery of equipment, or to methods or quantities of equipment sold or delivered.

7. *a.* (1) For a dealership agreement governing equipment other than outdoor power equipment, takes action terminating, canceling, failing to renew the dealership agreement, or substantially changes the competitive circumstances intended by the dealership agreement, due to the results of conditions beyond the dealer's control, including drought, flood, labor disputes, or economic recession.

(2) For a dealership agreement governing outdoor power equipment, takes action terminating, canceling, or failing to renew the dealership agreement due to the results of conditions beyond the dealer's control, including drought, flood, labor disputes, or economic recession.

*b.* This subsection shall not apply if the dealer is in default of a security agreement in effect with the supplier.

2003 Acts, ch 55, §7  
Subsection 7 amended  
Subsection 7, paragraphs a and b and last unnumbered paragraph, redesignated editorially as paragraph a, subparagraphs (1) and (2) and paragraph b, respectively

### **322F.8 Supplier liability.**

1. *a.* (1) A dealer may bring a legal action against a supplier for damages sustained by the dealer as a consequence of the supplier's violation of this chapter. A supplier violating this chapter shall compensate the dealer for damages sustained by the dealer as a consequence of the supplier's violation, together with the actual costs of the action, including reasonable attorney fees.

(2) For a dealership agreement governing equipment other than outdoor power equipment, a dealer may be granted injunctive relief against unlawful termination, cancellation, or the nonrenewal of the dealership agreement, or a substantial change of competitive circumstances as pro-

vided in section 322F.2.

(3) For a dealership agreement governing outdoor power equipment, a dealer may be granted injunctive relief against unlawful termination, cancellation, or the nonrenewal of the dealership agreement as provided in section 322F.2.

*b.* The remedies in this section are in addition to any other remedies permitted by law.

2. *a.* If the payment or allowance of equipment repurchased pursuant to section 322F.3 is not made as required, the amount due bears interest at the rate of one and one-half percent per month calculated from the date that the dealership agreement was terminated.

*b.* If upon termination of a dealership agreement by nonrenewal or cancellation, by a dealer or supplier, the supplier fails to make payment or credit the account of the dealer as provided in this chapter, the supplier is liable in a civil action brought by the dealer for the repurchase amount set forth in section 322F.3, plus interest as calculated pursuant to paragraph “a”.

3. The requirements of this chapter supplement any agreement between a dealer and a supplier. The dealer may elect either to pursue contractual remedies under the dealership agreement or remedies provided under this chapter. An election by the dealer to pursue a remedy provided under this chapter does not bar the dealer from pursuing any other remedy under law or equity, including contractual remedies. This chapter does not affect rights of the supplier to charge back to the dealer’s accounts amounts previously paid or credited as a discount to the dealer’s purchase of goods, including equipment.

2003 Acts, ch 55, §8, 9  
 Subsection 1 amended  
 Subsection 1, unnumbered paragraph 1, paragraphs a and b, and last unnumbered paragraph editorially redesignated as paragraph a, subparagraphs (1) – (3), and paragraph b  
 Subsection 2, paragraph b amended

### 322F.9 Applicability.

1. A term of a dealership agreement that is inconsistent with the terms of this chapter is void and unenforceable and does not waive any rights that are provided to a person by this chapter.

2. *a.* For all dealership agreements other than those provided for in this section, this chapter applies to those dealership agreements in effect that have no expiration date and all other dealership agreements entered into or renewed on or after July 1, 1990. Any such dealership agreement in effect on June 30, 1990, which by its own terms will terminate on a subsequent date, shall be governed by the law as it existed prior to July 1, 1990.

*b.* For all dealership agreements governing all-terrain vehicles, this chapter applies to those dealership agreements in effect that have no expiration date and all other such dealership agreements entered into or renewed on or after July 1, 2002. Any such dealership agreement in effect on July 1, 2002, which by its own terms will terminate on a subsequent date, shall be governed by the law as it existed prior to July 1, 2002.

*c.* For all dealership agreements governing agricultural equipment used principally for floriculture and for all dealership agreements governing construction equipment, industrial equipment, utility equipment, and outdoor power equipment, this chapter applies to those dealership agreements in effect that have no expiration date and all other such dealership agreements entered into or renewed on or after July 1, 2003. Any dealership agreement in effect on July 1, 2003, which by its own terms will terminate on a subsequent date, shall be governed by the law as it existed prior to July 1, 2003.

2003 Acts, ch 55, §10  
 Subsection 2 amended

## CHAPTER 322G

### DEFECTIVE MOTOR VEHICLES (LEMON LAW)

#### 322G.4 Nonconformity of motor vehicles.

1. After three attempts have been made to repair the same nonconformity that substantially impairs the motor vehicle, or after one attempt to repair a nonconformity that is likely to cause death or serious bodily injury, the consumer may give written notification, which shall be by certified or registered mail or by overnight service, to the manufacturer of the need to repair the nonconformity in order to allow the manufacturer a final attempt to cure the nonconformity. The manufacturer shall, within ten days after receipt of such notification, notify and provide the consumer with the opportunity to have the vehicle repaired at a reasonably accessible repair facility and after de-

livery of the vehicle to the designated repair facility by the consumer, the manufacturer shall, within ten days, conform the motor vehicle to the warranty. If the manufacturer fails to notify and provide the consumer with the opportunity to have the vehicle repaired at a reasonably accessible repair facility or perform the repairs within the time periods prescribed in this subsection, the requirement that the manufacturer be given a final attempt to cure the nonconformity does not apply.

After twenty or more cumulative days when the motor vehicle has been out of service by reason of repair of one or more nonconformities, the consumer may give written notification to the manufacturer which shall be by certified or registered

mail or by overnight service. Commencing upon the date such notification is received, the manufacturer has ten cumulative days when the vehicle has been out of service by reason of repair of one or more nonconformities to conform the motor vehicle to the warranty.

2. If the manufacturer, or its authorized service agent, has not conformed the motor vehicle to the warranty by repairing or correcting one or more nonconformities that substantially impair the motor vehicle after a reasonable number of attempts, the manufacturer shall, within forty days of receipt of payment by the manufacturer of a reasonable offset for use by the consumer, replace the motor vehicle with a replacement motor vehicle acceptable to the consumer, or repurchase the motor vehicle from the consumer or lessor and refund to the consumer or lessor the full purchase or lease price, less a reasonable offset for use. The replacement or refund shall include payment of all collateral and reasonably incurred incidental charges. The consumer has an unconditional right to choose a refund rather than a replacement. If the consumer elects to receive a refund, and the refund exceeds the amount of the payment for a reasonable offset for use, the requirement that the consumer pay the reasonable offset for use in advance does not apply, and the manufacturer shall deduct that amount from the refund due to the consumer. If the consumer elects a replacement motor vehicle, the manufacturer shall provide the consumer a substitute motor vehicle to use until such time as the replacement vehicle is delivered to the consumer. At the time of the refund or replacement, the consumer, lienholder, or lessor shall furnish to the manufacturer clear title to and possession of the original motor vehicle.

Refunds shall be made to the consumer and lienholder of record, if any, as their interests appear. If applicable, refunds shall be made to the lessor and lessee as follows: the lessee shall receive the lessee's cost less a reasonable offset for use, and the lessor shall receive the lease price less the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle. If it is determined that the lessee is entitled to a refund pursuant to this chapter, the consumer's lease agreement with the lessor is terminated upon payment of the refund and no penalty for early termination shall be assessed. The department of revenue shall refund to the manufacturer any use tax which the manufacturer refunded to the con-

sumer, lessee, or lessor under this section, if the manufacturer provides to the department of revenue a written request for a refund and evidence that the use tax was paid when the vehicle was purchased and that the manufacturer refunded the use tax to the consumer, lessee, or lessor.

3. It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the warranty if, during the lemon law rights period, any of the following occur:

a. The same nonconformity that substantially impairs the motor vehicle has been subject to examination or repair at least three times by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in subsection 1, and such nonconformity continues to exist.

b. A nonconformity that is likely to cause death or serious bodily injury has been subject to examination or repair at least one time by the manufacturer or its authorized service agent, plus a final attempt by the manufacturer to repair the motor vehicle if undertaken as provided for in subsection 1, and such nonconformity continues to exist.

c. The motor vehicle has been out of service by reason of repair by the manufacturer, or its authorized service agent, of one or more nonconformities that substantially impair the motor vehicle for a cumulative total of thirty or more days, exclusive of down time for routine maintenance prescribed by the owner's manual. The thirty-day period may be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or natural disaster.

The terms of this subsection shall be extended for a period of up to two years after the date of the original delivery of a motor vehicle to a consumer, or the first twenty-four thousand miles of operation attributable to a consumer, whichever occurs first, if a nonconformity has been reported but has not been cured by the manufacturer, or its authorized service agent, before the expiration of the lemon law rights period.

4. A manufacturer, or its authorized service agent, shall not refuse to examine or repair any nonconformity for the purpose of avoiding liability under this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 324A

### TRANSPORTATION PROGRAMS

#### **324A.5 Coordination of transportation services.**

The department of human services, department

of elder affairs, and the officers and agents of other state and local governmental units shall assist the department in carrying out section 324A.4, sub-

sections 1 and 2, insofar as the functions of these respective officers and departments are concerned with the health, welfare and safety of any recipient of transportation services.

1. Any agency or organization found to be in noncompliance with section 324A.4 shall be notified in writing by the department of those activities which are not in compliance. The notice shall also provide for a period of thirty days during which compliance with section 324A.4 can be accomplished without penalty or sanction.

2. If noncompliant activities continue after the period of thirty days, the department shall, in cooperation with the attorney general and the director of the department of administrative services, initiate the following actions:

*a.* If the activities that are not in compliance with section 324A.4 are funded with state or federal funds which are administered by the state and can be used by agencies or organizations that are in compliance with section 324A.4, then upon notice by the department, the director of the department of administrative services shall not permit the expenditure of ten percent of the funds during the fiscal year immediately following the notice, an additional twenty percent of funds during the following year, an additional thirty percent during the third year, and the remaining funds in the fourth year that the activities remain in noncompliance. Any funds retained by the director of the department of administrative services shall be returned to the originating state agency for redistribution to agencies and organizations eligible to receive the funds for transportation purposes.

*b.* If the activities that are not in compliance with section 324A.4 are funded with state, federal or local funds which are not administered by the state or cannot be used by agencies and organizations that are in compliance with section 324A.4, then upon notice by the department, the attorney

general shall file an action to enjoin agencies or organizations from expending funds for transportation purposes until and unless compliance with section 324A.4 is achieved. If federal funds are involved in such cases, then the attorney general shall notify the responsible federal agency of the actions and request its cooperation.

*c.* The department of inspections and appeals shall establish an appeal process pursuant to chapters 10A and 17A which allows those agencies or organizations determined to not be in compliance with this chapter an opportunity for a timely hearing before the department of inspections and appeals. A decision by the department of inspections and appeals is subject to review by the state department of transportation. The state department of transportation's decision is the final agency action. Judicial review of the action of the department may be sought in accordance with chapter 17A.

*d.* The department shall, in accordance with chapter 17A, adopt and enforce rules setting minimum standards for determination of compliance and certification. The rules and standards required by this section shall be formulated in consultation with all affected state agencies, local government units with professional and consumer groups affected, and shall be designed to further the accomplishment of the purposes of this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

### **324A.7 Urban public transit systems — intent.**

An urban public transit system shall, to the extent practicable, utilize private-sector operators in the planning and provision of transit services.

2003 Acts, ch 8, §23  
NEW section

## CHAPTER 325A

### MOTOR CARRIER AUTHORITY

#### **325A.7A Tariffs — approval by department.**

1. *Transportation prohibited.* A motor carrier of household goods shall not undertake to perform any service for, engage in, or participate in the transportation of personal effects or property between points within this state until the motor carrier's tariff has been filed, posted, and approved by the department.

2. *Change in tariff.* Unless the department orders otherwise, a motor carrier of household goods shall give thirty days' notice to the depart-

ment and to the public, as provided by rules adopted by the department, prior to making a change in a tariff.

3. *Changes without notice.* The department, for good cause shown, may allow changes in a tariff without the thirty days' notice required in subsection 2 by issuing an order specifying the changes to be made and the time they shall take effect.

4. *Power to revise tariff.* Any time a tariff is filed with the department, the department may hold a hearing for the purpose of determining that the tariff is just, reasonable, and nondiscriminat-

ing. The hearing shall be conducted by the director or the director's designee.

5. *Suspension of tariff.* Pending the hearing and the decision of the department, the tariff shall not be put into effect; however, this period of suspension of the tariff shall not exceed one hundred twenty days beyond the time the tariff would otherwise have been effective after filing and thirty days' notice.

6. *Decision.* Following the hearing, the department shall establish the tariff changes proposed by the motor carrier in whole or in part, or establish other changes the department determines to be just, reasonable, and nondiscriminating.

2003 Acts, ch 8, §24, 29  
Section is effective March 28, 2003, and applies retroactively to January 1, 2002; 2003 Acts, ch 8, §29  
NEW section

**325A.7B Agency tariffs.**

1. *Authorization.* Sections 325A.2 and 325A.7 shall not be construed to prohibit the making of rates by two or more motor carriers of household goods.

2. *Agency tariffs.* The names of the several motor carriers that are parties to an agency tariff shall be specified in the tariff. Unless otherwise required by the department, the agency tariff may be filed by only one of the parties to the agency tariff, or by a tariff filing agent, under a power of attorney granted by each of the parties to the agency tariff not doing the filing and filed with the department on forms prescribed by the department.

2003 Acts, ch 8, §25, 29  
Section is effective March 28, 2003, and applies retroactively to January 1, 2002; 2003 Acts, ch 8, §29  
NEW section

**CHAPTER 327B**

**REGISTRATION OF CARRIER AUTHORITY**

**327B.1 Authority secured and registered.**

1. It is unlawful for a carrier to perform an interstate transportation service for compensation upon the highways of this state without first registering the authority obtained from the United States department of transportation or evidence that such authority is not required with the state department of transportation.

2. The department shall participate in the single state insurance registration program for regulated motor carriers as provided in 49 U.S.C. § 14504 and United States department of transportation regulations.

3. Registration for carriers transporting commodities exempt from United States department of transportation regulation shall be granted without hearing upon application and payment of a twenty-five-dollar filing fee and an annual one-dollar fee per vehicle.

4. The state department of transportation may execute reciprocity agreements with authorized representatives of any state exempting non-

residents from payment of fees as set forth in this chapter. The state department of transportation shall adopt rules pursuant to chapter 17A for the identification of vehicles operated under reciprocity agreements.

5. Fees may be subject to reduction or proration pursuant to sections 326.5 and 326.32.

2003 Acts, ch 108, §57  
For applicable scheduled fines, see §805.8A, subsection 13, paragraphs f and g  
Subsections 1 – 3 amended

**327B.7 Reciprocity for exempt commodity base state registration system.**

The department may enter into a reciprocity agreement on behalf of this state with authorized representatives of other states to become a member of an exempt commodity base state registration system for the registration, insurance verification, and fee collection for carriers hauling commodities exempt from United States department of transportation authority.

2003 Acts, ch 108, §58  
Section amended

**CHAPTER 327C**

**SUPERVISION OF CARRIERS**

**327C.22 Interstate freight rates.**

The department shall exercise constant diligence to ascertain the rates, charges, rules, and practices of common carriers operating in this state, in relation to the transportation of freight in interstate business. When it shall ascertain from any source or have reasonable grounds to believe

that the rates charged on such interstate business or the rules or practices in relation thereto discriminate unjustly against any of the citizens, industries, interests, or localities of the state, or place any of them at an unreasonable disadvantage as compared with those of other states, or are in violation of the laws of the United States regu-

lating commerce, or in conflict with the rulings, orders, or regulations of the surface transportation board, the department shall take the necessary steps to prevent the continuance of such rates, rules, or practices.

2003 Acts, ch 108, §59  
Section amended

**327C.23 Application to surface transportation board.**

When any common carrier has put in force any rates, rules, or practices in relation to interstate freight business, in violation of the laws of the

United States regulating commerce, or of the orders, rules, or regulations of the surface transportation board, or shall unjustly discriminate against any of the citizens, industries, interests, or localities of the state, the department shall present the material facts involved in such violations or discrimination to the surface transportation board and seek relief therefrom, and, if deemed necessary or expedient, the department shall prosecute any charge growing out of such violation or discrimination, at the expense of the state, before the surface transportation board.

2003 Acts, ch 108, §60  
Section amended

## CHAPTER 327D

### REGULATION OF CARRIERS

**327D.67 Detailed requirements.**

The schedules shall plainly state the places between which such property and persons will be carried, and, separately, all terminal charges, storage charges, refrigeration charges, and all other charges which the department may require to be stated, all privileges or facilities granted or allowed, and all rules which may in any way change, affect, or determine any part or the aggregate of such rates, or the value of the various services rendered to the passenger, shipper, or consignee.

The form of every schedule shall be prescribed by the department and shall conform, in the case of common carriers, as nearly as may be to the form prescribed by the United States department of transportation.

2003 Acts, ch 108, §61  
Unnumbered paragraph 2 amended

**327D.72 Interstate commerce schedules.**

When schedules and classifications required by the United States department of transportation contain in whole or in part the information required by the provisions of this chapter, the posting and filing of a copy of such schedules and classifications with the United States department of transportation shall be deemed a compliance with

the filing requirements of this chapter insofar as such schedules and classifications contain the information required by this chapter, and any additional or different information may be posted and filed in a supplementary schedule.

2003 Acts, ch 108, §62  
Section amended

**327D.200 Inconsistency with federal law — railroads.**

If any provision of this chapter is inconsistent or conflicts with federal laws, rules, or regulations applicable to railway corporations subject to the jurisdiction of the surface transportation board, the department shall suspend the provision, but only to the extent necessary to eliminate the inconsistency or conflict.

2003 Acts, ch 108, §63  
Section amended

**327D.201 Railroad intrastate rates — rules.**

The department may issue rules relating to the regulation of railroad intrastate rates, classifications, rules, and practices in accordance with the standards and procedures of the surface transportation board applicable to rail carriers.

2003 Acts, ch 108, §64  
Section amended

## CHAPTER 327G

### FENCES, CROSSINGS, SWITCHES, PRIVATE BUILDINGS, SPUR TRACKS, AND REVERSION

**327G.61 Definitions.**

As used in this division:

1. “*Department*” means the state department of transportation.
2. “*Spur track*” means a railroad track located

wholly within the state connected to a main or branch line of a railroad and used to originate or terminate traffic at one or more industries or a railroad track not subject to the jurisdiction of the surface transportation board. A spur track shall

not include a railroad line used to provide line-haul or intercity transportation.

2003 Acts, ch 108, §65  
Subsection 2 amended

### **327G.78 Sale of railroad property.**

Subject to sections 327G.77 and 6A.16, when a railroad corporation, its trustee, or its successor in interest has interests in real property adjacent to a railroad right-of-way that are abandoned by order of the surface transportation board, reorganization court, bankruptcy court, or the department, or when a railroad corporation, its trustee, or its successor in interest seeks to sell its interests in that property under any other circumstance, the railroad corporation, its trustee, or its successor in interest shall extend a written offer to sell at a fair market value price to the persons holding leases, licenses, or permits upon those properties, allowing sixty days from the time of receipt for a written response. If a disagreement arises between the parties concerning the price or other terms of the sale transaction, either or both parties may make written application to the department to resolve the disagreement. The application shall be made

within sixty days from the time an initial written response is served upon the railroad corporation, trustee, or successor in interest by the person wishing to purchase the property. The department shall notify the department of inspections and appeals which shall hear the controversy and make a final determination of the fair market value of the property and the other terms of the transaction which were in dispute, within ninety days after the application is filed. The determination is subject to review by the department and the department's decision is the final agency action. All correspondence shall be by certified mail.

The decision of the department is binding on the parties, except that a person who seeks to purchase the real property may withdraw the offer to purchase within thirty days of the decision of the department. If a withdrawal is made, the railroad corporation, trustee, or successor in interest may sell or dispose of the real property without further order of the department.

This section does not apply when a rail line is being sold for continued railroad use.

2003 Acts, ch 108, §66  
Unnumbered paragraph 1 amended

## CHAPTER 327I

### RAILWAY FINANCE AUTHORITY

#### **327I.26 Appropriation to authority.**

Notwithstanding section 423.24 and prior to the application of section 423.24, subsection 1, paragraph "b", there shall be deposited into the general fund of the state and is appropriated to the authority from eighty percent of the revenues derived from the operation of section 423.7 the amounts certified by the authority under section 327I.25. However, the total amount deposited into the general fund and appropriated to the Iowa railway fi-

nance authority under this section shall not exceed two million dollars annually. Moneys appropriated to the Iowa railway finance authority under this section are appropriated only for the payment of principal and interest on obligations or the payment of leases guaranteed by the authority as provided under section 327I.25.

For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §173, 205  
Section not amended; footnote added

## CHAPTER 327J

### PASSENGER RAIL SERVICE

#### **327J.3 Administration.**

1. The director may expend moneys from the fund to pay the costs associated with the initiation, operation, and maintenance of rail passenger service. The director shall report by February 1 of each year to the legislative services agency concerning the status of the fund including anticipated expenditures for the following fiscal year.

2. The director may enter into agreements with AMTRAK and other states associated with the midwest regional rail system for the purpose of developing a rail passenger system serving the midwest, including service from Chicago, Illinois,

to Omaha, Nebraska, through Iowa. The agreements may include any of the following:

*a.* Cost-sharing agreements associated with initiating service, capital costs, operating subsidies, and other costs necessary to develop and maintain service.

*b.* Joint powers agreements and other institutional arrangements associated with the administration, management, and operation of a midwest regional rail system.

3. The director shall enter into discussions with members of Iowa's congressional delegation to foster rail passenger service in this state and

the midwest and to maximize the level of federal funding for the service, including funding for the midwest regional rail system.

4. The director may provide assistance and enter into agreements with cities along the proposed route of the midwest regional rail system or other passenger rail system serving the midwest to ensure that rail stations and terminals are designed and developed in accordance with the following objectives:

*a.* To meet safety and efficiency requirements

outlined by AMTRAK and the federal railroad administration.

*b.* To aid intermodal transportation.

*c.* To encourage economic development.

5. The director shall report annually to the general assembly concerning the development and operation of the midwest regional rail system and the state's passenger rail service.

2003 Acts, ch 35, §45, 49  
Terminology change applied

## CHAPTER 328

### AERONAUTICS

#### **328.26 Application for registration.**

Every application for registration pursuant to sections 328.19 and 328.20 shall be made upon such forms, and shall contain such information, as the department may prescribe, and every application shall be accompanied by the full amount of the registration fee.

When an aircraft is registered to a person for the

first time the fee submitted to the department shall include the tax imposed by section 422.43 or section 423.2 or evidence of the exemption of the aircraft from the tax imposed under section 422.43 or 423.2.

For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §174, 205  
Section not amended; footnote added

## CHAPTER 330

### AIRPORTS

#### **330.2 Aviation hangar revolving loan fund.** Repealed by 2003 Acts, ch 8, § 7.

Crediting of moneys received from repayments on loans made from for-

mer aviation hangar revolving loan fund to state department of transportation for purposes of supporting general aviation airports; 2003 Acts, ch 8, §8

## CHAPTER 331

### COUNTY HOME RULE IMPLEMENTATION

Subject to reciprocal resident bidder preference in §73A.21  
Motor vehicle purchases, restrictions, fuel economy; see §8A.362

#### **331.209 Plan "two" terms of office.**

If plan "two" is selected pursuant to section 331.206 or 331.207, the board shall be elected as provided in this section.

1. Not later than ninety days after the redistricting of congressional and legislative districts becomes law, or October 15 of the year immediately following each year in which the federal decennial census is taken, whichever is later, the temporary county redistricting commission shall divide the county into a number of supervisor districts corresponding to the number of supervisors in the county. However, if the plan is selected pursuant to section 331.207, the temporary county redistricting commission shall divide the county before February 15 of the election year. The supervisor

districts shall be drawn, to the extent applicable, in compliance with the redistricting standards provided for senatorial and representative districts in section 42.4, and if a supervisor redistricting plan is challenged in court, the requirement of justifying any variance in excess of one percent contained in section 42.4, subsection 1, paragraph "c" applies to the board. If the temporary county redistricting commission adopts a supervisor redistricting plan with a variance in excess of one percent, the board shall publish the justification for the variance in one or more official newspapers as provided in chapter 349 within ten days after the action is taken. If more than one incumbent supervisor resides in the same supervisor district after the districts have been redrawn following the

federal decennial census, the terms of office of those supervisors shall expire on the first day of January that is not a Sunday or a holiday following the next general election.

2. Each supervisor must reside in a separate supervisor district but shall be elected by the electors of the county at large. Election ballots shall be prepared to specify the district which each candidate seeks to represent and each elector may cast a vote for one candidate from each district for which a supervisor is to be chosen in the general election.

3. At the primary and general elections the number of supervisors, or candidates for the offices, which constitute the board in the county shall be elected as provided in this section. Terms of supervisors shall be the same as provided in section 331.208.

4. Each temporary county redistricting commission shall notify the state commissioner of elections when the boundaries of supervisor districts are changed, shall provide a map delineating the new boundary lines, and shall certify to the state commissioner of elections the populations of the new supervisor districts as determined under the latest federal decennial census. Upon failure of a temporary county redistricting commission to make the required changes by the dates specified by this section and sections 331.203 and 331.204 as determined by the state commissioner of elections, the state commissioner of elections shall make or cause to be made the necessary changes as soon as possible, and shall assess to the county the expenses incurred in so doing. The state commissioner of elections may request the services of personnel and materials available to the legislative services agency to assist the state commissioner in making required changes in supervisor district boundaries which become the state commissioner's responsibility.

2003 Acts, ch 35, §44, 49  
Terminology change applied

### **331.302 County legislation.**

1. The board shall exercise a power or perform a duty only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. A county shall not provide a penalty in excess of a five hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. The criminal penalty surcharge required by section 911.2 shall be added to a county fine and is not a part of the county's penalty.

3. The subject matter of an ordinance or amendment shall be generally described in its title.

4. An amendment to an ordinance or to a code of ordinances shall specifically repeal the ordinance or code, or the section, subsection, paragraph, or subpart to be amended, and shall set forth the ordinance, code, section, subsection, paragraph, or subpart as amended.

4A. *a.* A county may by ordinance adopt by reference any portion of the Code of Iowa in effect at the time of the adoption in the manner provided in section 380.8 for adoption of a proposed code of ordinances containing a proposed new ordinance or amendment, subject to the following limitations:

(1) The ordinance shall describe the subject matter and identify the portion of the Code of Iowa adopted by chapter, section, and subsection or other subpart, as applicable.

(2) A portion of the Code of Iowa may be adopted by reference only if the criminal penalty provided by the law adopted does not exceed thirty days imprisonment and a five hundred dollar fine.

(3) Amendments or other changes to those portions of the Code of Iowa which have been adopted by reference shall serve as an automatic modification of the applicable ordinance.

*b.* An ordinance which adopts by reference any portion of the Code of Iowa may provide that violations of the ordinance are county infractions and subject to the limitations of section 331.307.

5. A proposed ordinance or amendment shall be considered and voted on for passage at two meetings of the board prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than a majority of the supervisors.

However, if a summary of the proposed ordinance or amendment is published as provided in section 331.305 prior to its first consideration and copies are available at the time of publication at the office of the auditor, the ordinance or amendment shall be considered and voted on for passage at one meeting prior to the meeting at which it is to be finally passed, unless this requirement is suspended by a recorded vote of not less than a majority of the supervisors.

6. Passage of an ordinance, amendment, or resolution requires an affirmative vote of not less than a majority of the supervisors. Each supervisor's vote on an ordinance, amendment, or resolution shall be recorded.

7. A resolution becomes effective upon passage and an ordinance or amendment becomes a law when a summary of the ordinance or the complete text of the ordinance is published, unless a subsequent effective date is provided within the measure. As used in this subsection, "summary" shall mean a narrative description of the terms and conditions of an ordinance setting forth the main points of the ordinance in a manner calculated to inform the public in a clear and understandable manner the meaning of the ordinance and which shall provide the public with sufficient notice to conform to the desired conduct required by the ordinance. The description shall include the title of the ordinance, an accurate and intelligible abstract or synopsis of the essential elements of the ordinance, a statement that the description is a summary, the location and the normal busi-

ness hours of the office where the ordinance may be inspected, when the ordinance becomes effective, and the full text of any provisions imposing fines, penalties, forfeitures, fees, or taxes. Legal descriptions of property set forth in ordinances shall be described in full, provided that maps or charts may be substituted for legal descriptions when they contain sufficient detail to clearly define the area with which the ordinance is concerned. The narrative description shall be written in a clear and coherent manner and shall, to the extent possible, avoid the use of technical or legal terms not generally familiar to the public. When necessary to use technical or legal terms not generally familiar to the public, the narrative description shall include definitions of those terms.

8. The auditor shall promptly record each measure, publish a summary of all ordinances or a complete text of the ordinances and amendments as provided in section 331.305, authenticate all measures except motions with signature and certification as to time and manner of publication, if any, and maintain for public use copies of all effective ordinances and codes. A copy of the complete text of an ordinance or amendment shall also be available for distribution to the public at the office of the county auditor. The auditor's certification is presumptive evidence of the facts stated therein.

9. At least once every five years, the board shall compile a code of ordinances containing all of the county ordinances in effect.

If a proposed code of ordinances contains only existing ordinances edited and compiled without change in substance, the board may adopt the code by ordinance.

If a proposed code of ordinances contains a proposed new ordinance or amendment, the board shall hold a public hearing on the proposed code before adoption. The auditor shall publish notice of the hearing as provided in section 331.305. Copies of the proposed code of ordinances shall be available at the auditor's office and the notice shall so state. Within thirty days after the hearing, the board may adopt the proposed code of ordinances which becomes law upon publication of the ordinance adopting it. If the board substantially amends the proposed code of ordinances after a hearing, notice and hearing shall be repeated.

Ordinances and amendments which become effective after adoption of a code of ordinances may be compiled as a supplement to the code, and upon adoption of the supplement by resolution, become part of the code of ordinances.

An adopted code of ordinances is presumptive evidence of the passage, publication, and content of the ordinances therein as of the date of the auditor's certification of the ordinance adopting the code or supplement.

10. The compensation paid to a newspaper for a publication required by this section shall not exceed the fee provided in section 618.11. The com-

penensation paid to a newspaper for publication of the complete text of an ordinance shall not exceed three-fourths of the fee provided in section 618.11.

11. The board may adopt the provisions of a statewide or nationally recognized standard code or portions of any such code by an ordinance which identifies the code by subject matter, source, and date, and incorporates the provisions either by reference or by setting them forth in full. The code or portion shall be adopted only after notice and hearing in the manner provided in subsection 9.

12. Immediately after the effective date of a measure establishing a zoning district, building lines, or fire limits, the auditor shall certify the measure and a plat showing the district, lines, or limits, to the recorder. The recorder shall record the measure and plat in the miscellaneous record or other book provided for special records, and shall index the record.

13. A measure voted upon is not invalid because a supervisor has a conflict of interest, unless the vote of the supervisor was decisive to passage of the measure. If a majority or unanimous vote of the board is required by statute, the majority or vote shall be computed on the basis of the number of supervisors not disqualified by reason of conflict of interest. However, a majority of all supervisors is required for a quorum. For the purposes of this subsection, the statement of a supervisor that the supervisor declines to vote by reason of conflict of interest is conclusive and shall be entered of record.

14. A valid measure adopted by a county prior to July 1, 1981, remains valid unless the measure is irreconcilable with a state law.

15. A county shall not provide a civil penalty in excess of seven hundred fifty dollars for the violation of an ordinance which is classified as a county infraction or if the infraction is a repeat offense, a civil penalty not to exceed one thousand dollars for each repeat offense. A county infraction is not punishable by imprisonment.

2003 Acts, ch 178, §21  
Subsection 15 amended

### **331.307 County infractions.**

1. A county infraction is a civil offense punishable by a civil penalty of not more than seven hundred fifty dollars for each violation or if the infraction is a repeat offense a civil penalty not to exceed one thousand dollars for each repeat offense.

2. A county by ordinance may provide that a violation of an ordinance is a county infraction.

3. A county shall not provide that a violation of an ordinance is a county infraction if the violation is a felony, an aggravated misdemeanor, or a serious misdemeanor under state law or if the violation is a simple misdemeanor under chapters 687 through 747.

4. An officer authorized by a county to enforce a county code or regulation may issue a civil citation to a person who commits a county infraction.

The citation may be served by personal service as provided in rule of civil procedure 1.305, by certified mail addressed to the defendant at the defendant's last known mailing address, return receipt requested, or by publication in the manner as provided in rule of civil procedure 1.310 and subject to the conditions of rule of civil procedure 1.311. A copy of the citation shall be retained by the issuing officer, and one copy shall be sent to the clerk of the district court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

- a. The name and address of the defendant.
  - b. The name or description of the infraction attested to by the officer issuing the citation.
  - c. The location and time of the infraction.
  - d. The amount of civil penalty to be assessed or the alternate relief sought, or both.
  - e. The manner, location, and time in which the penalty may be paid.
  - f. The time and place of court appearance.
  - g. The penalty for failure to appear in court.
5. In proceedings before the court for a county infraction:

a. The matter shall be tried before a magistrate or district associate judge in the same manner as a small claim.

b. The county has the burden of proof that the county infraction occurred and that the defendant committed the infraction. The proof shall be by clear, satisfactory, and convincing evidence.

c. The court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the county and produce evidence or witnesses on the defendant's behalf.

d. The defendant may be represented by counsel of the defendant's own selection and at the defendant's own expense.

e. The defendant may answer by admitting or denying the infraction.

f. If a county infraction is proven, the court shall enter judgment against the defendant. If the infraction is not proven, the court shall dismiss it.

6. Notwithstanding section 602.8106, subsection 3, penalties or forfeitures collected by the court for county infractions shall be remitted to the county in the same manner as fines and forfeitures are remitted to cities for criminal violations under section 602.8106. If the person named in the citation is served as provided in this section and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.

7. A person against whom judgment is entered, shall pay court costs and fees as in small claims under chapter 631. If the action is dismissed, the county is liable for the court costs and court fees. Where the action is disposed of without

payment, or provision for assessment, of court costs, the clerk shall at once enter judgment for costs against the county.

8. Seeking a civil penalty as authorized in this section does not preclude a county from seeking alternative relief from the court in the same action.

9. When judgment has been entered against a defendant, the court may do any of the following:

a. Impose a civil penalty by entry of a personal judgment against the defendant.

b. Direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court.

c. Grant appropriate alternative relief ordering the defendant to abate or cease the violation.

d. Authorize the county to abate or correct the violation.

e. Order that the county's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both.

If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.

The magistrate or district associate judge shall have jurisdiction to assess or enter judgment for costs of abatement or correction in an amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to section 631.1, subsection 1, for magistrates and section 602.6306, subsection 2, for district associate judges. If the county seeks abatement or correction costs in excess of those amounts, the case shall be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appeal pursuant to section 631.13.

10. A defendant or the county may file a motion for a new trial or may appeal the decision of the magistrate or district associate judge to the district court. The procedure on appeal shall be the same as for a small claim pursuant to section 631.13. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but shall not be admissible or binding as to any future violation for the same or similar ordinance provision by the same defendant.

11. This section does not preclude a peace officer of a county from issuing a criminal citation for a violation of a county code or regulation if criminal penalties are also provided for the violation. Each day that a violation occurs or is permitted by the defendant to exist, constitutes a separate offense.

12. The issuance of a civil citation for a county infraction or the ensuing court proceedings do not

provide an action for false arrest, false imprisonment, or malicious prosecution.

2003 Acts, ch 178, §22  
Subsection 1 amended

### **331.342 Conflicts of interest in public contracts.**

As used in this section, “contract” means a claim, account, or demand against or agreement with a county, express or implied, other than a contract to serve as an officer or employee of the county. However, contracts subject to section 314.2 are not subject to this section.

An officer or employee of a county shall not have an interest, direct or indirect, in a contract with that county. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

1. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.

2. An employee of a bank or trust company, who serves as treasurer of a county.

3. Contracts made by a county upon competitive bid in writing, publicly invited and opened.

4. Contracts in which a county officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 8, or both, if the contracts are made by competitive bid, publicly invited and opened, or if the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract. The competitive bid qualification of this subsection does not apply to a contract for professional services not customarily awarded by competitive bid.

5. The designation of official newspapers.

6. A contract in which a county officer or employee has an interest if the contract was made before the time the officer or employee was elected or appointed, but the contract shall not be renewed.

7. A contract with volunteer fire fighters or civil defense volunteers.

8. A contract with a corporation in which a county officer or employee has an interest by reason of stockholdings when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of the officer or employee.

9. A contract made by competitive bid, publicly invited and opened, in which a member of a county board, commission, or administrative agency has an interest, if the member is not authorized by law to participate in the awarding of the contract. The competitive bid qualification of this subsection does not apply to a contract for professional services not customarily awarded by competitive bid.

10. Contracts not otherwise permitted by this section, for the purchase of goods or services by a

county, which benefit a county officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of one thousand five hundred dollars in a fiscal year.

11. A contract that is a bond, note, or other obligation of the county and the contract is not acquired directly from the county, but is acquired in a transaction with a third party, who may or may not be the original underwriter, purchaser, or obligee of the contract.

2003 Acts, ch 36, §2, 3  
Subsection 4 amended  
NEW subsection 11

### **331.362 Roads and traffic.**

1. A county has jurisdiction over secondary roads as provided in section 306.4, subsection 2, subsection 5, paragraph “b”, and subsection 6, paragraph “b”.

2. The board shall exercise the county’s jurisdiction over secondary roads in accordance with chapters 306, 309, 310, 314, and other applicable laws.

3. The board may establish secondary road assessment districts as provided in chapter 311.

4. If a county has land subject to section 312.8, the board shall administer road funds available under that section as prescribed in that section.

5. The board may enter into agreements with the department of transportation as provided in section 313.2.

6. The board shall provide for the control of noxious weeds in accordance with chapter 317.

7. The board shall cause the removal of obstructions on the secondary roads, in accordance with chapter 319.

8. The board shall proceed upon a petition to construct a sidewalk in accordance with sections 320.1 to 320.3. The board may grant permission to lay gas and water mains, construct and maintain cattleways, or construct sidewalks in connection with the secondary roads, in accordance with sections 320.4 to 320.8.

9. A county may regulate traffic on and use of the secondary roads, in accordance with sections 321.236 to 321.250, 321.254, 321.255, 321.285, subsection 5, sections 321.352, 321.471 to 321.473, and other applicable provisions of chapter 321, and sections 321G.9 and 327G.15.

Section not amended; internal reference change applied

### **331.403 Annual financial report.**

1. Not later than December 1 of each year on forms and pursuant to instructions prescribed by the department of management, a county shall prepare an annual financial report showing for each county fund the financial condition as of June 30 and the results of operations for the year then ended. Copies of the report shall be maintained as a public record at the auditor’s office and shall be filed with the director of the department of management and with the auditor of state by Decem-

ber 1. A summary of the report, in a form prescribed by the director, shall be published by each county not later than December 1 of each year in one or more newspapers which meet the requirements of section 618.14.

2. Beginning with the fiscal year ending June 30, 1985, the annual financial report required in subsection 1 shall be prepared in conformity with generally accepted accounting principles.

3. A county that fails to meet the filing deadline imposed by this section shall have withheld from payments to be made to the county and allocated to the county pursuant to section 425.1 an amount equal to five cents per capita until the financial report is filed.

2003 Acts, ch 178, §2  
Subsection 3 amended

### **331.424A County mental health, mental retardation, and developmental disabilities services fund.**

1. For the purposes of this chapter, unless the context otherwise requires, "*services fund*" means the county mental health, mental retardation, and developmental disabilities services fund created in subsection 2. The county finance committee created in section 333A.2 shall consult with the mental health and developmental disabilities commission in adopting rules and prescribing forms for administering the services fund.

2. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, county revenues from taxes and other sources designated for mental health, mental retardation, and developmental disabilities services shall be credited to the mental health, mental retardation, and developmental disabilities services fund of the county. The board shall make appropriations from the fund for payment of services provided under the county management plan approved pursuant to section 331.439. The county may pay for the services in cooperation with other counties by pooling appropriations from the fund with other counties or through county regional entities including but not limited to the county's mental health and developmental disabilities regional planning council created pursuant to section 225C.18.

3. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, receipts from the state or federal government for such services shall be credited to the services fund, including moneys allotted to the county from the state payment made pursuant to section 331.439 and moneys allotted to the county for property tax relief pursuant to section 426B.1.

4. For the fiscal year beginning July 1, 1996, and for each subsequent fiscal year, the county shall certify a levy for payment of services. For each fiscal year, county revenues from taxes imposed by the county credited to the services fund shall not exceed an amount equal to the amount of base year expenditures for services as defined in

section 331.438, less the amount of property tax relief to be received pursuant to section 426B.2, in the fiscal year for which the budget is certified. The county auditor and the board of supervisors shall reduce the amount of the levy certified for the services fund by the amount of property tax relief to be received. A levy certified under this section is not subject to the appeal provisions of section 331.426 or to any other provision in law authorizing a county to exceed, increase, or appeal a property tax levy limit.

5. Appropriations specifically authorized to be made from the mental health, mental retardation, and developmental disabilities services fund shall not be made from any other fund of the county.

Reimbursement rate increase for purchase of service providers for fiscal years beginning on July 1 of 2000, 2001, and 2002; 2000 Acts, ch 1221, §3; 2001 Acts, ch 184, §2, 4, 15; 2001 Acts, ch 191, §34, 53; 2002 Acts, ch 1174, §2; 2003 Acts, ch 183, §2

Section not amended; footnote revised

### **331.424C Emergency services fund.**

A county that is providing fire protection service or emergency medical service to a township pursuant to section 331.385 shall establish an emergency services fund and may certify taxes not to exceed sixty and three-fourths cents per one thousand dollars of the assessed value of taxable property located in the township. The county has the authority to use a portion of the taxes levied and deposited in the fund for the purpose of accumulating moneys to carry out the purposes of section 359.43, subsection 4.

2003 Acts, ch 44, §63  
Section amended

### **331.427 General fund.**

1. Except as otherwise provided by state law, county revenues from taxes and other sources for general county services shall be credited to the general fund of the county, including revenues received under sections 9I.11, 101A.3, 101A.7, 123.36, 123.143, 142B.6, 176A.8, 321.105, 321.152, 321G.7, section 331.554, subsection 6, sections 341A.20, 364.3, 368.21, 422A.2, 428A.8, 430A.3, 433.15, 434.19, 445.57, 453A.35, 458A.21, 483A.12, 533.24, 556B.1, 583.6, 602.8108, 904.908, and 906.17, and the following:

- a. License fees for business establishments.
- b. Moneys remitted by the clerk of the district court and received from a magistrate or district associate judge for fines and forfeited bail imposed pursuant to a violation of a county ordinance.
- c. Other amounts in accordance with state law.

2. Fees and charges including service delivery fees, credit card fees, and electronic funds transfer charges payable to a third party, not to the county, that are imposed for completing an electronic financial transaction with the county are not considered county revenues for purposes of subsection 1.

3. The board may make appropriations from the general fund for general county services, including but not limited to the following:

- a. Expenses of a joint emergency management commission under chapter 29C.
  - b. Development, operation, and maintenance of memorial buildings or monuments under chapter 37.
  - c. Purchase of voting machines under chapter 52.
  - d. Expenses incurred by the county conservation board established under chapter 350, in carrying out its powers and duties.
  - e. Local health services. The county auditor shall keep a complete record of appropriations for local health services and shall issue warrants on them only on requisition of the local or district health board.
  - f. Expenses relating to county fairs, as provided in chapter 174.
  - g. Maintenance of a juvenile detention home under chapter 232.
  - h. Relief of veterans under chapter 35B.
  - i. Care and support of the poor under chapter 252.
  - j. Operation, maintenance, and management of a health center under chapter 346A.
  - k. For the use of a nonprofit historical society organized under chapter 504, Code 1989, or chapter 504A, a city-owned historical project, or both.
  - l. Services listed in section 331.424, subsection 1, and section 331.554.
  - m. Closure and postclosure care of a sanitary disposal project under section 455B.302.
4. Appropriations specifically authorized to be made from the general fund shall not be made from the rural services fund, but may be made from other sources.

2003 Acts, ch 18, §3; 2003 Acts, ch 108, §67; 2003 Acts, ch 178, §3  
2001 amendment striking subsection 3, paragraph n, and repeal of related transition provisions take effect May 21, 2001, and apply retroactively to April 13, 2000; 2001 Acts, ch 155, §11

Subsection 1, unnumbered paragraph 1 amended  
NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and 4

Subsection 3, paragraph k amended

### 331.436 Protest.

Protests to the adopted budget must be made in accordance with sections 24.27 through 24.32 as if the county were the municipality under those sections except that the number of people necessary to file a protest under this section shall not be less than one hundred.

2003 Acts, ch 178, §17  
Section amended

### 331.502 General duties.

The auditor shall:

- 1. Have general custody and control of the courthouse, subject to the direction of the board.
- 2. Provide, upon request and payment of the legal fee, a certified copy of any record or account kept in the auditor's office.
- 3. Carry out duties relating to the administration of local governmental budgets as provided in chapter 24 and section 384.19.

4. Report the approval of the bond of a public officer approved by the auditor on behalf of the board as provided in section 64.21.

5. Have custody of the official bonds of county and township officers as provided in section 64.23.

6. Take temporary possession of the office and all official books and papers in the office of treasurer when a vacancy occurs and hold the office, books, and records until a successor qualifies as provided in section 69.3. The auditor shall also serve temporarily as the recorder if a vacancy occurs in that office and, if there is no chief deputy assessor, act temporarily as the assessor as provided in section 441.8.

7. Serve as a member of an appointment board to fill a vacancy in the membership of the board as provided in section 69.8, subsection 4.

8. Submit annually to the Iowa department of public health the names and addresses of the clerk, or if there is no clerk, the secretary of the local boards of health in the county as provided in section 135.32.

9. Notify the chairperson of the county agricultural extension education council when the bond of the council treasurer has been filed as provided in section 176A.14.

10. Attest to anticipatory warrants issued by the board for the operation of a county limestone quarry as provided in section 353.7.

11. Carry out duties relating to the determination of legal settlement, collection of funds due the county, and support of persons with mental retardation as provided in sections 222.13, 222.50, 222.61 to 222.66, 222.69, and 222.74.

12. Collect the costs relating to the treatment and care of private patients at the state psychiatric hospital as provided in sections 225.23, 225.24, and 225.35.

13. Carry out duties relating to the hospitalization and support of persons with mental illness as provided in sections 229.42, 230.3, 230.11, 230.15, 230.21, 230.22, 230.25, and 230.26.

14. With acceptable sureties, approve the bonds of the members of a county commission of veteran affairs as provided in section 35B.6.

15. Issue warrants and maintain a book containing a record of persons receiving veteran assistance as provided in section 35B.10.

16. If the legal settlement of a poor person receiving financial assistance is in another county, notify the auditor of that county of the financial assistance as provided in section 252.22.

17. Notify the treasurer of funds due the state for the treatment of indigent persons at the university hospital as provided in section 255.26.

18. Make available to schools, voting machines or sample ballots for instructional purposes as provided in section 256.11, subsection 5.

19. Carry out duties relating to the collection and payment of funds for educating and supporting deaf students as provided in sections 270.6 and 270.7.

20. Order the treasurer to transfer tuition payments from the account of the debtor school corporation to the creditor school corporation as provided in section 282.21.

21. Order the treasurer to transfer transportation service fees from the account of the debtor school corporation to the creditor school corporation as provided in section 285.1, subsection 13.

22. Apportion school taxes, rents, and other money dedicated for public school purposes as provided in section 298.11.

23. Carry out duties relating to school lands and funds as provided in chapter 257B.

24. Carry out duties relating to the establishment, alteration, and vacation of public highways as provided in sections 306.21, 306.25, 306.29 to 306.31, 306.37, and 306.40.

25. Carry out duties relating to the establishment and maintenance of secondary roads as provided in chapter 309.

26. Collect costs incurred by the county weed commissioner as provided in section 317.21.

27. Maintain a file of certificates of appointment issued by county officers as provided in section 331.903.

28. Furnish information and statistics requested by the governor or the general assembly as provided in section 331.901, subsection 1.

29. Carry out duties relating to the organization, expansion, reduction, or dissolution of a rural water district as provided in chapter 357A.

30. Carry out duties related to posting financial information of a township as provided in sections 359.23 and 359.49.

31. Acknowledge the receipt of funds refunded by the state as provided in section 12B.18.

32. Be responsible for all public money collected or received by the auditor's office. The money shall be deposited in a bank approved by the board as provided in chapter 12C.

33. Carry out duties relating to the establishment and management of levee and drainage districts as provided in chapter 468, subchapter I, parts 1 to 5, subchapter II, parts 1, 3, and 6, subchapter III, and subchapter V.

34. Serve as a trustee for funds of a cemetery association as provided in sections 566.12 and 566.13.

35. Notify the state department of transportation of claims filed for improvements on public roads payable from the primary road fund as provided in section 573.24.

36. Certify to the clerk of the district court the names, addresses, and expiration date of the terms of office of persons appointed to the county judicial magistrate appointing commission as provided in section 602.6503.

37. Serve as an ex officio member of the jury commission as provided in section 607A.9.

38. Destroy outdated records as ordered by the

board.

39. Carry out duties relating to the selection of jurors as provided in chapter 607A.

40. Designate newspapers in which official notices of the auditor's office shall be published as provided in section 618.7.

41. Carry out duties relating to lost property as provided in sections 556F.2, 556F.4, 556F.7, 556F.10, and 556F.16.

42. For payment of a permanent school fund mortgage, acknowledge satisfaction of the mortgage by execution of a written instrument referring to the mortgage as provided in section 655.1.

43. Receive and record in a book kept for that purpose, moneys recovered from a person willfully committing waste or trespass on real estate as provided in section 658.10.

44. Carry out other duties required by law and duties assigned pursuant to section 331.323 or 331.610.

2003 Acts, ch 35, §42, 49; 2003 Acts, ch 145, §251

See Code editor's note to §2.9

Subsection 3 stricken and former subsections 4 – 45 renumbered as 3 –

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### **331.552 General duties.**

The treasurer shall:

1. Receive all money payable to the county unless otherwise provided by law.

2. Disburse money owed or payable by the county on warrants or checks drawn and signed by the auditor and sealed with the official county seal.

3. Keep a true account of all receipts and disbursements of the county, which account shall be available for inspection by the board at any reasonable time.

4. Keep the official county seal provided by the county. The official seal shall be an impression seal on the face of which shall appear the name of the county, the word "county" which may be abbreviated, the word "treasurer" which may be abbreviated, and the word "Iowa". The impression of the seal shall be placed on each motor vehicle certificate of title signed by the treasurer.

5. Account for, report, and pay into the state treasury any money, property, or securities received on behalf of the state as provided in sections 8A.506 to 8A.508.

6. Account for and report to the board the amount of swampland indemnity funds received from the treasurer of state under section 12.16.

7. Register and call tax anticipatory warrants issued for a memorial hospital as provided under section 37.30.

8. Serve on a nomination appeals commission to hear nomination objections filed with the county commissioner of elections as provided in section 44.7.

9. Keep on file the bond and oath of the auditor as provided in section 64.23.

10. Reserved.
11. Serve as treasurer of an area hospital located outside the corporate limits of a city as provided in section 145A.15.
12. Register and call anticipatory warrants related to the sale of limestone as provided in section 353.8.
13. Make transfer payments to the state for school expenses for blind and deaf children, support of persons with mental illness, and hospital care for the indigent as provided in sections 230.21, 255.26, 269.2, and 270.7.
14. Transfer funds to pay the expenses of creating or changing the boundaries of a school district as provided in section 275.26.
15. Transfer funds to pay tuition expenses owed by a debtor school district to a creditor school district as provided in section 282.21.
16. Pay to the treasurers of the school corporations located in the county the taxes and other moneys due as provided in section 298.11 and send amounts collected for each fund of a school corporation for direct deposit into the depository and account designated as provided in section 298.13.
17. Pay monthly to the treasurer of state proceeds of public lands sold and escheated estates as provided in section 257B.2 and pay annually on February 1 interest collected from public lands sold on credit as provided in section 257B.5.
18. Maintain a permanent school fund account and records of school funds received as provided in section 257B.31.
19. Carry out duties relating to the sale and redemption of anticipatory certificates for secondary road construction as provided in sections 309.50 to 309.55.
20. Carry out duties relating to the establishment of secondary road assessment districts as provided in chapter 311.
21. Carry out duties relating to the sale and redemption of county bonds as provided in division IV, parts 3 and 4.
22. Notify the chairperson of the county hospital board of trustees and pay to the hospital treasurer the tax revenue collected for the county hospital during the preceding month as provided in section 347A.1.
23. Collect a fee of ten dollars for issuing a tax sale certificate or a certificate of redemption from tax sale.
24. Carry out duties relating to the condemnation of property as provided in section 331.656, subsection 4.
25. Carry out duties relating to the funding of drainage districts as provided in chapter 468, subchapter I, parts 1 to 5, subchapter II, parts 1, 5, and 6, subchapter III, and subchapter IV, parts 1 and 2.
26. Collect and disburse funds for soil and water conservation districts as provided in sections

161A.33 and 161A.34.

27. Credit the remainder of funds received from a hotelkeeper's sale to satisfy a lien to the county general fund as provided in section 583.6.

28. Designate the newspapers in which the official notices of the treasurer's office are to be published as provided in section 618.7.

29. Send, before the fifteenth day of each month, the amount of tax revenue, special assessments, and other moneys collected for each tax-certifying or tax-levying public agency in the county for direct deposit into the depository or financial institution and account designated by the governing body of the public agency. The treasurer shall send notice to the chairperson or other designated officer of the public agency stating the amount deposited, the date, the amount to be credited to each fund according to the budget, and the source of revenue.

30. Carry out other duties as required by law and duties assigned pursuant to section 331.323.

31. Collect all penalties that have accrued prior to April 1, 1992, on unpaid taxes, as defined in section 445.1, and process them as interest.

32. File with the county auditor the name of a designated employee, if other than the first deputy treasurer, authorized to perform the duties of the treasurer during the absence or disability of the treasurer and the name of any employee authorized to sign, on behalf of the treasurer, any form, notice, or document requiring the signature of the treasurer.

33. Carry out duties relating to warrant lists provided by the county auditor pursuant to section 331.506, subsection 1.

34. Destroy tax sale redemption certificates and all associated tax sale records after ten years have elapsed from the end of the fiscal year in which the certificate was redeemed. If a tax sale certificate of purchase is cancelled as required by section 446.37 or 448.1, all associated tax sale records shall be destroyed after ten years have elapsed from the end of the fiscal year in which the tax sale certificate of purchase was cancelled.

2003 Acts, ch 24, §4; 2003 Acts, ch 145, §252  
Subsection 5 amended  
NEW subsection 34

### **331.553 General powers.**

The treasurer may:

1. Administer oaths and take affirmations as provided in sections 63A.2 and 421.21.
2. Subject to the requirements of section 331.903, appoint and remove deputies, clerks and assistants.
3. Require that payment be made by guaranteed funds for tax sale redemptions, issuance of plat clearances, issuance of tax clearances for mobile homes, payments of taxes or assessments made within the thirty days prior to the annual tax sale or any adjournment of the tax sale, and

any other payment which is to be collected by the county treasurer. For the purposes of this subsection, “*guaranteed funds*” means cash, cashier’s check, money order, travelers’ check, or certified check.

4. Charge five dollars, as an administrative expense, for every rate, charge, rental, or special assessment certified as a lien to the treasurer for collection. This amount shall be added to the amount of the lien, collected at the time of payment from the payor, and credited to the county general fund.

5. Accept credit cards and electronic transfers of funds in payment of moneys due to the county, including but not limited to credits and reimbursements received from the state, tax payments, and tax sale redemptions. A county treasurer may adjust fees to reflect the cost of processing such payments.

6. Require a payor or an agent of a payor to make payment by electronic transfer of the funds when the payment totals one hundred thousand dollars or more.

2003 Acts, ch 18, §4  
For definitions applicable to subsection 3, see §445.1  
Subsection 5 amended

### 331.555 Fund management.

1. During each term of office, the treasurer shall keep a separate account of the taxes levied for state, county, school, highway, or other purposes and of all other funds created by law whether of regular, special, or temporary nature. The treasurer shall not pay out or use the money in a fund for any purpose except as specifically authorized by law. The treasurer shall be charged with the amount of tax or other funds collected or received by the treasurer and shall be credited with the amount of taxes or other funds disbursed from each account as authorized by law.

2. Except as provided in section 321.153, on or before the fifteenth day of each month, the treasurer shall prepare sworn statements of the amount of money held by the treasurer on the last day of the preceding month belonging to the state treasury and mail a copy of the statement and the remittance to the treasurer of state. Another copy of the statement shall be mailed to the director of the department of administrative services. However, in lieu of mailing the remittance to the treasurer of state, the treasurer may deposit the remittance to the credit of the treasurer of state in an interest-bearing account in a bank in the county as designated by the treasurer of state.

3. If a treasurer fails to comply with the requirements of subsection 2, the treasurer shall forfeit for each failure a sum of not less than one hundred dollars nor more than five hundred dollars to be recovered in an action against the treasurer’s bond brought in the name of the director of the department of administrative services or the treasurer of state.

4. The treasurer shall make a complete settlement with the county semiannually and when the treasurer leaves office as provided in section 12B.7.

5. The treasurer shall maintain custody of all public moneys in the treasurer’s possession and deposit or invest the moneys as provided in section 12B.10 and chapter 12C.

6. The treasurer shall keep all funds invested to the extent practicable and may invest the funds jointly with one or more counties, judicial district departments of correctional services, cities, city utilities, or rural water districts created under chapter 357A pursuant to a joint investment agreement. All investments of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.

2003 Acts, ch 145, §286  
Terminology change applied

### 331.557 Duties relating to motor vehicle registration.

The treasurer shall:

1. Issue, renew, and replace lost or damaged vehicle registration cards or plates and issue and transfer certificates of title for vehicles as provided in sections 321.17 to 321.52.

2. Collect, pay to the state, or refund registration fees as provided in sections 321.105 to 321.156.

3. Collect the use tax on vehicles subject to registration as provided in sections 423.6, 423.7, and 423.7A.

4. Carry out other duties as required by law.

For future amendment to subsection 3, see 2003 Acts, 1st Ex, ch 2, §175, 205  
Section not amended; footnote added

### 331.559 Duties relating to taxation.

The treasurer shall:

1. Determine and collect taxes on mobile homes as provided in sections 435.22 to 435.26.

2. Collect the tax levied for the county brucellosis and tuberculosis eradication fund as provided in section 165.18.

3. Collect the tax levied for the county agricultural extension education fund and pay it to the extension treasurer as provided in section 176A.12.

4. Collect the costs assessed by the secretary of agriculture relating to the treatment or destruction of agricultural or horticultural plants or products as provided in section 177A.17.

5. Collect the tax levied for the erection and equipping of community college facilities as provided in section 260C.22.

6. Collect the costs assessed against a property owner for the destruction or eradication of weeds as provided in sections 317.20 and 317.21.

7. Levy a tax sufficient to pay any deficiency in the assessments collected to pay the principal and interest on bonds issued by a benefited water district as provided in section 357.22.

8. Collect city taxes certified to the auditor as provided in section 384.2.

9. Send the amounts of each city's tax revenue and special assessments collected on its behalf for direct deposit into the depository and account designated as provided in section 384.11.

10. Accept a partial payment of the annual installment of a special assessment before its due date as provided in section 384.65, subsection 6.

11. Serve as an agent of the director of revenue to collect state taxes as provided in section 422.71, subsection 5.

12. Carry out duties relating to the administration of the homestead tax credit as provided in sections 425.4, 425.5, 425.7, 425.9, 425.10, and 425.25.

13. Carry out duties relating to the administration of the agricultural land tax credit as provided in section 426.8.

14. Carry out duties relating to the administration of the military service tax credit as provided in sections 426A.3, 426A.5, 426A.8 and 426A.9.

15. Maintain a suspended tax list book as provided in section 427.12.

16. Collect taxes levied against the property of telephone and telegraph companies as provided in section 433.10.

17. Collect taxes levied against the property of railway companies as provided in section 434.22.

18. Carry out duties relating to the collection and expenditure of assessment expense funds as provided in section 441.16.

19. Apportion and collect the costs assessed by the district court against the board of review or any taxing body resulting from an appeal of property assessments as provided in section 441.40.

20. Carry out duties relating to the preparation and correction of the tax list as provided in chapter 443. After ten years from the date of receipt, the county treasurer may dispose of the tax list delivered to the county treasurer pursuant to chapter 443.

21. Carry out duties relating to the collection of property taxes as provided in chapter 445.

22. Carry out duties relating to the sale of parcels for delinquent taxes as provided in chapter 446.

23. Carry out duties relating to the redemption of parcels sold for delinquent taxes as provided in chapter 447.

24. Carry out duties relating to the issuance of a tax deed or certificate of title for parcels, as defined in section 445.1, sold for delinquent taxes as provided in chapter 448.

25. Correct tax books or records in accordance with an order of apportionment issued as provided in chapter 449.

26. Carry out other duties relating to taxation

as provided by state law.

2003 Acts, ch 145, §286  
Terminology change applied

### 331.602 General duties.

The recorder shall:

1. Record all instruments presented to the recorder's office for recordation upon payment of the proper fees and compliance with other recording requirements as provided by law. The instruments presented for filing or recordation shall be legible and reproducible, and shall have typed or legibly printed on them the names of all signatories including the names of acknowledging officers and witnesses beneath the original signatures. Except as otherwise authorized by the recorder, the instruments shall be no larger than eight and one-half inches by fourteen inches and shall provide a space at the top of the instrument at least eight and one-half inches across the page by two inches in length, on which space shall be typed or legibly printed across the page on the bottom one-fourth inch of this space, the name, address, and telephone number of the individual who prepared the instrument and, immediately below the two inches of space, the tax statement information required in paragraph "d". The remaining portion of this space shall be reserved for use by the county recorder.

a. However, if an instrument does not contain typed or printed names, the recorder shall accept the instrument for recordation or filing if it is accompanied by an affidavit, to be recorded with the instrument, correctly spelling in legible print or type the signatures appearing on the instrument.

b. The requirement of paragraph "a" does not apply to military discharges, military instruments, wills, court records, or to any other instrument dated before July 4, 1959.

c. Failure to print or type signatures as provided in this subsection does not invalidate the instrument.

d. A certificate of change of title or an instrument conveying an interest in real property, other than a mortgage, a mortgage release, or an assignment, shall contain the statement "Address tax statement:" which shall be filled out with the name of the taxpayer and a complete mailing address. Each instrument conveying an interest in real property shall contain this statement unless otherwise authorized by the county recorder.

2. Rerecord an instrument without fee upon presentation of the original instrument by the owner if an error is made in recording the instrument. The recorder shall also note on the new record a reference to the original record and on the original record a reference to the new record.

3. If an error is made in indexing an instrument, reindex the instrument without fee.

4. Reserved.
5. Compile a list of deeds recorded in the recorder's office after July 4, 1951, which are dated or acknowledged more than six months before the date of recording and forward a copy of the list each month to the inheritance tax division of the department of revenue.
6. Carry out duties as a member of a nomination appeals commission as provided in section 44.7.
7. Carry out duties relating to the recordation of oil and gas leases as provided in sections 458A.22 and 458A.24.
8. Endorse on each notice of an unemployment contribution lien the day, hour, and minute that the lien is received from the department of workforce development, index the notice of lien, and record the lien as provided in section 96.14, subsection 3.
9. Carry out duties relating to the registration of vessels as provided in sections 462A.5, 462A.23, 462A.51, 462A.52, 462A.54, and 462A.55.
10. Carry out duties relating to the issuance of hunting, fishing, and fur harvester licenses as provided in sections 483A.10, 483A.12, 483A.13, 483A.14, 483A.15, and 483A.22.
11. Collect migratory game bird fees as provided in chapter 484A.
12. Record the orders and decisions of the fence viewers and index the record in the name of each adjoining owner of land affected by the order or decision as provided in section 359A.10. The recorder shall also note that a judgment has been rendered on an appeal of an order or decision of the fence viewers as provided in section 359A.24.
13. Record the articles of incorporation of farm aid associations as provided in section 176.5 for the fee specified in section 331.604.
14. Reserved.
15. Record without fee a sheriff's deed for land under foreclosure procedures as provided in section 257B.35.
16. Issue snowmobile registrations as provided in sections 321G.4, 321G.6, and 321G.21.
17. Record the measure and plat of a zoning district, building line, or fire limit adopted by a city as provided in section 380.11.
18. Carry out duties relating to the platting of land as provided in chapter 354.
19. Submit monthly to the director of revenue a report of the real property transfer tax received.
20. Carry out duties relating to the endorsement, indexing, and recording of income tax liens as provided in section 422.26.
21. Carry out duties relating to the taxation of real estate transfers as provided in chapter 428A.
22. Carry out duties relating to the recording and indexing of affidavits and claims affecting real estate as provided in section 448.17.
23. Forward to the director of revenue a copy of any deed, bill of sale, or other transfer which shows that it is made or intended to take effect at

or after the death of the person executing the instrument as provided in section 450.81.

24. Record papers, statements, and certificates relating to the condemnation of property as provided in section 6B.38, and carry out duties related to the filing of certain condemnation documents with the office of secretary of state.

25. Carry out duties relating to the recordation of articles of incorporation and other instruments for state banks as provided in chapter 524.

26. Carry out duties relating to the recordation of articles of incorporation and other instruments for credit unions as provided in chapter 533.

27. Carry out duties relating to the recordation of articles of incorporation and other instruments for savings and loan associations as provided in chapter 534.

28. Carry out duties relating to the filing of financing statements or instruments as provided in chapter 554, article 9, part 5.

29. Register the name and description of a farm as provided in sections 557.22 to 557.26.

30. Record a statement of claim provided in chapter 557C relating to mineral interests in coal.

31. Record conveyances and leases of agricultural land as provided in section 558.44.

32. Collect the recording fee and the auditor's transfer fee for real property being conveyed as provided in section 558.58.

33. Reserved.

34. Record and index a notice of title interest in land as provided in section 614.35.

35. Designate the newspapers in which the notices pertaining to the office of recorder shall be published as provided in section 618.7.

36. Record a conveyance of property presented by a commissioner appointed by the district court as provided in section 624.35.

37. Carry out duties relating to the indexing of name changes, and the recorder shall charge a fee for indexing as provided in section 331.604.

38. Report to the board the fees collected as provided in section 331.902.

39. Accept applications for passports.

40. Carry out other duties as provided by law and duties assigned pursuant to section 331.323.

2003 Acts, ch 5, §1; 2003 Acts, ch 145, §286  
For future amendment striking subsection 13 effective July 1, 2005, see  
2002 Acts, ch 1017, §4, 8; 2003 Acts, ch 108, §123  
Terminology change applied  
Subsection 33 stricken

#### **331.605C Electronic transaction fee — audit.**

1. For the fiscal year beginning July 1, 2003, and ending June 30, 2004, the recorder shall collect a fee of five dollars for each recorded transaction, regardless of the number of pages, for which a fee is paid pursuant to section 331.604 to be used for the purposes of planning and implementing electronic recording and electronic transactions in each county and developing county and statewide internet websites to provide electronic access to

records and information.

2. Beginning July 1, 2004, the recorder shall collect a fee of one dollar for each recorded transaction, regardless of the number of pages, for which a fee is paid pursuant to section 331.604 to be used for the purpose of paying the county's ongoing costs of maintaining the systems developed and implemented under subsection 1.

3. The county treasurer, on behalf of the recorder, shall establish and maintain an interest-bearing account into which all moneys collected pursuant to subsections 1 and 2 shall be deposited.

4. The local electronic government transaction fund is established in the office of the treasurer of state under the control of the treasurer of state. Moneys deposited into the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on moneys in the local electronic government transaction fund shall be credited to the fund. Moneys in the local electronic government transaction fund are not subject to transfer, appropriation, or reversion to any other fund, or any other use except as provided in this subsection. The treasurer of state shall enter into a contract with the Iowa state association of counties affiliate representing county recorders to hold the fund for the development, implementation, and maintenance of a statewide internet website for purposes of providing electronic access to records and information recorded or filed by county recorders. On a monthly basis, the county treasurer shall pay one dollar of each fee collected pursuant to subsection 1 to the treasurer of state for deposit into the local electronic government transaction fund. Moneys credited to the local electronic government transaction fund are appropriated to the treasurer of state to be used for contract costs. This subsection is repealed June 30, 2004.

5. The pooled local government electronic transaction fund is established in the office of the treasurer of state under control of the treasurer of state. Moneys deposited into the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on moneys in the pooled local government electronic transaction fund shall be credited to the fund. Moneys in the fund are not subject to transfer, appropriation, or reversion to any other fund, or any other use except as provided in this subsection. On a quarterly basis, the county treasurer shall pay four dollars of each fee collected pursuant to subsection 1 and all fees collected pursuant to subsection 2, to the treasurer of state for deposit into the pooled local government electronic transaction fund. Moneys credited to the pooled local government electronic transaction fund are appropriated to the treasurer of state to be distributed equally to all counties and paid to the county treasurers of each county within thirty days after the moneys are received by the treasurer of state. Moneys received by a county treasurer pursuant to this subsection shall

be deposited into the account established and maintained by the county treasurer on behalf of the county recorder under subsection 3, and shall be used by the county recorder for the purposes set forth in subsections 1 and 2.

6. The recorder shall make available any information required by the county auditor or auditor of state concerning the fees collected under this section for the purposes of determining the amount of fees collected and the uses for which such fees are expended.

2003 Acts, ch 178, §25; 2003 Acts, ch 179, §124, 125  
NEW section

### **331.607 Books and records.**

The recorder shall keep the following books and records:

1. A record for military discharges as provided in section 331.608.

2. An index of unemployment contribution liens as provided in section 96.14, subsection 3.

3. A record of fees as provided in section 331.902.

4. An index of income tax liens as provided in section 422.26.

5. A drainage plat book, index, and record book as provided in sections 468.624 and 468.625.

6. A record of the names and descriptions of farms as provided in section 557.22.

7. Index and records for instruments affecting real estate as provided under chapter 558.

8. An index and record of homesteads as provided in section 561.4.

9. A claimant's index and record for the notices of title interests in land as provided in section 614.35.

10. A book of copies of original entries which has been compared with the originals and certified as true copies of land records by the register of the United States land office as provided in section 622.44.

11. Other indexes and records as provided by law.

2003 Acts, ch 5, §2  
Subsection 6 amended

### **331.608 Military personnel records.**

1. The recorder shall maintain a record in which, upon request, the discharge of a veteran shall be recorded without charge.

2. If an official discharge was not issued or if the veteran was killed in action or died in service, the recorder shall record an official certificate, general or special order, letter, or telegram from a competent authority, including letters from the United States department of defense, the United States veterans administration, or other governmental office, which shows the termination of the veteran's service.

3. The recorder shall record without charge the commissions and warrants of veteran officers and noncommissioned officers, orders citing a vet-

eran for bravery and meritorious action, and citations and bestowals of medals from the state, federal or foreign governments.

4. The recorder shall record without charge the discharge or other records of a deceased veteran which are presented on behalf of the deceased veteran by a veterans organization.

5. The recorder shall keep an alphabetical index referring to the name of the veteran whose discharge paper is recorded.

6. Unless otherwise provided by the person who requested the recording of a record under this section, notwithstanding section 22.2, subsection 1, such record shall be confidential and shall not be made available for examination or copying except as follows:

a. To the person who is the subject of the record, to a member of that person's immediate family, or to that person's agent or representative duly authorized in writing.

b. To a person requesting to examine or copy a record when the event that resulted in the record being made occurred more than seventy-five years prior to the request.

c. To a person who is a funeral director licensed pursuant to chapter 156 and who has custody of the body of a deceased veteran.

d. When otherwise ordered by a court of competent jurisdiction.

e. When otherwise required by a department or agency of the federal or state government or a political subdivision thereof.

f. To a person conducting research who has received written approval from the county commissioner of veteran affairs to view the records.

7. If a certified copy of a record is required to perfect the claim of a veteran in service or honorably discharged or a claim of a dependent of the veteran, the certified copy shall be furnished by the custodian of the record without charge.

8. If the recorder periodically publishes notice of the services provided to military persons and veterans under this section, the recorder shall pay the cost of the publication in the same manner as other expenses of the recorder's office.

9. As used in this section, "veteran" means a veteran as defined in section 35.1, who enlisted or was inducted from the county, resided at any time in the county, or is buried in the county.

2003 Acts, ch 114, §2, 3  
NEW subsection 6 and former subsections 6 - 8 renumbered as 7 - 9  
Subsection 7 amended

**331.652 General powers of the sheriff.**

1. The sheriff may call upon any person for assistance to:

a. Keep the peace or prevent the commitment of crime.

b. Arrest a person who is liable to arrest.

c. Execute a process of law.

2. The sheriff, when necessary, may summon the power of the county to carry out the responsi-

bilities of office.

3. The sheriff may use the services of the department of public safety in the apprehension of criminals and detection of crime.

4. The sheriff, with the co-operation of the commissioner of public safety, may hold an annual conference and school of instruction for all peace officers within the county, including regularly organized reserve peace officers under the sheriff's jurisdiction, at which time instruction may be given in all matters relating to the duties of peace officers.

5. The sheriff may administer oaths and take affirmations on matters relating to the business of the office of sheriff as provided in section 63A.2.

6. The sheriff may serve a subpoena or order issued under authority of the department of revenue as provided in section 421.22.

7. Subject to the requirements of chapter 341A and section 331.903, the sheriff may appoint and remove deputies, assistants, and clerks.

8. The sheriff may appoint one or more civil process servers, subject to the provisions of section 331.903.

a. A person appointed by the sheriff as a civil process server may, under the direction of the sheriff, execute and return all writs and other legal process issued to the sheriff by legal authority.

b. The court shall take judicial notice of a civil process server's signature.

c. All costs for service of writs and other legal process by a civil process server shall be collected in accordance with the provisions of section 331.655.

d. A civil process server shall not be considered to be a sheriff or a deputy sheriff for purposes of this chapter or chapter 97B or 341A.

9. The sheriff may dispose of personal property under section 80.39.

2003 Acts, ch 108, §68; 2003 Acts, ch 145, §286  
Terminology change applied  
Subsection 8, paragraph d amended

**331.653 General duties of the sheriff.**

The sheriff shall:

1. Execute and return all writs and other legal process issued to the sheriff by legal authority. The sheriff shall execute and return any legal process in the sheriff's possession at the expiration of the sheriff's term of office and if a vacancy occurs in the office of sheriff, the sheriff's deputies shall execute and return the legal processes in their possession as if the sheriff had continued in office. The sheriff's successor or other officer authorized to discharge the duties of the office of sheriff may execute and return the legal processes on behalf of the outgoing sheriff and the sheriff's deputies, but the outgoing sheriff and the sheriff's deputies remain liable for the execution and return of the legal processes in their possession when the sheriff leaves office or the vacancy occurs.

2. Upon written order of the county attorney,

make a special investigation of any alleged infraction of the law within the county and report the findings to the county attorney within a reasonable time. Upon completion of the investigation, the sheriff shall file with the auditor a detailed, sworn statement of the expenses of the investigation accompanied by the written order of the county attorney. The board shall audit and pay the reasonable and necessary expenses of the investigation.

3. Upon leaving office, deliver to the sheriff's successor and take the successor's receipt for all books and papers pertaining to the office except as provided in subsection 1, property attached and levied upon, and prisoners in the county jail. The receipt is sufficient indemnity to the outgoing sheriff.

4. Provide bailiff and other law enforcement service to the district judges, district associate judges, and associate juvenile judges, and judicial magistrates of the county upon request.

5. Serve as a member of the joint emergency management commission as provided in section 29C.9.

6. Enforce the provisions of chapter 718A relating to the desecration of flags and insignia.

7. Carry out duties relating to election contests as provided in sections 57.6, 62.4, and 62.19.

8. Carry out duties relating to the seizure and disposition of illegal oil and gas supplies as provided in section 458A.15.

9. Serve a notice or subpoena received from a board of arbitration as provided in section 679B.10.

10. Cooperate with the division of labor services of the department of workforce development in the enforcement of child labor laws as provided in section 92.22.

11. Carry out duties relating to the seizure and forfeiture of cigarettes, vehicles, and other property used in violation of cigarette tax laws as provided in section 453A.32.

12. Observe and inspect any licensed premise for gambling devices and report findings to the license-issuing authority as provided in section 99A.4.

13. Carry out duties relating to the issuance of permits for the possession, transportation, and detonation of explosive materials as provided in sections 101A.3, 101A.5, 101A.7, and 101A.8.

14. Seize fish and game taken, possessed, or transported in violation of the state fish and game laws as provided in section 481A.12.

15. Carry out duties relating to the enforcement of state liquor and beer laws as provided in sections 123.14, 123.117, and 123.118.

16. Reserved.

17. Enforce the payment of the manufactured or mobile home tax as provided in section 435.24.

18. Carry out duties relating to the reporting of persons injured in the commission of a crime, either as perpetrators or victims, as provided in sec-

tions 147.111 and 147.112.

19. Carry out duties relating to the enforcement of livestock transportation laws as provided in chapter 172B.

20. Investigate disputes in the ownership or custody of branded animals as provided in section 169A.10.

21. Reserved.

22. Reserved.

23. Carry out duties relating to the involuntary hospitalization of persons with mental illness as provided in sections 229.7 and 229.11.

23A. Carry out duties related to service of a summons, notice, or subpoena pursuant to sections 232.35, 232.37, and 232.88.

24. Carry out duties relating to the assessment of reported child abuse cases and the protection of abused children as provided in section 232.71B.

25. Remove, upon court order, an indigent person to the county or state of the person's legal settlement as provided in section 252.18.

26. File a complaint upon receiving knowledge of an indigent person who is ill and may be improved, cured or advantageously treated by medical or surgical treatment or hospital care as provided in section 255.2.

27. Give notice of the time and place of making an appraisal of unneeded school land as provided in sections 297.17 and 297.28.

28. Cooperate with the state department of transportation, the department of public safety, and other law enforcement agencies in the enforcement of local and state traffic laws and inspections as provided in sections 321.5 and 321.6.

29. Report the theft and recovery of a registered motor vehicle as provided in section 321.72.

30. Collect unpaid motor vehicle fees and penalties as provided in sections 321.133 to 321.135.

31. Reserved.

32. Enforce sections 321.372 to 321.379 relating to school buses.

33. Carry out duties relating to the enforcement of laws prohibiting the operation of a motor vehicle while under the influence of an alcoholic beverage as provided in chapter 321J.

34. Upon request, assist the department of revenue and the state department of transportation in the enforcement of motor fuel tax laws as provided in section 452A.76.

35. Have charge of the county jails in the county and custody of the prisoners committed to the jails as provided in chapter 356.

36. Reserved.

37. Reserved.

38. Notify the department of natural resources of hazardous conditions of which the sheriff is notified as provided in section 455B.386.

39. Carry out duties relating to condemnation of private property as provided under chapter 6B.

40. Carry out duties relating to the removal and disposition of abandoned motor vehicles as

provided in section 556B.1.

41. Carry out duties relating to the determination of what is included in a homestead as provided in section 561.8.

42. Carry out duties relating to liens for services of animals as provided in chapter 580.

43. Carry out duties relating to the service of notice on a jury commissioner or jury manager as provided in section 607A.44.

44. Reserved.

45. Designate the newspapers in which notices pertaining to the sheriff's office are published as provided in section 618.7.

46. Carry out duties relating to the execution of judgments and orders of the court as provided in chapter 626.

47. Add the amount of an advancement made by the holder of the sheriff's sale certificate to the execution, upon verification by the clerk as provided by section 629.3.

48. Upon appointment of the court, serve as a receiver of property of a judgment debtor as provided in sections 630.7 and 630.9.

49. Carry out duties relating to the attachment of property as provided in chapters 639, 640, and 641.

50. Carry out duties relating to garnishment under chapter 642.

51. Carry out duties relating to an action of replevin as provided in chapter 643.

52. Carry out orders of the court or a judge relating to the service or execution of a writ of habeas corpus as provided under chapter 663.

53. Carry out duties relating to the disposition of lost property as provided in chapter 556F.

54. Carry out orders of the court requiring the sheriff to take custody and deposit or deliver trust funds as provided in section 636.30.

55. Carry out legal processes directed by an appellate court as provided in section 625A.14.

56. Furnish the bureau of criminal identification with the criminal identification records and other information upon direction by the commissioner of public safety as provided in section 690.1.

57. Take the fingerprints of all persons specified under section 690.2 and forward the fingerprint records to the commissioner of public safety.

58. Report information on crimes committed and delinquent acts committed, which would be a serious or aggravated misdemeanor or felony if committed by an adult, and furnish disposition reports on persons arrested and juveniles taken into custody, for a delinquent act which would be a serious or aggravated misdemeanor or felony if committed by an adult, and criminal complaints or information or juvenile delinquency petitions, alleging a delinquent act which would be a serious or aggravated misdemeanor or felony if committed by an adult, filed in any court as provided in section 692.15.

59. Carry out duties relating to firearm train-

ing and the issuance and revocation of firearm permits as provided in chapter 724.

60. Accept custody of persons handed over to the sheriff by the department of public safety as provided in section 804.28.

61. Carry out duties relating to the forfeiture and judgment of bail as provided in section 811.6.

62. Resume custody of a defendant who is re-committed after bail by order of a magistrate as provided in section 811.7.

63. Carry out duties relating to the confinement of persons with mental illness or dangerous persons as provided in section 812.5.

64. Release a defendant in custody upon receipt of a certificate of release as provided in section 814.14.

65. Upon call of the governor or attorney general, render assistance in the enforcement of the law as provided in section 817.2.

65A. Carry out the duties imposed under sections 915.11 and 915.16.

66. Upon court order, take an accused person into custody from the warden of a penal institution and convey the person to the place of trial as provided in rule of criminal procedure 2.7.

67. Receive and detain a defendant transferred from another county under a change of venue as provided in rule of criminal procedure 2.11(10).

68. Carry out duties relating to the execution of a judgment for confinement or other execution as provided in rule of criminal procedure 2.26.

69. Carry out duties relating to the return of service in civil cases as provided in rule of civil procedure 1.308.

70. Serve a writ of certiorari as provided in rule of civil procedure 1.1407.

71. Carry out other duties required by law and duties assigned pursuant to section 331.323.

2003 Acts, ch 145, §286; 2003 Acts, ch 151, §27  
Terminology changes applied  
NEW subsection 23A

### **331.756 Duties of the county attorney.**

The county attorney shall:

1. Diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.

2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.

3. Prosecute all preliminary hearings for

charges triable upon indictment.

4. Prosecute misdemeanors under chapter 236. The county attorney shall prosecute other misdemeanors when not otherwise engaged in the performance of other official duties.

5. Enforce all forfeited bonds and recognizances and prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and forfeitures accruing to the state, the county or a road district in the county, and all suits in the county against public service corporations which are brought in the name of the state. To assist in this duty, the county attorney may procure professional collection services provided by persons or organizations, including private attorneys, which are generally considered to have knowledge and special abilities which are not generally available to state or local government or may designate another county official or agency to assist with collection efforts.

If professional collection services are procured, the county attorney shall file with the clerk of the district court an indication of the satisfaction of each obligation to the full extent of all moneys collected in satisfaction of that obligation, including all fees and compensation retained by the collection service incident to the collection and not paid into the office of the clerk.

Before a county attorney designates another county official or agency to assist with collection of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and forfeitures, the board of supervisors of the county must approve the designation.

All fines, penalties, court costs, fees, and restitution for court-appointed attorney fees ordered pursuant to section 815.9, including the expenses of a public defender which are delinquent as defined in section 602.8107 may be collected by the county attorney or the person procured or designated by the county attorney. In order to receive a percentage of the amounts collected pursuant to section 602.8107, the county attorney must file annually with the clerk of the district court on or before July 1 a notice of full commitment to collect delinquent obligations and must file on the first day of each month a list of the cases in which the county attorney or the person procured or designated by the county attorney is pursuing the collection of delinquent obligations. The annual notice shall contain a list of procedures which will be initiated by the county attorney. Amounts collected by the county attorney or the person procured or designated by the county attorney shall be distributed in accordance with section 602.8107.

6. Commence, prosecute, and defend all actions and proceedings in which a county officer, in

the officer's official capacity, or the county is interested or a party.

7. Give advice or a written opinion, without compensation, to the board and other county officers and to school and township officers, when requested by an officer, upon any matters in which the state, county, school, or township is interested, or relating to the duty of the officer in any matters in which the state, county, school, or township may have an interest, but the county attorney shall not appear before the board at a hearing in which the state or county is not interested.

8. Attend the grand jury when necessary for the purpose of examining witnesses before it or giving it legal advice. The county attorney shall procure subpoenas or other process for witnesses and prepare all informations and bills of indictment.

9. Give a receipt to all persons from whom the county attorney receives money in an official capacity and file a duplicate receipt with the county auditor.

10. Make reports relating to the duties and the administration of the county attorney's office to the governor when requested by the governor.

11. Cooperate with the auditor of state to secure correction of a financial irregularity as provided in section 11.15.

12. Submit reports as to the condition and operation of the county attorney's office when required by the attorney general as provided in section 13.2, subsection 8.

13. Reserved.

14. Hear and decide objections to a nomination filed with the county election commissioner as provided in section 44.7.

15. Review the report and recommendations of the ethics and campaign disclosure board and proceed to institute the recommended actions or advise the board that prosecution is not merited, as provided in sections 68B.32C and 68B.32D.

16. Prosecute or assist in the prosecution of actions to remove public officers from office as provided in section 66.11.

17. Institute legal proceedings against persons who violate laws administered by the division of labor services of the department of workforce development as provided in section 91.11.

18. Investigate complaints and prosecute violations of child labor laws as provided in section 92.22.

19. Prosecute violations of employment security laws and rules as provided in section 96.17, subsection 2.

20. Assist, at the request of the director of revenue, in the enforcement of cigar and tobacco tax laws as provided in sections 453A.32 and 453A.49.

21. Prosecute nuisances as provided in section 99.24.

22. Attend the hearing, interrogate witnesses, and advise a license-issuing authority relating to the revocation of a license for violation of gambling

laws as provided in section 99A.7. The county attorney shall also represent the license-issuing authority in appeal proceedings taken under section 99A.6.

23. Represent the state fire marshal in legal proceedings as provided in section 100.20.

24. Prosecute, at the request of the director of the department of natural resources or an officer appointed by the director, violations of the state fish and game laws as provided in section 481A.35.

25. Assist the division of beer and liquor law enforcement in the enforcement of beer and liquor laws as provided in section 123.14. The county attorney shall also prosecute nuisances, forfeitures of abatement bonds, and foreclosures of the bonds as provided in sections 123.62 and 123.86.

26. Reserved.

27. Serve as attorney for the county health care facility administrator in matters relating to the administrator's service as a conservator or guardian for a resident of the health care facility as provided in section 135C.24.

28. Reserved.

29. At the request of the director of public health, commence legal action to enjoin the unlawful use of radiation-emitting equipment as provided in section 136C.5.

30. Reserved.

31. Prosecute violations of the Iowa veterinary practice Act as provided in section 169.19.

32. Assist the department of inspections and appeals in the enforcement of the Iowa food code and the Iowa hotel sanitation code as provided in sections 137F.19 and 137C.30.

33. Institute legal procedures on behalf of the state to prevent violations of chapter 9H or 202B.

34. Prosecute violations of the Iowa dairy industry laws as provided in section 179.11.

35. Prosecute persons who fail to file an annual or special report with the secretary of agriculture under the meat and poultry inspection Act as provided in section 189A.17.

36. Cooperate with the secretary of agriculture in the enforcement of label requirements for food packages as provided in section 191.7.

37. Prosecute violations of the Iowa commercial feed law as provided in section 198.13, subsection 3.

38. Cooperate with the secretary of agriculture in the enforcement of the agricultural seed laws as provided in section 199.14.

39. Prosecute violations of the Iowa fertilizer law as provided in section 200.18, subsection 4.

40. Prosecute violations of the Iowa drug, device, and cosmetic Act as requested by the board of pharmacy examiners as provided in section 126.7.

41. Provide the Iowa department of corrections with information relating to the background and criminal acts committed by each person sentenced to a state correctional institution from the county as provided in section 904.202.

42. Carry out duties relating to the commit-

ment of a person with mental retardation as provided in section 222.18.

43. Proceed to collect, as requested by the county, the reasonable costs for the care, treatment, training, instruction, and support of a person with mental retardation from parents or other persons who are legally liable for the support of the person with mental retardation as provided in section 222.82.

44. At the direction of a district court judge, investigate the financial condition of a person under commitment proceedings to the state psychiatric hospital or those legally responsible for the person as provided in section 225.13.

45. Appear on behalf of the administrator of the division of mental health and developmental disabilities of the department of human services in support of an application to transfer a person with mental illness who becomes incorrigible and dangerous from a state hospital for persons with mental illness to the Iowa medical and classification center as provided in section 226.30.

46. Carry out duties relating to the hospitalization of persons for mental illness as provided in section 229.12.

47. Carry out duties relating to the collection of the costs for the care, treatment, and support of persons with mental illness as provided in sections 230.25 and 230.27.

48. Carry out duties relating to the care, guidance, and control of juveniles as provided in chapter 232.

49. Prosecute violations of law relating to the family investment program, medical assistance, and supplemental assistance as provided in sections 239B.15, 249.13, and 249A.14.

50. Commence legal proceedings to enforce the rights of children placed under foster care arrangements as provided in section 233A.11.

51. Commence legal proceedings, at the request of the superintendent of the Iowa juvenile home, to recover possession of a child as provided in section 233B.12.

52. Furnish, upon request of the governor, a copy of the minutes of evidence and other pertinent facts relating to an application for a pardon, reprieve, commutation, or remission of a fine or forfeiture as provided in section 914.5.

53. Carry out duties relating to the provision of medical and surgical treatment for an indigent person as provided in sections 255.7 and 255.8.

54. Commence legal proceedings to recover school funds as provided in section 257B.33.

55. At the request of the state geologist, commence legal proceedings to obtain a copy of the map of a mine or mine extension as provided in section 456.12.

56. Enforce, upon complaint, the performance of duties by officers charged with the responsibilities of controlling or eradicating noxious weeds as provided in section 317.23.

57. Commence legal proceedings to remove

billboards and signs which constitute a public nuisance as provided in section 319.11.

58. Reserved.

59. Assist, upon request, the department of transportation's general counsel in the prosecution of violations of common carrier laws and regulations as provided in section 327C.30.

60. Enforce the control of vegetation on railroad property by the railroad corporations as provided in section 327F.29.

61. Appoint a member of the civil service commission for deputy sheriffs as provided in section 341A.2 or 341A.3.

62. Represent the civil service commission for deputy sheriffs in civil suits initiated by the commission for the proper enforcement of the civil service law as provided in section 341A.16.

63. Present to the grand jury at its next session a copy of the report filed by the division of corrections of the department of human services of its inspection of the jails in the county as provided in section 356.43.

64. Represent the township trustees in counties having a population of less than twenty-five thousand except when the interests of the trustees and the county are adverse as provided in section 359.18.

64A. Reserved.

64B. Make a written report to the department of inspections and appeals within fifteen days of the end of each calendar quarter of the amount of funds which were owed to the state for indigent defense services and which were recouped pursuant to subsection 5.

65. Represent the assessor and the board of review in legal proceedings relating to assessments as provided in section 441.41.

66. Represent the state in litigation relating to the inheritance tax if requested by the department of revenue as provided in section 450.1.

67. Institute proceedings to enjoin persons from violating water treatment laws as provided in section 455B.224.

68. Conduct legal proceedings relating to the condemnation of private property as provided in section 6B.2.

69. Reserved.

70. Institute legal proceedings against violations of insurance laws as provided in sections 511.7 and 515.93.

71. Assist, as requested by the attorney general, with the enforcement of the Iowa competition law as provided in section 553.7.

72. Initiate proceedings to enforce provisions relating to the recordation of conveyances and leases of agricultural land as provided in section 558.44.

73. Reserved.

74. Bid on real estate on behalf of the county when necessary to secure the county from loss as provided by section 569.2.

75. Reserved.

76. Reserved.

77. Prosecute a complaint to establish paternity and compel support for a child as provided in section 600B.19.

78. Give to an accused person a copy of each report of the findings of the criminalistics laboratory in the investigation of an indictable criminal charge against the accused as provided in section 691.4.

79. Notify state and local governmental agencies issuing licenses or permits, of a person's conviction of obscenity laws relating to minors as provided in section 728.8.

80. In the case of appeal from the district court, furnish the attorney general with a copy of the notice of appeal and pertinent material from the district court proceedings as provided in section 814.8.

81. Certify fees and mileage payable to witnesses subpoenaed by the county attorney before the district court as provided in section 815.3.

82. Carry out duties relating to extradition of fugitive defendants as provided in chapter 818.

83. Advise the director of the judicial district department of correctional services of the facts and circumstances surrounding the crime committed and the record and history of the defendant granted probation as provided in section 907.8.

83A. Carry out the duties imposed under sections 915.12 and 915.13.

83B. Establish a child protection assistance team in accordance with section 915.35.

84. Bring an action in the nature of quo warranto as provided in rule of civil procedure 1.1302.

85. Perform other duties required by law and duties assigned pursuant to section 331.323.

2003 Acts, ch 107, §3; 2003 Acts, ch 115, §15, 19; 2003 Acts, ch 145, §286  
Terminology change applied  
Subsection 33 amended  
NEW subsection 83B

### **331.909 Multidisciplinary community services teams.**

1. A county or multicounty consortium of agencies providing health, counseling, economic assistance, education, law enforcement, or therapeutic services may establish a multidisciplinary team for the more effective planning and delivery of services to an individual or family under the following conditions:

a. The team complies with federal regulations regarding confidentiality.

b. The agencies comprising the team have written confidentiality standards.

c. The agencies comprising the team enter into an annual interagency agreement to comply with confidentiality standards specified in the agreement.

d. An agency initiating a multidisciplinary team obtains a signed agreement from an individual authorizing the team to share information con-

cerning the individual or the individual's family on a confidential basis.

2. The activities of a multidisciplinary community services team shall not duplicate the activities of a multidisciplinary team for child abuse under section 235A.13, dependent adult abuse activities under section 235B.6, or child victim services provided under section 915.35.

3. A multidisciplinary community services team shall select a chairperson and other officers as deemed necessary by the members of the team. A multidisciplinary community services team is not a governmental body as defined in section 21.2 and is not subject to the provisions of chapter 21, relating to open meetings. Notwithstanding chapter 22, the confidentiality of information in the possession of a multidisciplinary team which is required by law to be confidential shall be maintained except as specifically provided by this section.

4. The members of a multidisciplinary community services team are expressly authorized to orally disclose personally identifying information

to one another which is otherwise required by law to be confidential. Disclosure of confidential information other than oral information between team members under provisions of this section is expressly prohibited.

5. A member of a multidisciplinary community services team shall not use confidential information obtained from another team member except in the best interests of the subject of the confidential information and shall not disclose such information to another person except as otherwise authorized by law. A member of a multidisciplinary community services team who willfully uses or discloses confidential information in violation of this section commits a serious misdemeanor. Notwithstanding section 903.1, the penalty for a person convicted pursuant to this subsection is a fine of not more than five hundred dollars in the case of a first offense and not more than five thousand dollars in the case of each subsequent offense.

2003 Acts, ch 180, §61  
Subsection 2 amended

## CHAPTER 335

### COUNTY ZONING

#### 335.24 Conflict with other regulations.

If the regulations made under this chapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under this chapter govern. If any other statute or local ordinance or regulation requires a greater width or size of yards, courts or other open spaces, or requires a lower height of building or a less number of stories, or a greater percentage of lot to be left unoccupied, or imposes other higher standards than are required by the regulations made under this chapter, the other statute or local ordinance or regulation governs. If a regulation proposed or made under this chapter relates to any structure, building, dam, ob-

struction, deposit, or excavation in or on the floodplains of any river or stream, prior approval of the department of natural resources is required to establish, amend, supplement, change, or modify the regulation or to grant any variation or exception from the regulation.

2003 Acts, ch 108, §69  
Section amended

#### 335.31 Elder family homes.

A county board of supervisors or county zoning commission shall consider an elder family home a family home, as defined in section 335.25, for purposes of zoning, in accordance with section 231A.2,\* and may identify limitations regarding the proximity of one proposed elder family home to another.

\*Chapter 231A repealed by 2003 Acts, ch 166, §28; corrective legislation is pending

Section not amended; footnote added

## CHAPTER 346

### COUNTY BONDS

#### 346.27 "Authority" for control of joint property.

1. Any joint building acquired, owned, erected, constructed, controlled, or occupied in accordance with the authorization contained in this section is

declared to be acquired, owned, erected, constructed, controlled, or occupied for a public purpose and as a matter of public need.

2. Any county may join with its county seat to incorporate an "Authority" for the purpose of ac-

quiring, constructing, demolishing, improving, enlarging, equipping, furnishing, repairing, maintaining, and operating a public building, and to acquire and prepare the necessary site, including demolition of any structures, for the joint use of the county and city or any school district which is within or is a part of the county or city.

3. The incorporation of an authority shall be accomplished by the adoption of articles of incorporation by the governing body of each incorporating unit. For adoption, the affirmative vote of a majority of the members of each governing body is required. The articles of incorporation shall be executed for and on behalf of each incorporating unit by the following officers:

*a.* For the county, by the chairperson of the board of supervisors.

*b.* For the city, by its mayor and city clerk.

4. The articles of incorporation shall set forth the name of the authority, the name of the incorporating units, the purpose for which the authority is created, the number, terms, and manner of selection of its officers including its governing body which shall be known as the "commission", the powers and duties of the authority and of its officers, the date upon which the authority becomes effective, the name of the newspaper in which the articles of incorporation shall be published, and any other matters.

5. The authority shall be directed and governed by a board of commissioners of three members, one to be elected by the board of supervisors of the county from the area outside of the county seat, one to be elected by the council of the city from the area inside the city, and one to be elected by the joint action of the board of supervisors of the county and the council of the city, and if the governing bodies are unable to agree upon a choice for the third member within sixty days of the election of the first member, then the third member shall be appointed by the governor. The commissioners shall serve for six-year terms. Of the first appointees, the member appointed by the board of supervisors shall be for a term of two years, the member appointed by the city council shall be for a term of four years, and the member appointed by the joint action of the board and council shall be for a term of six years. The board of commissioners shall designate one of their number as chairperson, one as secretary, and one as treasurer, and shall adopt bylaws and rules of procedure and provide therein for regular meetings and for the proper safekeeping of its records. No commissioner shall receive any compensation in connection with services as commissioner. Each commissioner, however, shall be entitled to reimbursement for any necessary expenditures in connection with the performance of the commissioner's duties.

6. The articles of incorporation shall be recorded in the office of the county recorder and filed with the secretary of state, and shall be published once in a newspaper designated in the articles of

incorporation and having a general circulation within the county, and upon such recording and publication, the authority shall be deemed to come into existence.

7. Amendments may be made to the articles of incorporation if adopted by the governing body of each incorporating unit; provided that no amendment shall impair the obligation of any bond or other contract. Each amendment shall be adopted, executed, recorded and published in the same manner as specified for the original articles of incorporation.

8. Any incorporating unit may make donations of property, real or personal, including gratuitous lease, to the authority as deemed proper and appropriate in aiding the authority to effectuate its purposes.

9. The authority shall be a body corporate with power to sue and be sued in any court of this state, have a seal and alter the same at its pleasure, and make and execute contracts, leases, deeds, and other instruments necessary or convenient to the exercise of its powers. In addition, it shall have and exercise the following public and essential governmental powers and functions and all other powers incidental or necessary to carry out and effectuate its express powers:

*a.* To select, locate, and designate an area lying wholly within the territorial limits of the county seat of the county in which the authority is incorporated as the site to be acquired for the construction, alteration, enlargement, or improvement of a building. The site selected is subject to approval by a majority of the members of each governing body of the incorporating units.

*b.* To acquire in the corporate name of the authority the fee simple title to the real property located within the area by purchase, gift, devise, or by the exercise of the power of eminent domain, or to take possession of real estate by lease.

*c.* To demolish, repair, alter, or improve any building within the designated area, to construct a new building within the area and to furnish, equip, maintain, and operate the building.

*d.* To construct, repair, and install streets, sidewalks, sewers, water pipes, and other similar facilities and otherwise improve the site.

*e.* To make provisions for off-street parking facilities.

*f.* To operate, maintain, manage, and enter into contracts for the operation, maintenance, and management of buildings, and to provide rules for the operation, maintenance and management.

*g.* To employ and fix the compensation of technical, professional, and clerical assistance as necessary and expedient to accomplish the objects and purposes of the authority.

*h.* To lease all or any part of a building to the incorporating units for a period of time not to exceed fifty years, upon rental terms agreed upon between the authority and the incorporating units. The rentals specified shall be subject to increase

by agreement of the incorporating units and the authority if necessary in order to provide funds to meet obligations.

*i.* To procure insurance of any and all kinds in connection with the building. The bidding procedures provided in section 73A.18 shall be utilized in the procurement of insurance.

*j.* To accept donations, contributions, capital grants, or gifts from individuals, associations, municipal and private corporations, and the United States, or any agency or instrumentality thereof, and to enter into agreements in connection therewith.

*k.* To borrow money and to issue and sell revenue bonds in an amount and with maturity dates not in excess of fifty years from date of issue, to provide funds for the purpose of acquiring, constructing, demolishing, improving, enlarging, equipping, furnishing, repairing, maintaining, and operating buildings, and to acquire and prepare sites, convenient therefor, and to pay all incidental costs and expenses, including, but not limited to architectural, engineering, legal, and financing expense and to refund and refinance revenue bonds as often as deemed advantageous by the board of commissioners.

*l.* The provisions of chapter 73A applicable to other municipalities are applicable to an authority.

10. After the incorporation of an authority, and before the sale of any issue of revenue bonds, except refunding bonds, the authority shall call an election to decide the question of whether the authority shall issue and sell revenue bonds. The ballot shall state the amount of the bonds and the purposes for which the authority is incorporated. Registered voters of the city and the unincorporated area of the county shall be entitled to vote on the question. The question may be submitted at a general election or at a special election. An affirmative vote of a majority of the votes cast on the question is required to authorize the issuance and sale of revenue bonds.

In addition to the notice required by section 49.53, a notice of the election shall be published once each week for at least two weeks in some newspaper published in the county stating the date of the election, the hours the polls will be open, and a copy of the question. The authority shall call this election with the concurrence of both incorporating units. The election shall be conducted by the commissioner in accordance with the provisions of chapters 49 and 50.

11. When the board of commissioners decides to issue bonds subject to the election requirement, it shall adopt a resolution describing the area to be acquired, the nature of the existing improvements, the disposition to be made of the improvements, and a general description of any new buildings to be constructed.

12. The resolution shall set out the limit of the cost of the project, including the cost of acquiring

and preparing the site, determine the period of usefulness and fix the amount of revenue bonds to be issued, the date or dates of maturity, the dates on which interest is payable, the sinking fund provisions, and all other details in connection with the bonds. The board shall determine and fix the rate of interest of any revenue bonds issued, in a resolution adopted by the board prior to the issuance. The resolution, trust agreement, or other contract entered into with the bondholders may contain covenants and restrictions concerning the issuance of additional revenue bonds as necessary or advisable for the assurance of the payment of the bonds authorized.

13. Bonds shall be issued in the name of the authority and are declared to have all the qualities and incidents of negotiable instruments under the laws of this state.

14. Bonds issued under this section may be issued as serial or term bonds, shall be of such denomination or denominations and form, including interest coupons to be attached, shall be payable at such place or places and bear such date as the board of commissioners fix by the resolution authorizing the bonds, shall mature within a period not to exceed fifty years, and may be redeemable prior to maturity with or without premium, at the option of the board of commissioners, upon terms and conditions the board shall fix by the resolution authorizing the issuance of bonds. The board of commissioners may provide for the registration of bonds in the name of the owner as to the principal alone or as to both principal and interest upon terms and conditions the board determines. All bonds issued by an authority shall be sold at a price so that the interest cost to the commission of the proceeds of the bonds shall not exceed that permitted by chapter 74A, payable semiannually, computed to maturity, and shall be sold in the manner and at the time the board of commissioners determines.

15. Bonds issued by an authority, and the interest thereon, shall be payable solely from the revenues derived from the operation, management, or use of the buildings acquired or to be acquired by the authority, which revenues shall include payments received under any leases or other contracts for the use of the buildings. Bonds shall recite that the principal and interest thereon are payable only from the revenues pledged, and shall state on their face that they are not an indebtedness of the authority or a claim against the property of the authority.

16. Bonds shall be executed in the name of the commission by the chairperson of the board of commissioners or by another officer of the commission as the board, by resolution, may direct, and be attested by the secretary, or by another officer of the commission as the board, by resolution, may direct, and shall be sealed with the commission's corporate seal. In case any officer whose signature appears on the bonds or coupons shall cease to be

such officer before delivery of the bonds, the officer's signature shall be valid and sufficient for all purposes, the same as if the officer had remained in office until delivery.

17. In its discretion, the authority may issue refunding bonds to refund its bonds prior to their maturity, refund its outstanding matured bonds, refund matured coupons evidencing interest upon its outstanding bonds, refund interest at the coupon rate that has accrued upon its outstanding matured bonds, and refund its bonds which by their terms are subject to call or redemption before maturity. All bonds redeemed or purchased shall be canceled.

18. To secure the payment of revenue bonds and for the purpose of setting forth the covenants and undertakings of the authority in connection with the issuance of revenue bonds and the issuance of any additional revenue bonds payable from such revenue income to be derived from the operation, management, or use of the buildings acquired or to be acquired by the authority, the authority may execute and deliver a trust agreement except that no lien upon any physical property of the authority shall be created.

19. The resolution shall provide for the creation of a sinking fund account into which shall be payable from the revenues of the project, from month to month as such revenues are collected, the sums in excess of the cost of maintenance and operation of the project and the cost of administration of the authority, sufficient to comply with the covenants of the bond resolution and sufficient to pay the accruing interest and retire the bonds at maturity. The board of commissioners, in a resolution, may provide for other accounts as necessary for the sale of the bonds. Moneys in the accounts shall be applied in the manner provided by the resolution, the trust agreement, or other contract with the bondholders.

20. No such bonds shall constitute a debt of the authority or of any public body within the meaning of any statutory or constitutional limitation as to debt.

21. From and after the issuance of bonds the board of commissioners shall establish and fix rates, rentals, fees, and charges for the use of any and all buildings or space owned and operated by the authority, sufficient at all times to pay maintenance and operation costs and to pay the accruing interest and retire the bonds at maturity and to make all payments to all accounts created by any bond resolution and to comply with all covenants of any bond resolution.

22. When an incorporating unit enters into a lease with the authority, the governing body of the incorporating unit shall provide by ordinance or resolution for the levy and collection of a direct

annual tax sufficient to pay the annual rent payable under the lease as and when it becomes due and payable. The tax shall be levied and collected in like manner with the other taxes of the incorporating unit and shall be in addition to all other taxes authorized to be levied by that incorporating unit. This tax shall not be included within and shall be in addition to any statutory limitation of rate or amount for that incorporating unit. The fund realized from the tax levy shall be set aside for the payment of the annual rent and shall not be disbursed for any other purpose until the annual rental has been paid in full.

23. All leases, contracts, deeds of conveyance, bonds, or other instruments in writing on behalf of the authority, shall be executed in the name of the authority by the chairperson and secretary of the authority, or by other officers as the board of commissioners, by resolution, directs, and the seal of the authority shall be affixed.

24. All property owned by any authority shall be exempt from taxation by the state or any taxing unit of the state. However, any interest derived from bonds issued by the authority shall be subject to taxation.

25. When all bonds issued by an authority have been retired, the authority may convey the title to the property owned by the authority to the incorporating units in accordance with the provisions contained in the articles of incorporation. If articles of incorporation do not exist, the conveyance may be made in accordance with any agreement adopted by the respective governing bodies of the incorporating units and the authority.

The question of whether a conveyance shall be made shall be submitted to the registered voters of the city and the unincorporated area of the county. An affirmative vote equal to at least a majority of the total votes cast on the question shall be required to authorize the conveyance. If the question does not carry, the authority shall continue to operate, maintain, and manage the building under a lease arrangement with the incorporating units.

26. Any incorporating unit may enter into a lease with an authority that the authority and the incorporating unit determine is necessary and convenient to effectuate their purposes and the purposes of this section. The power to enter into leases under this section is in addition to other powers granted to cities and counties to enter into leases and the provisions of chapter 75, section 364.4, subsection 4, and section 331.301, subsection 10, are not applicable to leases entered into under this section.

2003 Acts, ch 178, §26  
NEW subsection 26

## CHAPTER 356

## JAILS AND MUNICIPAL HOLDING FACILITIES

**356.7 Charges for administrative costs and room and board — enforcement procedures.**

1. The county sheriff, or a municipality operating a temporary municipal holding facility or jail, may charge a prisoner who is eighteen years of age or older and who has been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order for the actual administrative costs relating to the arrest and booking of that prisoner, and for room and board provided to the prisoner while in the custody of the county sheriff or municipality. Moneys collected by the sheriff or municipality under this section shall be credited respectively to the county general fund or the city general fund and distributed as provided in this section. If a prisoner who has been convicted of a criminal offense or sentenced for contempt of court for violation of a domestic abuse order fails to pay for the administrative costs and the room and board, the sheriff or municipality may file a room and board reimbursement claim with the district court as provided in subsection 2. The county attorney may file the reimbursement claim on behalf of the sheriff and the county or the municipality. The attorney for the municipality may also file a reimbursement claim on behalf of the municipality. This section does not apply to prisoners who are paying for their room and board by court order pursuant to sections 356.26 through 356.35.

2. The sheriff, municipality, or the county attorney, on behalf of the sheriff, or the attorney for the municipality, may file a reimbursement claim with the clerk of the district court which shall include all of the following information, if known:

*a.* The name, date of birth, and social security number of the person who is the subject of the claim.

*b.* The present address of the residence and principal place of business of the person named in the claim.

*c.* The criminal proceeding pursuant to which the claim is filed, including the name of the court, the title of the action, and the court's file number.

*d.* The name and office address of the person who is filing the claim.

*e.* A statement that the notice is being filed pursuant to this section.

*f.* The amount of room and board charges the person owes.

*g.* The amount of administrative costs the person owes.

*h.* If the sheriff or municipality wishes to have the amount of the claim for charges owed included within the amount of restitution determined to be owed by the person, a request that the amount

owed be included within the order for payment of restitution by the person.

3. Upon receipt of a claim for reimbursement, the court shall approve the claim in favor of the sheriff or the county, or the municipality, for the amount owed by the prisoner as identified in the claim and any fees or charges associated with the filing or processing of the claim with the court. The sheriff or municipality may choose to enforce the claim in the manner provided in chapter 626. Once approved by the court, the claim for the amount owed by the person shall have the force and effect of a judgment for purposes of enforcement by the sheriff or municipality. However, irrespective of whether the judgment lien for the amount of the claim has been perfected, the claim shall not have priority over competing claims for child support obligations owed by the person.

4. This section does not limit the right of the sheriff or municipality to obtain any other remedy authorized by law.

5. Of the moneys collected and credited to the county general fund as provided in this section, sixty percent of the moneys collected shall be used for the following purposes:

*a.* Courthouse security equipment and law enforcement personnel costs.

*b.* Infrastructure improvements of a jail, including new or remodeling costs.

*c.* Infrastructure improvements of juvenile detention facilities, including new or remodeling costs.

The sheriff may submit a plan or recommendations to the county board of supervisors for the use of the funds as provided in this subsection or the sheriff and board may jointly develop a plan for the use of the funds. Subject to the requirements of this subsection, funds may be used in the manner set forth in an agreement entered into under chapter 28E.

The county board of supervisors shall review the plan or recommendations submitted by the sheriff during the normal budget process of the county.

6. Of the moneys collected and credited to the city general fund as provided in this section, sixty percent of the moneys collected shall be used for police or law enforcement budget expenditures.

7. As used in this section, "*administrative costs relating to the arrest and booking of a prisoner*" means those functions or automated functions that are performed to receive a prisoner into jail or a temporary holding facility including the following:

*a.* Patting down and searching, booking, wristbanding, bathing, clothing, fingerprinting, photographing, and medical and dental screening.

*b.* Document preparation, retrieval, updating,

filing, and court scheduling.

- c. Warrant service and processing.
- d. Inventorying of a prisoner's money and subsequent account creation.
- e. Inventorying and storage of a prisoner's

property and clothing.

- f. Management and supervision.  
2003 Acts, ch 113, §1; 2003 Acts, ch 179, §72  
Section amended

## CHAPTER 357A

### RURAL WATER DISTRICTS

#### 357A.15 Taxing prohibited — refunds.

A district shall not have power to levy any taxes. The facilities constructed or otherwise acquired by a district, including but not limited to ponds, reservoirs, pipelines, wells, check dams, and pumping installations, the revenues obtained by the district from the sale of water, and the revenue bonds or notes, or interest from the revenue bonds or notes, issued by a district shall not be taxable in any manner by the state or any of its political subdivisions.

A rural water district organized under chapter 504A shall receive a refund of sales or use taxes

upon submitting an application to the department of revenue for such refund of taxes imposed upon the gross receipts of all sales of building materials, supplies, or equipment sold to a contractor or used in the fulfillment of a written contract for the construction of facilities for such rural water district to the same extent as a rural water district organized under this chapter may obtain a refund under section 422.45, subsection 7.

2003 Acts, ch 145, §286  
For future amendment to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §176, 205  
Terminology change applied

## CHAPTER 362

### DEFINITIONS AND MISCELLANEOUS PROVISIONS

#### 362.5 Interest in public contract prohibited — exceptions.

When used in this section, “contract” means any claim, account, or demand against or agreement with a city, express or implied.

A city officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the officer's or employee's city. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

1. The payment of lawful compensation of a city officer or employee holding more than one city office or position, the holding of which is not incompatible with another public office or is not prohibited by law.
2. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.
3. An employee of a bank or trust company, who serves as treasurer of a city.
4. Contracts made by a city, upon competitive bid in writing, publicly invited and opened.
5. Contracts in which a city officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 9, or both, if the contracts are made by competitive bid in writing, publicly invited and opened, or if

the remuneration of employment will not be directly affected as a result of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract. The competitive bid qualification of this subsection does not apply to a contract for professional services not customarily awarded by competitive bid.

6. The designation of an official newspaper.
7. A contract in which a city officer or employee has an interest if the contract was made before the time the officer or employee was elected or appointed, but the contract may not be renewed.
8. Contracts with volunteer fire fighters or civil defense volunteers.
9. A contract with a corporation in which a city officer or employee has an interest by reason of stockholdings when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of such officer or employee.
10. Contracts not otherwise permitted by this section, for the purchase of goods or services by a city having a population of more than two thousand five hundred, which benefit a city officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of one thousand five hundred dollars in

a fiscal year.

11. Contracts not otherwise permitted by this section for the purchase of goods or services by a city having a population of two thousand five hundred or less, which benefit a city officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of two thousand five hundred dollars in a fiscal year.

12. Franchise agreements between a city and a utility and contracts entered into by a city for the

provision of essential city utility services.

13. A contract that is a bond, note, or other obligation of the city and the contract is not acquired directly from the city, but is acquired in a transaction with a third party who may or may not be the original underwriter, purchaser, or obligee of the contract.

2003 Acts, ch 36, §4, 5  
Subsection 5 amended  
NEW subsection 13

## CHAPTER 364

### POWERS AND DUTIES OF CITIES

#### 364.3 Limitation of powers.

The following are limitations upon the powers of a city:

1. A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.

2. A city shall not provide a penalty in excess of a five hundred dollar fine or in excess of thirty days imprisonment for the violation of an ordinance. An amount equal to ten percent of all fines collected by cities shall be deposited in the account established in section 602.8108. However, one hundred percent of all fines collected by a city pursuant to section 321.236, subsection 1, shall be retained by the city. The criminal penalty surcharge required by section 911.2 shall be added to a city fine and is not a part of the city's penalty.

3. A city may not set standards and requirements which are lower or less stringent than those imposed by state law, but may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise.

4. A city may not levy a tax unless specifically authorized by a state law.

5. A city shall not adopt or enforce any ordinance imposing any registration or licensing system or registration or license fees for owner-occupied manufactured or mobile homes including the lots or lands upon which they are located. A city shall not adopt or enforce any ordinance imposing any registration or licensing system, or registration or license fees, or safety or sanitary standards for rental manufactured or mobile homes unless a similar registration or licensing system, or registration or license fees, or safety or sanitary standards are required for other rental properties intended for human habitation. This subsection does not preclude the investigation and abatement of a nuisance or the enforcement of a tiedown system, or the enforcement of any regulations of the state or local board of health if those regulations apply to other rental properties or to owner-

occupied housing intended for human habitation.

6. A city shall not provide a civil penalty in excess of seven hundred fifty dollars for the violation of an ordinance which is classified as a municipal infraction or if the infraction is a repeat offense, a civil penalty not to exceed one thousand dollars for each repeat offense. A municipal infraction is not punishable by imprisonment.

7. A city which operates a cable communications system shall manage the right-of-way on a competitively neutral and nondiscriminatory basis. Additionally, a city-operated cable communications system shall be required to pay the same fees and charges and comply with other requirements as may be imposed by the city by ordinance or by the terms of a franchise granted by the city, or as may otherwise be imposed by the city, upon any other cable provider. This subsection does not prohibit a city from making an equitable apportionment of franchise requirements between or among cable television providers, in order to eliminate duplication. This subsection shall not be construed to prohibit a city-operated cable communications system from making transfers of surplus as otherwise allowed or from making in-kind contributions as otherwise allowed.

8. *a.* A city may adopt and enforce an ordinance requiring the construction of a storm shelter at a manufactured home community or mobile home park which is constructed after July 1, 1999. In lieu of requiring construction of a storm shelter, a city may require a community or park owner to provide a plan for the evacuation of community or park residents to a safe place of shelter in times of severe weather including tornadoes and high winds if the city determines that a safe place of shelter is available within a reasonable distance of the manufactured home community or mobile home park for use by community or park residents. Each evacuation plan prepared pursuant to this subsection shall be filed with, and approved by, the local emergency management agency. If construction of a storm shelter is required, an ordi-

nance adopted or enforced pursuant to this subsection shall not include any of the following requirements:

(1) That the size of the storm shelter be larger than the equivalent of seven square feet for each manufactured or mobile home space in the manufactured home community or mobile home park.

(2) That the storm shelter include a restroom if the shelter is used exclusively as a storm shelter.

(3) That the storm shelter exceed the construction specifications approved by a licensed professional engineer and presented by the owner of the manufactured home community or mobile home park.

(4) That the shelter be located any closer than one thousand three hundred twenty feet from any manufactured or mobile home in the community. However, this restriction shall not prohibit the adoption or enforcement of an ordinance that requires a minimum of one shelter to be located in a manufactured home community or mobile home park.

b. For the purposes of this subsection:

(1) “*Manufactured home community*” means the same as land-leased community defined in sections 335.30A and 414.28A.

(2) “*Mobile home park*” means a mobile home park as defined in section 562B.7.

(3) “*Storm shelter*” means a single structure or multiple structures designed to provide persons with temporary protection from a storm.

9. A city shall not adopt or enforce any ordinance imposing any limitation on the amount of rent that can be charged for leasing private residential or commercial property. This subsection does not prevent the right of a city to manage and control residential property in which the city has a property interest.

2003 Acts, ch 178, §23  
Subsection 6 amended

### 364.22 Municipal infractions.

1. A municipal infraction is a civil offense punishable by a civil penalty of not more than seven hundred fifty dollars for each violation or if the infraction is a repeat offense, a civil penalty not to exceed one thousand dollars for each repeat offense. However, notwithstanding section 364.3, a municipal infraction arising from noncompliance with a pretreatment standard or requirement, referred to in 40 C.F.R. § 403.8, by an industrial user may be punishable by a civil penalty of not more than one thousand dollars for each day a violation exists or continues.

A city may classify a municipal infraction, other than a violation arising from noncompliance with a pretreatment standard or requirement, as an environmental violation if the infraction is a violation of chapter 455B or 459, subchapters II and III, or a violation of a standard established by the city in consultation with the department of natural resources, or both. The discharge of airborne resi-

due from grain, created by the handling, drying, or storing of grain by a person, shall not be subject to an ordinance, the violation of which is classified as an environmental violation, unless the person is engaged in industrial production or manufacturing of grain products. The discharge of airborne residue from grain, created by the handling, drying, or storing of grain by a person engaged in industrial production or manufacturing of grain products, shall not be subject to an ordinance, the violation of which is classified as an environmental violation, if the discharge occurs from September 15 to January 15. A municipal infraction which is classified as an environmental violation is punishable by a civil penalty of not more than one thousand dollars for each occurrence. A person committing an environmental violation is not subject to a civil penalty, if all of the following conditions are satisfied:

a. The violation results solely from the person conducting an initial start-up, cleaning, repairing, performing scheduled maintenance, testing, or conducting a shutdown, of either equipment causing the violation or the equipment designed to reduce or eliminate the violation.

b. The person notifies the city of the violation within twenty-four hours from the time that the violation begins.

c. The violation does not continue in existence for more than eight hours.

A city shall not enforce this section against a person committing an environmental violation, until the city offers to participate in informal negotiations with the person. If the person accepts the offer, the city and the person shall participate in good faith negotiations to resolve issues alleged to be the basis for the violation.

2. A city by ordinance may provide that a violation of an ordinance is a municipal infraction.

3. A city shall not provide that a violation of an ordinance is a felony, an aggravated misdemeanor, or a serious misdemeanor under state law or if the violation is a simple misdemeanor under chapters 687 through 747.

4. An officer authorized by a city to enforce a city code or regulation may issue a civil citation to a person who commits a municipal infraction. The citation may be served by personal service as provided in rule of civil procedure 1.305, by certified mail addressed to the defendant at the defendant’s last known mailing address, return receipt requested, or by publication in the manner as provided in rule of civil procedure 1.310 and subject to the conditions of rule of civil procedure 1.311. A copy of the citation shall be retained by the issuing officer, and one copy shall be sent to the clerk of the district court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

a. The name and address of the defendant.

b. The name or description of the infraction at-

tested to by the officer issuing the citation.

- c. The location and time of the infraction.
  - d. The amount of civil penalty to be assessed or the alternate relief sought, or both.
  - e. The manner, location, and time in which the penalty may be paid.
  - f. The time and place of court appearance.
  - g. The penalty for failure to appear in court.
5. In municipal infraction proceedings:
- a. The matter shall be tried before a magistrate, a district associate judge, or a district judge in the same manner as a small claim. The matter shall only be tried before a judge in district court if the total amount of civil penalties assessed exceeds the jurisdictional amount for small claims set forth in section 631.1.
  - b. The city has the burden of proof that the municipal infraction occurred and that the defendant committed the infraction. The proof shall be by clear, satisfactory, and convincing evidence.
  - c. The court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the city and produce evidence or witnesses on the defendant's behalf.
  - d. The defendant may be represented by counsel of the defendant's own selection and at the defendant's own expense.
  - e. The defendant may answer by admitting or denying the infraction.
  - f. If a municipal infraction is proven the court shall enter a judgment against the defendant. If the infraction is not proven, the court shall dismiss it.

6. All penalties or forfeitures collected by the court for municipal infractions shall be remitted to the city in the same manner as fines and forfeitures are remitted for criminal violations under section 602.8106. If the person named in the citation is served as provided in this section and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.

7. A person against whom judgment is entered, shall pay court costs and fees as in small claims under chapter 631. If the action is dismissed, the city is liable for the court costs and court fees. Where the action is disposed of without payment, or provision for assessment, of court costs, the clerk shall at once enter judgment for costs against the city.

8. Seeking a civil penalty as authorized in this section does not preclude a city from seeking alternative relief from the court in the same action.

9. When judgment has been entered against a defendant, the court may do any of the following:

- a. Impose a civil penalty by entry of a personal judgment against the defendant.
- b. Direct that payment of the civil penalty be suspended or deferred under conditions imposed

by the court.

- c. Grant appropriate alternative relief ordering the defendant to abate or cease the violation.
- d. Authorize the city to abate or correct the violation.
- e. Order that the city's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both.

If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.

A magistrate or district associate judge shall have jurisdiction to assess or enter judgment for costs of abatement or correction in an amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to section 631.1, subsection 1, for magistrates and section 602.6306, subsection 2, for district associate judges. If the city seeks abatement or correction costs in excess of those amounts, and the matter is not before a judge in district court, the case shall be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appeal pursuant to section 631.13.

10. The defendant or the city may file a motion for a new trial or may appeal the decision of a magistrate, district associate judge, or a district judge to the district court. The procedure on appeal shall be the same as for a small claim pursuant to section 631.13. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but shall not be admissible or binding as to any future violation for the same or similar ordinance provision by the same defendant.

11. This section does not preclude a peace officer of a city from issuing a criminal citation for a violation of a city code or regulation if criminal penalties are also provided for the violation. Each day that a violation occurs or is permitted to exist by the defendant, constitutes a separate offense.

12. The issuance of a civil citation for a municipal infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or malicious prosecution.

13. An action brought pursuant to this section for a municipal infraction which is an environmental violation does not preclude, and is in addition to, any other enforcement action which may be brought pursuant to chapter 455B, 455D, 455E, or 459, subchapters II, III, and VI.

14. A police department may dispose of personal property under section 80.39.

2003 Acts, ch 178, §24

Subsection 1, unnumbered paragraph 1 amended

## CHAPTER 368

### CITY DEVELOPMENT

#### 368.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Adjoining*” means having a common boundary for not less than fifty feet. Land areas may be adjoining although separated by a roadway or waterway.
2. “*Annexation*” means the addition of territory to a city.
3. “*Board*” means the city development board established in section 368.9.
4. “*Boundary adjustment*” means annexation, severance or consolidation.
5. “*City development*” means an incorporation, discontinuance or boundary adjustment.
6. “*Committee*” means the board members, and the local representatives appointed as provided in sections 368.14 and 368.14A, to hear and make a decision on a petition or plan for city development.
7. “*Consolidation*” means the combining of two or more cities into one city.
8. “*Discontinuance*” means termination of a city.
9. “*Incorporation*” means establishment of a new city.
10. “*Island*” means land which is not part of a city and which is completely surrounded by the corporate boundaries of one or more cities. However, a part of the boundary of an “*island*” may be contiguous with a boundary of the state, a river, or similar natural barrier which prevents service access from an adjoining area of land outside the boundaries of a city.
11. “*Public land*” means land owned by the federal government, the state, or a political subdivision of the state.
12. “*Public utility*” means a public utility subject to regulation pursuant to chapter 476.
13. “*Registered voter*” means a person who is registered to vote pursuant to chapter 48A.
14. “*Severance*” means the deletion of territory from a city.
15. “*Territory*” means the land area or areas proposed to be incorporated, annexed, or severed, whether or not contiguous to all other areas proposed to be incorporated, annexed, or severed. Except as provided for by an agreement pursuant to chapter 28E, “*territory*” having a common boundary with the right-of-way of a secondary road extends to the center line of the road.
16. “*Urbanized area*” means any area of land within two miles of the boundaries of a city.

2003 Acts, ch 148, §1, 9

NEW subsection 11 and former subsections 11 – 15 renumbered as 12 –

16

#### 368.4 Annexing moratorium.

A city, following notice and hearing, may by resolution agree with another city or cities to refrain from annexing specifically described territory for a period not to exceed ten years and, following notice and hearing, may by resolution extend the agreement for subsequent periods not to exceed ten years each. Notice of a hearing shall be served by regular mail at least thirty days before the hearing on the city development board and on the board of supervisors of the county in which the territory is located and shall be published in an official county newspaper in each county containing a city conducting a hearing regarding the agreement, in any county within two miles of any such city, and in an official newspaper of each city conducting a hearing regarding the agreement. The notice shall include the time and place of the hearing, describe the territory subject to the proposed agreement, and the general terms of the agreement. After passage of a resolution by the cities approving the agreements, a copy of the agreement and a copy of any resolution extending an agreement shall be filed with the city development board within ten days of enactment. If such an agreement is in force, the board shall dismiss a petition or plan which violates the terms of the agreement.

2003 Acts, ch 148, §2, 9  
Section amended

#### 368.7 Voluntary annexation of territory.

1. *a.* All of the owners of land in a territory adjoining a city may apply in writing to the council of the adjoining city requesting annexation of the territory. Territory comprising railway right-of-way or territory comprising not more than twenty percent of the land area may be included in the application without the consent of the owner to avoid creating an island or to create more uniform boundaries. Public land may be included in the territory to be annexed. However, the area of the territory that is public land included without the written consent of the agency with jurisdiction over the public land may not be used to determine the percentage of territory that is included with the consent of the owner and without the consent of the owner.

*b.* Prior to notification in paragraph “*c*”, the annexing city shall provide written notice to the board of supervisors and township trustees of each county and township that contains all or a portion of the territory to be annexed. The written notice shall include the same information required in paragraph “*c*” and shall set a time for a consulta-

tion on the proposed annexation between the annexing city and each county and township that contains all or a portion of the territory to be annexed. The consultation shall be held at least fourteen business days before the applications in paragraph "c" are mailed. The governing body of each such county and township may designate one of its members to attend the consultation. Each such county and township may make written recommendations for modification to the proposed annexation no later than seven business days following the date of the consultation.

Not later than thirty days after the consultation, the board of supervisors of each county that contains all or a portion of the territory to be annexed shall, by resolution, state whether or not it supports the application or whether it takes no position in support of or against the application. If there is a comprehensive plan for the county, the board shall take the plan into account when considering its resolution. A copy of the resolution shall be immediately filed with the annexing city and shall be considered by the city council when taking action on the application. The city council shall forward a copy of the resolution to the city development board as part of the city proceedings on the annexation. Failure of a board of supervisors to adopt a resolution shall not delay the proceedings on the application nor shall such failure be considered a deficiency either in the application or in the annexing city's proceedings.

c. A copy of the application shall be mailed by certified mail to the nonconsenting owner and each affected public utility, at least fourteen business days prior to any action taken by the city council on the application. The application must contain a legal description and a map of the territory showing its location in relationship to the city.

d. The city shall provide for a public hearing on the application before approving or denying it. The city shall provide written notice at least fourteen business days prior to any action by the city council regarding the application, including a public hearing, by regular mail to the chairperson of the board of supervisors of each county which contains a portion of the territory proposed to be annexed, each public utility which serves the territory proposed to be annexed, each owner of property located within the territory to be annexed who is not a party to the application, and each owner of property that adjoins the territory to be annexed unless the adjoining property is in a city. The city shall publish notice of the application and public hearing on the application in an official county newspaper in each county which contains a portion of the territory proposed to be annexed. Both the written and published notice shall include the time and place of the public hearing and a legal description of the territory to be annexed. The city may not assess the costs of providing notice as required in this section to the applicants.

e. An application for annexation under this

subsection may be withdrawn by an applicant at any time within three business days after the public hearing unless the application was made pursuant to a written agreement for the extension of city services or unless the right to withdraw the application was specifically identified and waived by the applicant in the application. A landowner who has consented to the annexation may, within three business days after the public hearing, withdraw the landowner's consent to the annexation unless the landowner has entered into a written agreement for extension of city services or unless the right to withdraw consent was specifically identified and waived by the landowner.

f. An annexation including territory comprising not more than twenty percent of the land area without consent of the property owners is not complete without approval by four-fifths of the members of the city development board after a hearing for all affected property owners and the county. When considering such an annexation application, the board may request that the annexing city provide information on the amount of land located in the annexing city that is currently vacant or undeveloped and whether municipal services are being provided to current residents of the annexing city.

2. An application for annexation of territory not within an urbanized area of a city other than the city to which the annexation is directed must be approved by resolution of the council which receives the application. In the discretion of a city council, the resolution may include a provision for a transition for the imposition of taxes as provided in section 368.11, subsection 3, paragraph "m". The city council shall mail a copy of the application by certified mail to the board of supervisors of each county which contains a portion of the territory at least fourteen business days prior to any action taken by the city council on the application. The council shall also publish notice of the application in an official county newspaper in each county which contains a portion of the territory at least fourteen days prior to any action taken by the council on the application. Upon receiving approval of the council, the city clerk shall file a copy of the resolution, map, and legal description of the territory involved with the secretary of state, the county board of supervisors of each county which contains a portion of the territory, each affected public utility, and the state department of transportation. The city clerk shall also record a copy of the legal description, map, and resolution with the county recorder of each county which contains a portion of the territory. The secretary of state shall not accept and acknowledge a copy of a legal description, map, and resolution of annexation which would create an island. The annexation is completed upon acknowledgment by the secretary of state that the secretary of state has received the legal description, map, and resolution.

3. An application for annexation of territory

within an urbanized area of a city other than the city to which the annexation is directed must be approved both by resolution of the council which receives the application and by the board. The board shall not approve an application which creates an island. Notice of the application shall be mailed by certified mail, by the city to which the annexation is directed, at least fourteen business days prior to any action by the city council on the application to the council of each city whose boundary adjoins the territory or is within two miles of the territory, to the board of supervisors of each county which contains a portion of the territory, each affected public utility, and to the regional planning authority of the territory. Notice of the application shall be published in an official county newspaper in each county which contains a portion of the territory at least ten business days prior to any action by the city council on the application. In the discretion of a city council, the resolution may include a provision for a transition for the imposition of taxes as provided in section 368.11, subsection 3, paragraph "m". The annexation is completed when the board has filed and recorded copies of applicable portions of the proceedings as required by section 368.20, subsection 2.

4. If one or more applications for a voluntary annexation and one or more petitions for an involuntary annexation or incorporation for a common territory are submitted to the board within thirty days of the date the first application or petition was submitted to the board, the board shall approve the application for voluntary annexation, if the application meets the applicable requirements of this chapter, unless the board determines by a preponderance of the evidence that the application was filed in bad faith, or that the application as filed is contrary to the best interests of the citizens of the urbanized area, or that the applicant cannot within a reasonable period of time meet its obligation to provide services to the territory to be annexed sufficient to meet the needs of the territory. In consideration of the requests, the board may appoint a committee in the manner provided in section 368.14 to seek additional information from the applicant for voluntary annexation as necessary, including the information required of petitioners pursuant to section 368.11. The board, or the committee, if applicable, shall hold a public hearing on the application for voluntary annexation in the manner provided for involuntary petitions in section 368.15. The decision of the board under this subsection shall be made within ninety days of receipt of the application by the board. The failure of the board to approve an application under this paragraph shall be deemed final agency action subject to judicial review.

If an application for voluntary annexation is not approved pursuant to this section, the board shall cause the conversion of the application to a petition pursuant to section 368.13 and shall proceed

under section 368.14A. The conversion of an application to a petition shall not prejudice the status of the applicant. Judicial review of a board decision under this subsection may be requested by an aggrieved party.

2003 Acts, ch 148, §3, 9  
Internal reference changes applied  
Subsection 1 amended

### **368.11 Petition for involuntary city development action.**

1. A petition for incorporation, discontinuance, or boundary adjustment may be filed with the board by a city council, a county board of supervisors, a regional planning authority, or five percent of the registered voters of a city or territory involved in the proposal. Notice of the filing, including a copy of the petition, must be served upon the council of each city for which a discontinuance or boundary adjustment is proposed, the board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed or severed, the council of a city if an incorporation includes territory within the city's urbanized area, and any regional planning authority for the area involved.

2. Within ninety days of receipt of a petition, the board shall initiate appropriate proceedings or dismiss the petition. The board may combine for consideration petitions or plans which concern the same territory or city or which provide for a boundary adjustment or incorporation affecting common territory. The combined petitions may be submitted for consideration by a special local committee pursuant to section 368.14A.

3. The petition must include substantially the following information as applicable:

- a. A general statement of the proposal.
- b. A map of the territory, city or cities involved.
- c. Assessed valuation of platted and unplatted land.
- d. Names of property owners.
- e. Population density.
- f. Description of topography.
- g. Plans for disposal of assets and assumption of liabilities.
- h. Description of existing municipal services, including but not limited to water supply, sewage disposal, and fire and police protection.
- i. Plans for agreements with any existing special service districts.
- j. In a case of annexation or incorporation, the petition must state that none of the territory is within a city.
- k. In a case of incorporation or consolidation, the petition must state the name of the proposed city.
- l. Plans shall include a formal agreement between affected municipal corporations and counties for the maintenance, improvement and traffic control of any shared roads involved in an incorporation or boundary adjustment.

*m.* In the discretion of a city council, a provision for a transition for the imposition of city taxes against property within an annexation area. The provision shall not allow a greater exemption from taxation than the tax exemption formula schedule provided under section 427B.3, subsections 1 through 5, and shall be applied in the levy and collection of taxes. The provision may also allow for the partial provision of city services during the time in which the exemption from taxation is in effect.

*n.* In the case of an annexation, a plan for extending municipal services to be provided by the annexing city to the annexed territory within three years of July 1 of the fiscal year in which city taxes are collected against property in the annexed territory.

4. At least fourteen business days before a petition for involuntary annexation is filed as provided in this section, the petitioner shall make its intention known by sending a letter of intent by certified mail to the council of each city whose urbanized area contains a portion of the territory, the board of supervisors of each county which contains a portion of the territory, the regional planning authority of the territory involved, each affected public utility, and to each property owner listed in the petition. The written notification shall include notice that the petitioners shall hold a public meeting on the petition for involuntary annexation prior to the filing of the petition.

5. Before a petition for involuntary annexation may be filed, the petitioner shall hold a public meeting on the petition. Notice of the meeting shall be published in an official county newspaper in each county which contains a part of the territory at least five days before the date of the public meeting. The mayor of the city proposing to annex the territory, or that person's designee, shall serve as chairperson of the public meeting. The city clerk of the same city or the city clerk's designee shall record the proceedings of the public meeting. Any person attending the meeting may submit written comments and may be heard on the petition. The minutes of the public meeting and all documents submitted at the public meeting shall be forwarded to the county board of supervisors of each county where the territory is located and to the board by the chairperson of the meeting.

6. Within thirty days after receiving notice that a petition for involuntary annexation has been filed with the board, the board of supervisors of each county that contains all or a portion of the territory to be annexed shall, by resolution, state whether or not it supports the petition or whether it takes no position in support of or against the petition. If there is a comprehensive plan for the county, the board shall take the plan into account when considering its resolution. A copy of the resolution shall be immediately filed with the annexing city and with the city development board. Failure of a board of supervisors to adopt a resolution

shall not delay the proceedings on the petition nor shall such failure be considered a deficiency either in the petition or in the annexing city's proceedings.

2003 Acts, ch 108, §126, 132; 2003 Acts, ch 148, §4 – 6, 9  
Unnumbered paragraphs 1 and 2 editorially redesignated as subsections 1 and 2

Unnumbered paragraph 3 and subsections 1 – 13 editorially redesignated as subsection 3, unnumbered paragraph 1, and paragraphs a – m, respectively

Subsection 3, NEW paragraph n  
Unnumbered paragraph 4 editorially redesignated as subsection 4  
Unnumbered paragraph 5 amended and editorially redesignated as subsection 5  
NEW subsection 6

**368.25 Failure to provide municipal services.**

Prior to expiration of the three-year period established in section 368.11, subsection 14, the annexing city shall submit a report to the board describing the status of the provision of municipal services identified in the plan required in section 368.11, subsection 14. If a city fails to provide municipal services, or fails to show substantial and continuing progress in the provision of municipal services, to territory involuntarily annexed, according to the plan for extending municipal services filed pursuant to section 368.11, subsection 14, within the time period specified in that subsection, the city development board may initiate proceedings to sever the annexed territory from the city. The board shall notify the city of the severance proceedings and shall hold a public hearing on the proposed severance. The board shall give notice of the hearing in the same manner as notice of a public meeting in section 368.11. The board may order severance of all or a portion of the territory and the order to sever is not subject to approval at an election. A city may request that the board allow up to an additional three years to provide municipal services if good cause is shown. As an alternative to severance of the territory, the board may impose a moratorium on additional annexation by the city until the city complies with its plan for extending municipal services. For purposes of this section, "municipal services" means services included in the plan required by section 368.11, subsection 14, for extending municipal services.

2003 Acts, ch 148, §7, 9  
Section amended

**368.26 Annexation of certain property — compliance with less stringent regulations.**

A city ordinance or regulation that regulates a condition or activity occurring on protected farmland or regulates a person who owns and operates protected farmland is unenforceable against the owner of the protected farmland for a period of ten years from the effective date of the annexation, to the extent the city ordinance or regulation is more stringent than county legislation. Section 335.2 shall apply to the protected farmland until the owner of the protected farmland determines that the land will no longer be operated as an agricul-

tural operation. Any enforcement activity conducted in violation of this section is void.

A “*condition or activity occurring on protected farmland*” includes but is not limited to the raising, harvesting, drying, or storage of crops; the marketing of products at roadside stands or farm markets; the creation of noise, odor, dust, or fumes; the production, care, feeding, or housing of animals including but not limited to the construction, operation, or management of an animal feeding operation, an animal feeding operation structure, or aerobic structure, and to the storage, handling, or application of manure or egg washwater; the operation of machinery including but not lim-

ited to planting and harvesting equipment, grain dryers, grain handling equipment, and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.

For the purposes of this section, “*protected farmland*” means land that is part of a century farm as that term is defined in section 403.17, subsection 10. “*County legislation*” means any ordinance, motion, resolution, or amendment adopted by a county pursuant to section 331.302.

2003 Acts, ch 148, §8, 9  
NEW section

## CHAPTER 372

### ORGANIZATION OF CITY GOVERNMENT

#### 372.4 Mayor-council form.

1. A city governed by the mayor-council form has a mayor and five council members elected at large, unless the council representation plan is changed pursuant to section 372.13, subsection 11. The council may, by ordinance, provide for a city manager and prescribe the manager’s powers and duties, and as long as the council contains an odd number of council members, may change the number of wards, abolish wards, or increase the number of council members at large without changing the form.

However, a city governed, on July 1, 1975, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large and one council member from each of four wards, or a special charter city governed, on July 1, 1975, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large and one council member elected from each of eight wards, may continue until the form of government is changed as provided in section 372.2 or section 372.9. While a city is thus operating with an even number of council members, the mayor may vote to break a tie vote on motions not involving ordinances, resolutions or appointments made by the council alone, and in a special charter city operating with ten council members under this section, the mayor may vote to break a tie vote on all measures.

2. The mayor shall appoint a council member as mayor pro tem, and shall appoint and dismiss the marshal or chief of police except where an intergovernmental agreement makes other provisions for police protection or as otherwise provided in section 400.13. However, the appointment and dismissal of the marshal or chief of police are subject to the consent of a majority of the council. Other officers must be selected as directed by the council. The mayor is not a member of the council

and shall not vote as a member of the council.

3. In a city having a population of between five hundred and five thousand, the city council may, or shall upon petition of the electorate meeting the numerical requirements of section 372.2, subsection 1, submit a proposal at the next regular or special city election to reduce the number of council members to three. If a majority of the voters voting on the proposal approves it, the proposal is adopted. If the proposal is adopted, the new council shall be elected at the next regular or special city election. The council shall determine by ordinance whether the three council members are elected at large or by ward.

4. In a city having a population of less than five hundred, the city council may adopt a resolution of intent to reduce the number of council members from five to three and shall call a public hearing on the proposal. Notice of the time and place of the public hearing shall be published as provided in section 362.3, except that at least ten days’ notice must be given. At the public hearing, the council shall receive oral and written comments regarding the proposal from any person. Thereafter, the council, at the same meeting as the public hearing or at a subsequent meeting, may adopt a final resolution to reduce the number of council members from five to three or may adopt a resolution abandoning the proposal. If the council adopts a final resolution to reduce the number of council members from five to three, a petition meeting the same requirements specified in section 362.4 for petitions authorized by city code may be filed with the clerk within thirty days following the effective date of the final resolution, requesting that the question of reducing the number of council members from five to three be submitted to the registered voters of the city. Upon receipt of a petition requesting an election, the council shall direct the county commissioner of elections to put the pro-

posal on the ballot for the next regular city election. If the ballot proposal is adopted, the new council shall be elected at the next following regular city election. If a petition is not filed, the council shall notify the county commissioner of elections by July 1 of the year of the regular city election and the new council shall be elected at that regular city election. If the council notifies the

commissioner of elections after July 1 of the year of the regular city election, the change shall take effect at the next following regular city election. The council shall determine by ordinance whether the three council members are elected at large or by ward.

2003 Acts, ch 80, §1, 2  
Section amended

## CHAPTER 384

### CITY FINANCE

#### 384.3 General fund.

All moneys received for city government purposes from taxes and other sources must be credited to the general fund of the city, except that moneys received for the purposes of the debt service fund, the trust and agency funds, the capital improvements reserve fund, the emergency fund and other funds established by state law must be deposited as otherwise required or authorized by state law. All moneys received by a city from the federal government must be reported to the department of management who shall transmit a copy to the legislative services agency.

2003 Acts, ch 35, §45, 49  
Terminology change applied

#### 384.22 Annual report.

Not later than December 1 of each year, a city shall publish an annual report as provided in section 362.3 containing a summary for the preceding fiscal year of all collections and receipts, all accounts due the city, and all expenditures, the current public debt of the city, and the legal debt limit of the city for the current fiscal year. The report shall be prepared on forms and pursuant to instructions prescribed by the auditor of state. A copy of this report must be filed with the auditor of state not later than December 1 of each year.

A city that fails to meet the filing deadline imposed by this section shall have withheld from payments to be made to the county which are allocated to the city pursuant to section 425.1 an amount equal to five cents per capita until the annual report is filed with the auditor of state.

2003 Acts, ch 178, §4  
Unnumbered paragraph 2 amended

#### 384.62 Limit.

1. A special assessment against a lot for a public improvement shall not be in excess of the amount of the assessment, including the conditional deficiency assessment, as shown in the schedule confirmed by the court, or if court confirmation is not utilized, then on the original plat and schedule adopted by the council, and an assessment shall not exceed twenty-five percent of the value of the lot as shown by the plat and sched-

ule approved by the council or as reduced by the court.

2. Special assessments for the construction or repair of underground connections for private property for gas, water, sewers, or electricity may be assessed to each lot for the actual cost of each connection for that lot, and the twenty-five percent limitation does not apply. Such connections shall not be installed to service railway right-of-way without written agreement with the railway company owning or leasing the right-of-way.

3. A special assessment for a public improvement against a tract of land assessed as agricultural property shall not become payable upon the filing of a request by the owner for deferment until that land is not assessed as agricultural property. This section shall not apply to a tract of land of less than one-quarter acre surrounding any dwelling or nonfarm structure on that tract nor shall it apply to a special assessment levied before July 3, 1978. This section shall not apply if the public improvement is a sewer, water, gas, or electrical line to which the owner of the land makes a connection.

4. Payment of installments of special assessments for a public improvement against property assessed as agricultural property shall be deferred as follows:

a. The property owner who seeks deferment of an assessment shall file a written request for deferment with the city clerk at the time of the hearing on the resolution of necessity for the public improvement or within ten days following the date of the hearing and the request shall identify those lots subject to proposed assessments for which the property owner is seeking deferment which are assessed as agricultural property. The request may be withdrawn by the property owner at any time before or after the adoption of the resolution of necessity.

b. The city shall indicate those lots for which a deferment has been requested on the special assessment schedule.

c. After the assessments for the public improvement have been levied and the special assessment schedule has been filed with the county treasurer, the county treasurer shall indicate on

the tax rolls those assessments subject to deferment under this section.

*d.* A deferment shall continue for as long as the county assessor continues to classify the property as agricultural land on January 1 of each assessment year. A deferment shall end six months following any January 1 assessment date on which the county assessor no longer classifies the property as agricultural land and the special assessment shall become payable in the same manner as the special assessment would have become payable had it not been deferred by this subsection.

2003 Acts, ch 24, §5  
Section amended

### **384.63 Insufficiency — certification to county treasurer — deficiency assessment.**

1. If the special assessment which may be levied against a lot is insufficient to pay its proportion of the cost of the improvement, or if no special assessment may be levied against a lot, the deficiency shall be paid from the city fund or funds designated by the council.

2. The council shall, by resolution, provide that the deficiencies for the lots specially benefited by a public improvement shall be certified to the county treasurer, who shall record them in the county system as “special assessment deficiencies”, and to the appropriate city official charged with the responsibility of issuing building permits, who shall notify the council when a private improvement is subsequently constructed on any lot subject to a deficiency. Certification to the county treasurer shall include a legal description of each lot. The period of amortization for a public improvement for which there are deficiencies shall commence with the adoption of the resolution of necessity and extend for the same period for which installments of assessments for the project are made payable. Deficiencies may be assessed only during the period of amortization, which shall also be certified to the county treasurer and the city official charged with the responsibility of issuing building permits. Certification to the county treasurer shall include a legal description of each lot.

3. When a private improvement is constructed on a lot subject to a deficiency, during the period of amortization, the council shall, by resolution, assess a pro rata portion of the deficiency on that lot, in the same proportion to the total deficiency on that lot as the number of future installments of special assessments remaining to be paid is to the total number of installments of assessments for the project, subject to the twenty-five percent limitation of section 384.62. A deficiency assessment becomes a lien on the property and is payable in the same manner, and subject to the same interests as the other special assessments. The council shall direct the clerk to certify a deficiency assessment to the county treasurer, and to send a notice of the deficiency assessment by mail to each own-

er, as provided in section 384.60, but publication of the notice is not required.

4. An owner may appeal from the amount of the assessment within thirty days of the date notice is mailed. County officials shall collect a deficiency assessment, commencing in the year following the assessment, in the manner provided for the collection of other special assessments. Upon collection, the county treasurer shall make the appropriate credit entries in the county system, and shall credit the amounts collected as provided for other special assessments on the same public improvement, or to the city, to the extent that the deficiency has been previously paid from other city funds.

2003 Acts, ch 108, §70  
Subsection 3 amended

### **384.67 Payment to county treasurer.**

Assessments levied and certified under the provisions of this division, including installments and interest, are payable at the office of the county treasurer of the county where the property assessed is located, except that assessments may be paid in full or in part and without interest within thirty days after the date of certification, at the office of the county treasurer, if the property being assessed is located in an unincorporated area, or the city clerk, if the property being assessed is located in an incorporated area.

2003 Acts, ch 24, §6  
Section amended

### **384.84 Rates and charges — billing and collection — contracts.**

1. The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may establish, impose, adjust, and provide for the collection of rates and charges to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise. When revenue bonds or pledge orders are issued and outstanding pursuant to this division, the governing body shall establish, impose, adjust, and provide for the collection of rates to produce gross revenues at least sufficient to pay the expenses of operation and maintenance of the city utility, combined utility system, city enterprise, or combined city enterprise, and to leave a balance of net revenues sufficient to pay the principal of and interest on the revenue bonds and pledge orders as they become due and to maintain a reasonable reserve for the payment of principal and interest, and a sufficient portion of net revenues must be pledged for that purpose. Rates must be established by ordinance of the council or by resolution of the trustees, published in the same manner as an ordinance.

2. *a.* A city utility or enterprise service to a property or premises, including services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, solid

waste disposal, or any of these services, may be discontinued if the account for the service becomes delinquent. Gas or electric service provided by a city utility or enterprise shall be discontinued only as provided by section 476.20, and discontinuance of those services are subject to rules adopted by the utilities board of the department of commerce.

*b.* If more than one city utility or enterprise service is billed to a property or premises as a combined service account, all of the services may be discontinued if the account becomes delinquent.

*c.* A city utility or enterprise service to a property or premises shall not be discontinued unless prior written notice is sent to the account holder by ordinary mail, informing the account holder of the nature of the delinquency and affording the account holder the opportunity for a hearing prior to discontinuance of service. If the account holder is a tenant, and if the owner or landlord of the property has made a written request for notice, the notice shall also be given to the owner or landlord.

*d.* If a delinquent amount is owed by an account holder for a utility service associated with a prior property or premises, a city utility, city enterprise, or combined city enterprise may withhold service from the same account holder at any new property or premises until such time as the account holder pays the delinquent amount owing on the account associated with the prior property or premises.

3. *a.* Except as provided in paragraph “*d*”, all rates or charges for the services of sewer systems, storm water drainage systems, sewage treatment, solid waste collection, water, solid waste disposal, or any of these services, if not paid as provided by ordinance of the council or resolution of the trustees, are a lien upon the property or premises served by any of these services upon certification to the county treasurer that the rates or charges are due.

*b.* This lien may be imposed upon a property or premises even if a city utility or enterprise service to the property or premises has been or may be discontinued as provided in this section.

*c.* A lien for a city utility or enterprise service under paragraph “*a*” shall not be certified to the county treasurer for collection unless prior written notice of intent to certify a lien is given to the account holder of the delinquent account at least thirty days prior to certification. If the account holder is a tenant, and if the owner or landlord of the property has made a written request for notice, the notice shall also be given to the owner or landlord. The notice shall be sent to the appropriate persons by ordinary mail not less than thirty days prior to certification of the lien to the county treasurer.

*d.* Residential rental property where a charge for water service is separately metered and paid directly to the city utility or enterprise by the tenant is exempt from a lien for delinquent rates or charges associated with such water service if the

landlord gives written notice to the city utility or enterprise that the property is residential rental property and that the tenant is liable for the rates or charges. A city utility or enterprise may require a deposit not exceeding the usual cost of ninety days of water service to be paid to the utility or enterprise. Upon receipt, the utility or enterprise shall acknowledge the notice and deposit. A written notice shall contain the name of the tenant responsible for charges, address of the residential rental property that the tenant is to occupy, and the date that the occupancy begins. A change in tenant shall require a new written notice to be given to the city utility or enterprise within ten business days of the change in tenant. When the tenant moves from the rental property, the city utility or enterprise shall return the deposit if the water service charges are paid in full. A change in the ownership of the residential rental property shall require written notice of such change to be given to the city utility or enterprise within ten business days of the completion of the change of ownership. The lien exemption for rental property does not apply to charges for repairs to a water service if the repair charges become delinquent.

4. A lien shall not be imposed pursuant to this section for a delinquent charge of less than five dollars. The governing body of the city utility or enterprise may charge up to five dollars, and the county treasurer may charge up to five dollars, as an administrative expense of certifying and filing this lien, which amounts shall be added to the amount of the lien to be collected at the time of payment of the assessment from the payor. Administrative expenses collected by the county treasurer on behalf of the city utility or enterprise shall be paid to the governing body of the city utility or enterprise, and those collected by the county treasurer on behalf of the county shall be credited to the county general fund. The lien has equal precedence with ordinary taxes, may be certified to the county treasurer and collected in the same manner as taxes, and is not divested by a judicial sale.

5. A governing body may declare all or a certain portion of a city as a storm water drainage system district for the purpose of establishing, imposing, adjusting, and providing for the collection of rates as provided in this section. The ordinance provisions for collection of rates of a storm water drainage system may prescribe a formula for determination of the rates which may include criteria and standards by which benefits have been previously determined for special assessments for storm water public improvement projects under this chapter.

6. *a.* The governing body of a city utility, combined utility system, city enterprise, or combined city enterprise may:

(1) By ordinance of the council or by resolution of the trustees published in the same manner as an ordinance, establish, impose, adjust, and pro-

vide for the collection of charges for connection to a city utility or combined utility system.

(2) Contract for the use of or services provided by a city utility, combined utility system, city enterprise, or combined city enterprise with persons whose type or quantity of use or service is unusual.

(3) Lease for a period not to exceed fifteen years all or part of a city enterprise or combined city enterprise, if the lease will not reduce the net revenues to be produced by the city enterprise or combined city enterprise.

(4) Contract for a period not to exceed forty years with other governmental bodies for the use of or the services provided by the city utility, combined utility system, city enterprise, or combined city enterprise on a wholesale basis.

(5) Contract for a period not to exceed forty years with persons and other governmental bodies for the purchase or sale of water, gas, or electric power and energy on a wholesale basis.

b. Two or more city utilities, combined utility systems, city enterprises, or combined city enterprises, including city utilities established pursuant to chapter 388, may contract pursuant to chapter 28E for joint billing or collection, or both, of combined service accounts for utility or enterprise services, or both. The contracts may provide for the discontinuance of one or more of the city utility or enterprise services if a delinquency occurs in the payment of any charges billed under a

combined service account.

c. One or more city utilities or combined utility systems, including city utilities established pursuant to chapter 388, may contract pursuant to chapter 28E with one or more sanitary districts established pursuant to chapter 358 for joint billing or collection, or both, of combined service accounts from utility services and sanitary district services. The contracts may provide for the discontinuance of one or more of the city water utility services or sanitary district services if a delinquency occurs in the payment of any charges billed under a combined service account.

7. The portion of cost attributable to the agreement or arbitration awarded under section 357A.21 may be apportioned in whole or in part among water customers within an annexed area.

8. For the purposes of this section, “premises” includes a mobile home, modular home, or manufactured home as defined in section 435.1, when the mobile home, modular home, or manufactured home is taxed as real estate.

9. Notwithstanding subsection 3, a lien shall not be filed against the land if the premises are located on leased land. If the premises are located on leased land, a lien may be filed against the premises only.

2003 Acts, 1st Ex, ch 2, §19, 209  
NEW subsection 9

## CHAPTER 390

### JOINT ELECTRICAL UTILITIES

#### **390.8 Equity investment in independent transmission company.**

In addition to the powers conferred upon a city elsewhere in this chapter, any city operating a city electric utility on January 1, 2003, may enter into agreements with and acquire equity interests in independent transmission companies or similar independent transmission entities in which they are participating that are approved by the federal

energy regulatory commission. The purpose of such equity investments shall be to mitigate expenses incurred by the city electric utility due to its procurement of electric transmission service or to otherwise facilitate investment in transmission facilities and shall not be for general city or city utility investment purposes.

2003 Acts, ch 116, §1  
NEW section

## CHAPTER 392

### ADMINISTRATIVE AGENCIES

#### **392.6 Hospital or health care facility trustees.**

If a hospital or health care facility is established by a city, the city shall by ordinance provide for the election, at a general, city, or special election, of three trustees, whose terms of office shall be four years. However, at the first election, three shall be elected and hold their office, one for four years and

two for two years, and they shall by lot determine their respective terms. A candidate for hospital or health care facility trustee must be a resident of the hospital or health care facility service area within the boundaries of the state at the time of the election at which the person’s name appears on the ballot. A board of trustees elected pursuant to this section shall serve as the sole and only board

of trustees for any and all institutions established by a city as provided for in this section.

Cities maintaining an institution as provided for in this section which have a board of trustees consisting of three or five members may by ordinance increase the number of members to five or seven. The ordinance shall provide for the immediate appointment of the additional members necessary to establish a five-member or seven-member board and shall provide that, of the additional members added to the board by appointment, one-half of the additional members added shall serve until the next succeeding general or city election, and the remaining additional members shall serve until the second succeeding general or city election. The ordinance shall also provide that the determination of which election an appointed additional member shall be required to seek election be determined by lot. Thereafter, the terms of office of such additional members shall be four years. However, if a city has adopted an ordinance which increases the number of members of the board of trustees to five or seven members and the terms of office of four of the five members or six of the seven members end in the same year, the date of expiration of the term of one of the four members or two of the six members, to be determined by lot, shall be extended by an additional two years.

Terms of office of trustees elected pursuant to general or city elections shall begin at noon on the first day in January which is not a Sunday or legal holiday. Terms of office of trustees appointed to fill a vacancy or elected pursuant to special elections shall begin at noon on the tenth day after appointment or the special election which is not a Sunday or legal holiday. The trustees shall begin their terms of office by taking the oath of office, and organize as a board by the election of one of their number as chairperson and one as secretary, but no bond shall be required of them. Terms of office of trustees shall extend to noon on the first day in January which is not a Sunday or legal holiday or until their successors are elected and qualified. Vacancies on the board of trustees may, until the next general or regular city election, be filled by appointment by the remaining members of the board of trustees, unless within fourteen days after the appointment is made, there is filed with the city clerk a petition which requests a special election to fill the vacancy. Trustees who are appointed to fill a vacancy or who are elected at special elections shall serve the unexpired terms of office or until their successors are elected and qualified.

The treasurer of the board of trustees shall receive and disburse all funds under the control of the board as ordered by it. The treasurer shall give

bond in a form and amount as determined by the board in its discretion.

No trustee shall receive any compensation for services performed, but a trustee may receive reimbursement for any cash expenses actually made for personal expenses incurred as trustee, but an itemized statement of all expenses and moneys paid out shall be made under oath by each of the trustees and filed with the secretary and allowed only by the affirmative vote of the full board.

The board of trustees shall be vested with authority to provide for the management, control, and government of the city hospital or health care facility established as permitted by this section, and shall provide all needed rules for the economic conduct thereof and shall annually prepare a condensed statement of the total receipts and expenditures for the hospital or health care facility and cause the same to be published in a newspaper of general circulation in the city in which the hospital or health care facility is located. In the management of the hospital or health care facility no discrimination shall be made against practitioners of any school of medicine recognized by the laws of the state.

As a part of the board's authority it may accept property by gift, devise, bequest or otherwise; and, if the board deems it advisable, may, at public sale, sell or exchange any property so accepted upon a concurring vote of a majority of all members of the board of trustees, and apply the proceeds thereof, or property received in exchange therefor, to any legitimate hospital or health care facility purpose.

The trustees may in their discretion establish a fund for depreciation as a separate fund. Said funds may be invested in United States government bonds and when so invested the accumulation of interest on the bonds so purchased shall be used for the purposes of the depreciation fund; an investment when so made shall remain in United States government bonds until such time as in the judgment of the board of trustees it is deemed advisable to use the funds for hospital or health care facility purposes.

Boards of trustees of institutions provided for in this section are granted all of the powers and duties necessary for the management, control and government of the institutions, specifically including but not limited to any applicable powers and duties granted boards of trustees under other provisions of the Code relating to hospitals, nursing homes, and custodial homes irrespective of the chapter of the Code under which such institutions are established, organized, operated or maintained.

2003 Acts, ch 9, §1, 2  
Unnumbered paragraphs 1 and 3 amended

## CHAPTER 403

### URBAN RENEWAL

#### 403.6 Powers of municipality.

Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

1. To undertake and carry out urban renewal projects within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; and to disseminate slum clearance and urban renewal information.

2. To arrange or contract for the furnishing or repair by any person of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions, that it may deem reasonable and appropriate, attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project; and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

3. Within its area of operation, to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property, or personal property for administrative purposes, together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter: Provided, however, that no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising powers hereunder in the exercise of such functions with respect to an urban renewal project, unless the legislature shall specifically so state.

4. To invest any urban renewal project funds held in reserves or sinking funds, or any such funds not required for immediate disbursement, in property or securities in which a state bank may legally invest funds subject to its control; to redeem such bonds as have been issued pursuant to section 403.9 at the redemption price established therein, or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.

5. To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to give such security as may be required, and to enter into and carry out contracts in connection therewith. A municipality may include in any contract, for financial assistance with the federal government for an urban renewal project, such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of the chapter.

6. Within its area of operation, to make or have made all surveys and planning necessary to the carrying out of the purposes of this chapter, and to contract with any person in making and carrying out of such planning, and to adopt or approve, modify and amend such planning. Such planning may include, without limitation:

- a. A general plan for the locality as a whole;
- b. Urban renewal plans;
- c. Preliminary plans outlining urban renewal activities for neighborhoods to embrace two or more urban renewal areas;
- d. Planning for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;
- e. Planning for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements;
- f. Appraisals, title searches, surveys, studies, and other planning and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and to apply for, accept and utilize grants of funds from the federal government for such purposes.

7. To plan for the relocation of persons, including families, business concerns and others, displaced by an urban renewal project, and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government. Other provisions of the Code notwithstanding, in making such payments on projects not federally funded, the municipality may pay relocation assistance benefits in the amounts authorized by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, as amended by the Uniform Relocation Act Amendments of 1987, Title IV, Pub. L. No. 100-17.

8. To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter, and to levy taxes and assessments for such purposes; to zone or rezone any part of the municipality or make exceptions from building regulations; and to enter into agreements, respecting action to be taken by such municipality pursuant to any of the powers granted by this chapter, with an urban renewal agency vested with urban renewal project powers under section 403.14, which agreements may extend over any period, notwithstanding any provision of rule of law to the contrary.

9. To close, vacate, plan or replan streets, roads, sidewalks, ways or other places; and to plan or replan any part of the municipality.

10. Within its area of operation, to organize, co-ordinate and direct the administration of the provisions of this chapter as they apply to such municipality in order that the objective of remedying slum and blighted areas, and preventing the causes thereof, within such municipality, may be most effectively promoted and achieved; and to establish such new office or offices of the municipality, or to reorganize existing offices, in order to carry out such purpose most effectively.

11. To exercise all or any part of combination of powers herein granted.

12. To approve urban renewal plans.

13. To sell and convey real property in furtherance of an urban renewal project.

14. To supplement the rent required to be paid by any family residing in the municipality forced to relocate by reason of any governmental activity, provided it is necessary to do so in order to house such family in decent, safe and sanitary housing and provided further that such family does not have sufficient means, as determined by the municipality, to pay the required rent for such housing. Any such rent supplement for any such family shall not continue for more than five years.

15. To acquire by purchase, gift or condemnation real property within its area of operation for the relocation of railroad passenger and freight depots, tracks, and yard and other railroad facilities and to sell or exchange and convey such real

property to railroads.

16. To acquire or dispose of by purchase, construction, or lease, or otherwise to deal in air rights, and facilities or easements for lateral or vertical support of land or structures of any kind.

17. Subject to applicable state or federal regulations in effect at the time of the municipal action, accept contributions, grants, and other financial assistance from the state or federal government to be used upon a finding of public purpose for grants, loans, loan guarantees, interest supplements, technical assistance, or other assistance as necessary or appropriate to private persons for an urban renewal project.

18. To provide in an urban renewal plan for the exclusion from taxation of value added to real estate during the process of construction for development or redevelopment. The exclusion may be limited as to the scope of exclusion, territory, or class of property affected. However, the value added during construction shall not be eligible for exclusion from taxation for more than two years and the exclusion shall not be applied to a facility which has been more than eighty percent completed as of the most recent date of assessment. This subsection permits the elimination only of those taxes which are levied against assessments made during the construction of the development or redevelopment.

19. A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than \$ .....

This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except

that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the owner from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue, or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.

The provisions of this chapter shall be liberally interpreted to achieve the purposes of this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

#### **403.20 Percentage of adjustment considered in value assessment.**

In determining the assessed value of property within an urban renewal area which is subject to a division of tax revenues pursuant to section 403.19, the difference between the actual value of the property as determined by the assessor each year and the percentage of adjustment certified for that year by the director of revenue on or before November 1 pursuant to section 441.21, subsection 9, multiplied by the actual value of the property as determined by the assessor, shall be subtracted from the actual value of the property as determined pursuant to section 403.19, subsection 1. If the assessed value of the property as determined pursuant to section 403.19, subsection 1, is re-

duced to zero, the additional valuation reduction shall be subtracted from the actual value of the property as determined by the assessor.

2003 Acts, ch 145, §286  
Terminology change applied

#### **403.23 Annual reporting.**

1. On or before December 1 of each odd-numbered year, each municipality that has established an urban renewal area shall report to the department of management and to the appropriate county auditor the total amount of loans, advances, indebtedness, or bonds outstanding at the close of the most recently ended fiscal year, which qualify for payment from the special fund created in section 403.19, including interest negotiated on such loans, advances, indebtedness, or bonds. For purposes of this subsection, “*indebtedness*” includes written agreements whereby the municipality agrees to suspend, abate, exempt, rebate, refund, or reimburse property taxes, or provide a grant for property taxes paid, with moneys in the special fund. The amount of loans, advances, indebtedness, or bonds shall be listed in the aggregate for each municipality reporting.

2. At the request of the legislative services agency, the department of management shall provide the reports and additional information to the legislative services agency. The department of management, in consultation with the legislative services agency, shall determine reporting criteria and shall prepare a form for reports filed with the department pursuant to this section. The department shall make the form available by electronic means.

3. If a municipality does not file the report with the department of management and the county auditor by December 1 of each odd-numbered year, the county treasurer shall withhold disbursement of incremental taxes to the municipality until the report is filed beginning immediately with the next following disbursement of taxes. The county auditor shall notify the county treasurer if taxes are to be withheld.

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 178, §18, 19  
Terminology change applied  
Subsection 1 stricken and rewritten  
Subsections 2 and 3 amended

## CHAPTER 404A

### PROPERTY REHABILITATION TAX CREDIT

#### **404A.4 Project completion and tax credit certification — credit refund.**

1. Upon completion of the rehabilitation project, a certification of completion must be obtained from the state historic preservation office of the

department of cultural affairs. A completion certificate shall identify the person claiming the tax credit under this chapter and the rehabilitation costs incurred up to the two years preceding the completion date.

2. After verifying the eligibility for the tax credit, the state historic preservation office, in consultation with the department of economic development, shall issue a property rehabilitation tax credit certificate to be attached to the person's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of credit, other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

3. A person receiving a property rehabilitation tax credit under this chapter which is in excess of the person's tax liability for the tax year is entitled to a refund of the excess at a discounted value. The discounted value of the tax credit refund, as calculated by the department of economic development, in consultation with the department of revenue, shall be determined based on the discounted value of the tax credit five years after the tax year of the project completion at an interest rate equivalent to the prime rate plus two percent. The refunded tax credit shall not exceed seventy-five percent of the allowable tax credit.

4. The total amount of tax credits that may be approved for a fiscal year under this chapter shall not exceed two million four hundred thousand dollars. For the fiscal years beginning July 1, 2005, and July 1, 2006, an additional five hundred thousand dollars of tax credits may be approved each fiscal year for purposes of projects located in cultural and entertainment districts certified pursuant to section 303.3B. Any of the additional tax credits allocated for projects located in certified cultural and entertainment districts that are not approved during a fiscal year may be carried over to the succeeding fiscal year. Tax credit certificates shall be issued on the basis of the earliest awarding of certifications of completion as provided in subsection 1. The departments of economic development and revenue shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are approved.

5. Tax credit certificates issued under this chapter may be transferred to any person or entity. Within ninety days of transfer, the transferee must submit the transferred tax credit certificate to the state historic preservation office along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within thirty days of receiving the transferred tax credit

certificate and the transferee's statement, the office shall issue one or more replacement tax credit certificates to the transferee. Each replacement certificate must contain the information required under subsection 2 and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the office shall not be transferable. A tax credit shall not be claimed by a transferee under this chapter until a replacement tax credit certificate identifying the transferee as the proper holder has been issued.

The transferee may use the amount of the tax credit transferred against the taxes imposed under chapter 422, divisions II, III, and V, and chapter 432 for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

2003 Acts, ch 133, §2 - 4; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §90, 209

2003 amendments to subsection 2 and adding subsection 5 take effect May 16, 2003, and apply retroactively for tax years beginning on or after January 1, 2003; 2003 Acts, ch 133, §4

For future repeal of 2003 amendment to subsection 4 effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93

Terminology change applied  
Subsections 2 and 4 amended  
NEW subsection 5

#### 404A.5 Economic impact — recommendations.

The department of cultural affairs, in consultation with the department of economic development, shall be responsible for keeping the general assembly and the legislative services agency informed on the overall economic impact to the state of the rehabilitation of eligible properties. An annual report shall be filed which shall include, but is not limited to, data on the number and potential value of rehabilitation projects begun during the latest twelve-month period, the total property rehabilitation tax credits originally granted during that period, the potential reduction in state tax revenues as a result of all tax credits still unused and eligible for refund, and the potential increase in local property tax revenues as a result of the rehabilitated projects. The department, to the extent it is able, shall provide recommendations on whether a limit on tax credits should be established, the need for a broader or more restrictive definition of eligible property, and other adjustments to the tax credits under this chapter.

2003 Acts, ch 35, §45, 49

Section applies to qualified rehabilitation costs incurred on or after July 1, 2000; 2000 Acts, ch 1194, §20

Terminology change applied

## CHAPTER 405A

### STATE FUND ALLOCATIONS TO LOCAL GOVERNMENT

Repealed by 2003 Acts, ch 178, §11  
With respect to proposed amendments to former §405A.9 and  
405A.10, see Code editor's note to §2.9

## CHAPTER 411

### RETIREMENT SYSTEM FOR POLICE OFFICERS AND FIRE FIGHTERS

#### **411.39 Benefits for employees of the board of trustees for the statewide system.**

1. As used in this section, unless the context otherwise requires:

*a.* "Benefit programs" mean the state life insurance program, the state health or medical insurance program, and the state employees disability program administered by the department of administrative services.

*b.* "Employees" mean the secretary and other employees of the board of trustees for the statewide fire and police retirement system.

2. Employees are eligible to participate in the benefit programs for state employees. Participation in the benefit programs is optional, and an employee may participate by filing an election, in writing, with the board of trustees for the statewide system. The board of trustees shall file these elections with the department of administrative services.

3. The board of trustees shall determine what, if any, amount of the costs or premiums of the benefit programs shall be paid by the participating employees, and shall deduct the amount from

the wages of the participating employees. The board of trustees shall pay the remaining costs or premiums of the benefit programs from the fire and police retirement fund, including any portion to be attributed to an employer, and shall forward all amounts paid by participating employees and the board to the department of administrative services.

4. Participating employees shall be exempted from preexisting medical condition waiting periods. Participating employees may change programs or coverage under the state health or medical service group insurance plan subject to the enrollment rules established for full-time state employees excluded from collective bargaining as provided in chapter 20. A participating employee or the participating employee's surviving spouse shall have the same rights upon final termination of employment or death as are afforded full-time state employees and the employees' surviving spouses excluded from collective bargaining as provided in chapter 20.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 414

### CITY ZONING

#### **414.29 Elder family homes.**

A city council or city zoning commission shall consider an elder family home a family home, as defined in section 414.22, for purposes of zoning, in accordance with section 231A.2,\* and may iden-

tify limitations regarding the proximity of one proposed elder family home to another.

\*Chapter 231A repealed by 2003 Acts, ch 166, §28; corrective legislation is pending  
Section not amended; footnote added

## CHAPTER 421

### DEPARTMENT OF REVENUE

For transition provisions relating to the transfer of financial administration duties to the department of administrative services created in chapter 8A, see 2003 Acts, ch 145, §287, 288

#### **421.1 State board of tax review.**

There is hereby established within the depart-

ment of revenue for administrative and budgetary purposes a state board of tax review for the state

of Iowa. The state board of tax review, hereinafter called the state board, shall consist of three members.

The members of the state board shall be registered voters of the state and shall hold no other elective or appointive public office.

Members of the state board shall serve for six-year staggered terms beginning and ending as provided by section 69.19. A member who is appointed for a six-year term shall not be permitted a successive term.

Members shall be appointed by the governor subject to confirmation by the senate. Appointments to the board shall be bipartisan.

The members of the state board shall qualify by taking the regular oath of office as prescribed by law for state officers. A vacancy on the board shall be filled by appointment by the governor in the same manner as the original appointment.

The members of the state board shall be allowed their necessary travel and expenses while engaged in their official duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. They shall organize the board and select one of their members as chairperson.

The place of office of the state board shall be in the office of the tax department in the capitol of the state.

The state board shall meet as deemed necessary by the chairperson. Special meetings of the state board may be called by the chairperson on five days' notice given to each member. All meetings shall be held at the office of the tax department unless a different place within the state is designated by the state board or in the notice of the meeting.

It shall be the responsibility of the state board to exercise the following general powers and duties:

1. Determine and adopt such policies as are authorized by law and are necessary for the more efficient operation of any phase of tax review.

2. Perform such duties prescribed by law as it may find necessary for the improvement of the state system of taxation in carrying out the purposes and objectives of the tax laws.

3. Employ, pursuant to the Iowa merit system, adequate clerical help to keep such records as are necessary to set forth clearly all actions and proceedings of the state board.

4. Advise and counsel with the director of revenue concerning the tax laws and the rules adopted pursuant to the law; and, upon its own motion or upon appeal by any affected taxpayer, review the record evidence and the decisions of, and any orders or directive issued by, the director of revenue for the identification of taxable property, classification of property as real or personal, or for assessment and collection of taxes by the department or an order to reassess or to raise assessments to any local assessor, and shall affirm, modify, reverse, or

remand them within sixty days from the date the case is submitted to the board for decision. For an appeal to the board to be valid, written notice must be given to the department within thirty days of the rendering of the decision, order, or directive from which the appeal is taken. The director shall certify to the board the record, documents, reports, audits, and all other information pertinent to the decision, order, or directive from which the appeal is taken.

The affected taxpayer and the department shall be given at least fifteen days' written notice by the board of the date the appeal shall be heard and both parties may be present at such hearing if they desire. The board shall adopt and promulgate, pursuant to chapter 17A, rules for the conduct of appeals by the board. The record and all documents, reports, audits and all other information certified to the board by the director, and hearings held by the board pursuant to the appeal and the decision of the board thereon shall be open to the public notwithstanding the provisions of section 422.72, subsection 1, and section 422.20; except that the board upon the application of the affected taxpayer may order the record and all documents, reports, audits, and all other information certified to it by the director, or so much thereof as it deems necessary, held confidential, if the public disclosure of same would reveal trade secrets or any other confidential information that would give the affected taxpayer's competitor a competitive advantage. Any deliberation of the board in reaching a decision on any appeal shall be confidential.

5. Adopt a long-range program for the state system of tax reform based upon special studies, surveys, research, and recommendations submitted by or proposed under the direction of the director of revenue.

The state board shall constitute a continuing research commission as to tax matters in the state and cause to be prepared and submitted to each regular session of the general assembly a report containing such recommendations as to revisions, amendments, and new provisions of the law as the state board has decided should be submitted to the legislature for its consideration.

6. All of the provisions of section 422.70 shall also be applicable to the state board of tax review.

2003 Acts, ch 145, §286  
Confirmation, see §2.32  
Terminology change applied

#### **421.2 Department of revenue.**

A department of revenue is created. The department shall be administered by a director of revenue who shall be appointed by the governor subject to confirmation by the senate and shall serve at the pleasure of the governor. If the office of the director becomes vacant, the vacancy shall be filled in the same manner as provided for the original appointment. The director may establish, abolish, and consolidate divisions within the de-

partment of revenue when necessary for the efficient performance of the various functions and duties of the department of revenue.

2003 Acts, ch 145, §286  
Confirmation, see §2.32  
Terminology change applied

#### **421.3 Director to have no conflicting interests.**

The director of revenue shall not hold any other office under the laws of the United States or of this or any other state or hold any other position of profit. The director shall not engage in any occupation, business, or profession interfering with or inconsistent with the director's duties, serve on or under any committee of any political party, or contribute to the campaign fund of any person or political party. The director shall be of high moral character, shall be recognized for executive and administrative capacity, and shall possess expert knowledge and skills in the fields of taxation and property tax assessment. The director shall devote full time to the duties of the office.

2003 Acts, ch 145, §286  
Terminology change applied

**421.6 Rules — deposit of departmental moneys.** Repealed by 2003 Acts, ch 145, § 291. See § 8A.503.

#### **421.9 Duties and powers — office.**

1. The director of revenue or a designated deputy shall sign on behalf of the department all orders, subpoenas, warrants, and other documents of like character issued by the department.

2. The office of the department shall be maintained at the seat of government in this state. The department shall be deemed to be in continuous session and open for the transaction of business except Saturdays, Sundays, and legal holidays. The director of revenue may hold sessions in conducting investigations any place within the state when necessary to facilitate and render more thorough the performance of the director's duties.

3. The director may make application to the district court or judicial magistrate in the county where the books, records, or assets are located for an administrative search warrant as authorized by section 808.14, to ensure equitable administration of state tax law, if any of the following occurs:

*a.* A person refuses to allow the director or the director's authorized representative to audit the person's books or records or to inspect or value the person's assets.

*b.* The director has good and sufficient reason to believe that a person will not allow the department to audit books or records or inspect or value assets or to believe that the person will destroy books or records or secrete or transfer assets.

Immediately upon issuance of a distress warrant authorized by section 422.26, the director may make application to the district court or judi-

cial magistrate for an administrative search warrant as authorized by section 808.14 to execute the distress warrant.

2003 Acts, ch 145, §286  
Terminology change applied

#### **421.10 Appeal period — applicability.**

The appeal period for revision of assessment of tax, interest, and penalties set out under section 422.28, 422.54, 437A.9, 437A.22, 452A.64, 453A.29, or 453A.46 applies to appeals to notices from the department denying changes in filing methods, denying refund claims, and denying portions of refund claims for the tax covered by that section, and notices of any department action directed to a specific taxpayer, other than licensing, which involves a calculation.

For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §177, 205  
Section not amended; footnote added

#### **421.17 Powers and duties of director.**

In addition to the powers and duties transferred to the director of revenue, the director shall have and assume the following powers and duties:

1. To have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of supervisors and all other officers or boards in the performance of their official duties in all matters relating to assessments and taxation, to the end that all assessments of property and taxes levied on the property be made relatively just and uniform in substantial compliance with the law.

2. To supervise the activity of all assessors and boards of review in the state of Iowa; to cooperate with them in bringing about a uniform and legal assessment of property as prescribed by law.

The director may order the reassessment of all or part of the property in any assessing jurisdiction in any year. Such reassessment shall be made by the local assessor according to law under the direction of the director and the cost of making the assessment shall be paid in the same manner as the cost of making an original assessment.

The director shall determine the degree of uniformity of valuation as between the various assessing jurisdictions of the state and shall have the authority to employ competent personnel for the purpose of performing this duty.

For the purpose of bringing about uniformity and equalization of assessments throughout the state of Iowa, the director shall prescribe rules relating to the standards of value to be used by assessing authorities in the determination, assessment and equalization of actual value for assessment purposes of all property subject to taxation in the state, and such rules shall be adhered to and followed by all assessing authorities.

3. To prescribe and promulgate all forms of books and forms to be used in the listing and assessment of property, and on or before November 1 of each year shall furnish to the county auditor

of each county such prescribed forms of assessment rolls and other forms to properly list and assess all property subject to taxation in each county. The department of revenue shall also from time to time prepare and furnish in like manner forms for any and all other blanks, memoranda or instructions which the director deems necessary or expedient for the use or guidance of any of the officers over which the director is authorized by law to exercise supervision.

4. To confer with, advise, and direct boards of supervisors, boards of review, and others obligated by law to make levies and assessments, as to their duties under the laws.

5. To direct proceedings, actions, and prosecutions to be instituted for the enforcement of the laws relating to the penalties, liabilities, and punishment of public officers, and officers or agents of corporations, and other persons or corporations, for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property; to make or cause to be made complaints against members of boards of review, boards of supervisors or other assessing, reviewing, or taxing officers for official misconduct or neglect of duty. Employees of the department of revenue shall not during their regular hours of employment engage in the preparation of tax returns, except in connection with a regular audit of a tax return or in connection with assistance requested by the taxpayer.

6. To require city, township, school districts, county, state, or other public officers to report information as to the assessment of property and collection of taxes and such other information as may be needful or desirable in the work of the department in such form and upon such blanks as the director may prescribe.

The director shall require all city and county assessors to prepare a quarterly report in the manner and form to be prescribed by the director showing for each warranty deed or contract of sale of real estate, divided between rural and urban, during the last completed quarter the amount of real property transfer tax, the sale price or consideration, and the equalized value at which that property was assessed that year. This report with further information required by the director shall be submitted to the department within sixty days after the end of each quarter. The department shall prepare annual summaries of the records of the ratio of assessments to actual sales prices for all counties, and for cities having city assessors, and the information for the preceding year shall be available for public inspection by May 1.

7. To hold public hearings either at the seat of government or elsewhere in the state, and tax the costs thereof; to summon and compel witnesses to appear and give testimony, to administer oaths to said witnesses, and to compel said witnesses to produce for examination records, books, papers, and documents relating to any matter which the

director shall have the authority to investigate or determine. Provided, however, that no bank or trust company or its officers or employees shall be required to divulge knowledge concerning the property of any person when such knowledge was obtained through information imparted as a part of a business transaction with or for such person and in the usual and ordinary course of business of said bank or trust company, and was necessary and proper to the discharge of the duty of said bank or trust company in relation to such business transaction. This proviso shall be additional to other provisions of the law relating to confidential and privileged communications.

8. To cause the depositions of witnesses residing within or without the state, or absent therefrom, to be taken either on written or oral interrogatories, and the clerk of the district court of any county shall upon the order of the director issue a commission for the taking of such depositions. The proceedings therefor shall be the same as the proceedings for the taking of depositions in the district court so far as applicable.

9. To investigate the work and methods of boards of review, boards of supervisors, or other public officers, in the assessment, equalization, and taxation of all kinds of property, and for that purpose the director or employees of the department may visit the counties or localities when deemed necessary so to do.

10. To require any board of review at any time after its adjournment to reconvene and to make such orders as the director shall determine are just and necessary; to direct and order any board of review to raise or lower the valuation of the property, real or personal, in any township, city, or taxing district, to order and direct any board of review to raise or lower the valuation of any class or classes of property in any township, city, or taxing district, and generally to make any order or direction to any board of review as to the valuation of any property, or any class of property, in any township, city, county, or taxing district, which in the judgment of the director may seem just and necessary, to the end that all property shall be valued and assessed in the manner and according to the real intent of the law. For the purpose of this paragraph the words "*taxing district*" include drainage districts and levee districts.

The director may correct obvious errors or obvious injustices in the assessment of any individual property, but the director shall not reduce the valuation of any individual property except upon the recommendation of the local board of review and an order of the director affecting any valuation shall not be retroactive as to any reduction or increase in taxes payable prior to January 1 of the year in which that order is issued, or prior to September 1 of the preceding year in cities under special charter which collect their own municipal levies. The director shall not correct errors or injustices under the authority of this paragraph if that

correction would involve the exercise of judgment. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

The director may order made effective reassessments or revaluations in any taxing district for any taxing year or years and the director may in any year order uniform increases or decreases in valuation of all property or upon any class of property within any taxing district or any area within such taxing district, such orders to be effective in the year specified by the director. For the purpose of this paragraph the words "*taxing district*" include drainage districts and levee districts.

11. To carefully examine into all cases where evasion or violation of the law for assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered, and cause to be instituted such proceedings as will remedy improper or negligent administration of the laws relating to the assessment or taxation of property.

12. To make a summary of the tax situation in the state, setting out the amount of moneys raised by both direct and indirect taxation; and also to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation. To recommend such additions to and changes in the present system of taxation that in the director's judgment are for the best interest of the state and will eliminate the necessity of any levy for state purposes.

13. To transmit biennially to the governor and to each member and member-elect of the legislature, thirty days before the meeting of the legislature, the report of the director, covering the subject of assessment and taxation, the result of the investigation of the director, recommendations for improvement in the system of taxation in the state, together with such measures as may be formulated for the consideration of the legislature.

14. To publish in pamphlet form the revenue laws of the state and distribute them to the county auditors, assessors, and boards of review.

15. The director may establish criteria allowing for the use of electronic filing or the use of alternative filing methods of any return, deposit, or document required to be filed for taxes administered by the department. The director may also establish criteria allowing for payment of taxes, penalty, interest, and fees by electronic funds transfer or other alternative methods.

The director shall adopt rules setting forth procedures for use in electronic filing and electronic funds transfer or other alternative methods and standards that provide for acceptance of a signature in a form other than the handwriting of a person. The rules shall also take into consideration any undue hardship electronic filing or electronic funds transfer or other alternative methods create for filers.

16. To call upon a state agency or institution for technical advice and data which may be of value in connection with the work of the department.

17. To prepare and issue a state appraisal manual which each county and city assessor shall use in assessing and valuing all classes of property in the state. The appraisal manual shall be continuously revised and the manual and revisions shall be issued to the county and city assessors in such form and manner as prescribed by the director.

18. To issue rules as are necessary, subject to the provisions of chapter 17A, to provide for the uniform application of the exemptions provided in section 427.1 in all assessor jurisdictions in the state.

19. To subpoena from property owners and taxpayers any and all records and documents necessary to assist the department in the determination of the fair market value of industrial real estate. The burden of showing reasonable cause to believe that the documents or records sought by the subpoena are necessary to assist the department under this subsection shall be upon the director.

The provisions of sections 17A.10 to 17A.18A relating to contested cases shall not apply to any matters involving the equalization of valuations of classes of property as authorized by this chapter and chapter 441. This exemption shall not apply to a hearing before the state board of tax review.

20. To cooperate with the child support recovery unit created in chapter 252B to establish and maintain a process to implement the provisions of section 252B.5, subsection 8. The department of revenue shall forward to individuals meeting the criteria under section 252B.5, subsection 8, paragraph "a", a notice by first-class mail that the individual is obligated to file a state estimated tax form and to remit a separate child support payment.

a. Individuals notified shall submit a state estimated tax form on a quarterly basis.

b. The individual shall pay monthly, the lesser of the total delinquency or one hundred fifty percent of the current or most recent monthly obligation.

c. The individual shall remit the payment to the department of revenue separate from any tax liability payments, identify the payment as a support payment, and make the payment payable to the collection services center. The department shall forward all payments received pursuant to this section to the collection services center established pursuant to chapter 252B, for processing and disbursement. The department of revenue may establish a process for the child support recovery unit or collection services center to directly receive the payments. For purposes of crediting the support payments pursuant to sections 252B.14 and 598.22, payments received by the department of revenue and forwarded to the collection services center shall be credited as if received

directly by the collection services center.

*d.* The notice shall provide that, as an alternative to the provisions of paragraph “*b*”, the individual may contact the child support recovery unit to formalize a repayment plan and obtain an exemption from the quarterly filing requirement when payments are made pursuant to the repayment plan or to contest the balance due listed in the notice.

*e.* The department of revenue, in cooperation with the child support recovery unit, may adopt rules, if necessary, to implement this subsection.

21. To provide information contained in state individual tax returns to the child support recovery unit for the purposes of establishment or enforcement of support obligations. The department of revenue and child support recovery unit may exchange information in a manual or automated fashion. The department of revenue, in cooperation with the child support recovery unit, may adopt rules, if necessary, to implement this subsection.

22. To employ collection agencies, within or without the state, to collect delinquent taxes, including penalties and interest, administered by the department or delinquent accounts, charges, loans, fees or other indebtedness due the state or any state agency, that have formal agreements with the department for central debt collection where the director finds that departmental personnel are unable to collect the delinquent accounts, charges, loans, fees, or other indebtedness because of a debtor’s location outside the state or for any other reason. Fees for services, reimbursement, or other remuneration, including attorney fees, paid to collection agencies shall be based upon the amount of tax, penalty, and interest or debt actually collected and shall be paid only after the amount of tax, penalty, and interest or debt is collected. All funds collected must be remitted in full to the department within thirty days from the date of collection from a debtor or in a lesser time as the director prescribes. The funds shall be applied toward the debtor’s account and handled as are funds received by other means. An amount is appropriated from the amount of tax, penalty, and interest, delinquent accounts, charges, loans, fees, or other indebtedness actually collected by the collection agency sufficient to pay all fees for services, reimbursement, or other remuneration pursuant to a contract with a collection agency under this subsection. A collection agency entering into a contract with the department for the collection of delinquent taxes, penalties, and interests, delinquent accounts, charges, loans, fees, or other indebtedness pursuant to this subsection is subject to the requirements and penalties of the confidentiality laws of this state regarding tax or indebtedness information.

23. To develop, modify, or contract with vendors to create or administer systems or programs which identify nonfilers of returns or nonpayers of

taxes administered by the department. Fees for services, reimbursements, costs incurred by the department, or other remuneration may be funded from the amount of tax, penalty, or interest actually collected and shall be paid only after the amount is collected. An amount is appropriated from the amount of tax, penalty, and interest actually collected, not to exceed the amount collected, which is sufficient to pay for services, reimbursement, costs incurred by the department, or other remuneration pursuant to this subsection. Vendors entering into a contract with the department pursuant to this subsection are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information. The director shall report annually to the legislative services agency and the chairpersons and ranking members of the ways and means committees on the amount of costs incurred and paid during the previous fiscal year pursuant to this subsection.

24. Enter into agreements or compacts with remote sellers, retailers, or third-party providers for the voluntary collection of Iowa sales or use taxes attributable to sales into Iowa and to enter into multistate agreements or compacts that provide for the voluntary collection of sales and use taxes. The agreements or compacts shall generally conform to the provisions of Iowa sales and use tax statutes. All fees for services, reimbursements, remuneration, incentives, and costs incurred by the department associated with these agreements or compacts may be paid or reimbursed from the additional revenue generated. An amount is appropriated from amounts generated to pay or reimburse all costs associated with this subsection. Persons entering into an agreement or compact with the department pursuant to this subsection are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information. Notwithstanding any other provisions of law, the contract, agreement, or compact shall provide for the registration, collection, report, and verification of amounts subject to this subsection.

25. At the director’s discretion, accept payment of taxes, penalties, interest, and fees, or any portion thereof, by credit card. The director may adjust the payable amount to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

26. To ensure that persons employed under contract, other than officers or employees of the state, who provide assistance in administration of tax laws and who are directly under contract or who are involved in any way with work under the contract and who have access to confidential information are subject to applicable requirements and penalties of tax information confidentiality laws of the state regarding all tax return, return information, or investigative or audit information that

may be required to be divulged in order to carry out the duties specified under the contract.

27. *a.* To establish, administer, and make available a centralized debt collection capability and procedure for the use by any state agency as defined in subsection 29\* to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state. The department's collection facilities shall only be available for use by other state agencies for their discretionary use when resources are available to the director and subject to the director's determination that use of the procedure is feasible. The director shall prescribe the appropriate form and manner in which this information is to be submitted to the office of the department. The obligations or indebtedness must be delinquent and not subject to litigation, claim, appeal, or review pursuant to the appropriate remedies of each state agency.

*b.* The director shall establish, as provided in this section, a centralized computer data bank to compile the information provided and shall establish in the centralized data bank all information provided from all sources within the state concerning addresses, financial records, and other information useful in assisting the department in collection services.

*c.* The director shall establish a formal debt collection policy for use by state agencies which have not established their own policy. Other state agencies may use the collection facilities of the department pursuant to formal agreement with the department. The agreement shall provide that the information provided to the department shall be sufficient to establish the obligation in a court of law and to render it as a legal judgment on behalf of the state. After transferring the file to the department for collection, an individual state agency shall terminate all collection procedures and be available to provide assistance to the department. Upon receipt of the file, the department shall assume all liability for its actions without recourse to the agency, and shall comply with all applicable state and federal laws governing collection of the debt. The department may use a participating agency's statutory collection authority to collect the participating agency's delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state. The department has the powers granted in this section regarding setoff from income tax refunds or other accounts payable by the state for any of the obligations transferred by state agencies.

*d.* The department's existing right to credit against tax due shall not be impaired by any right granted to, or duty imposed upon, the department or other state agency by this section.

*e.* All state agencies shall be given access, at the discretion of the director, to the centralized

computer data bank and, notwithstanding any other provision of law to the contrary, may deny, revoke, or suspend any license or deny any renewal authorized by the laws of this state to any person who has defaulted on an obligation owed to or collected by the state. The confidentiality provisions of sections 422.20 and 422.72 do not apply to tax information contained in the centralized computer data bank. State agencies shall endeavor to obtain the applicant's social security or federal tax identification number, or state driver's license number from all applicants.

*f.* At the director's discretion, the department may accept payment of debts, interest, and fees, or any portion by credit card. The director may adjust the payable amount to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charge by the credit card issuer.

*g.* The director shall adopt administrative rules to implement this section, including, but not limited to, rules necessary to prevent conflict with federal laws and regulations or the loss of federal funds, to establish procedures necessary to guarantee due process of law, and to provide for reimbursement of the department by other state agencies for the department's costs related to debt collection.

*h.* The director shall report quarterly to the legislative fiscal committee, the legislative services agency, and the chairpersons and ranking members of the joint administration appropriations subcommittee concerning the implementation of the centralized debt collection program, the number of departmental collection programs initiated, the amount of debts collected, and an estimate of future costs and benefits which may be associated with the collection program. It is the intent of the general assembly that the centralized debt collection program will result in the collection of at least two dollars of indebtedness for every dollar expended in administering the collection program during a fiscal year. It is also the intent of the general assembly that the centralized debt collection program be administered without the anticipation of future additional commitments of computer equipment and personnel.

*i.* The director may distribute to credit reporting entities and for publication the names, addresses, and amounts of indebtedness owed to or being collected by the state if the indebtedness is subject to the centralized debt collection procedure established in this subsection. The director shall adopt rules to administer this paragraph, and the rules shall provide guidelines by which the director shall determine which names, addresses, and amounts of indebtedness may be distributed for publication. The director may distribute information for publication pursuant to this para-

graph, notwithstanding sections 422.20, 422.72, and 423.23, or any other provision of state law to the contrary pertaining to confidentiality of information.

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 44, §114; 2003 Acts, ch 145, §254, 286; 2003 Acts, ch 178, §110, 121; 2003 Acts, ch 179, §142

\*Subsection 29 was stricken by 2003 Acts, ch 145, §254; §8A.504 probably intended; corrective legislation is pending

For future amendments to subsection 24 and subsection 27, paragraph i effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §178, 180, 205

With respect to proposed amendment to former subsection 29, paragraph j effective July 1, 2004, see Code editor's note to §2.9

Terminology change applied

Code chapter reference added

Subsections 18 – 20 editorially renumbered as 17 – 19

Subsections 21, 23 – 30, and 33 stricken and former subsections 21A, 21B, 22, 22A, 22B, 31, 32, and 34 renumbered as 20 – 27

#### **421.17A Administrative levy against accounts.**

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. “*Account*” means “account” as defined in section 524.103, “share account or shares” as defined in section 534.102, or the savings or deposits of a member received or being held by a credit union, or certificates of deposit. “*Account*” also includes deposits held by an agent, a broker-dealer, or an issuer as defined in section 502.102. However, “*account*” does not include amounts held by a financial institution as collateral for loans extended by the financial institution.

b. “*Bank*” means “bank”, “insured bank”, and “state bank” as these are defined in section 524.103.

c. “*Credit union*” means “credit union” as defined in section 533.51.

d. “*Facility*” means the centralized debt collection facility of the department of revenue established pursuant to section 421.17, subsection 27.

e. “*Financial institution*” includes a bank, credit union, or savings and loan association. “*Financial institution*” also includes an institution which holds deposits for an agent, broker-dealer, or an issuer as defined in section 502.102.

f. “*Obligor*” means a person who is indebted to the state or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

g. “*Savings and loan association*” means “association” as defined in section 534.102.

h. “*Working days*” means Monday through Friday, excluding the holidays specified in section 1C.2, subsections 1 through 9.

2. *Purpose and use.*

a. Notwithstanding other statutory provisions which provide for the execution, attachment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or being collected by the state provided that any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section.

b. An obligor is subject to this section if the obligor's debt is being collected by the facility.

c. Any amount forwarded by a financial institution under this section shall not exceed the delinquent or accrued amount of the obligor's debt being collected by the state.

3. *Initial notice to obligor.* The facility may proceed under this section only if notice has been provided to the obligor by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section. The facility shall give twenty days' notice of its intention to use the levy process. The twenty-day notice period shall not be required if the facility determines that the collection of past due amounts would be jeopardized.

4. *Verification of accounts and immunity from liability.*

a. The facility may contact a financial institution to obtain verification of the account number, the names and social security numbers listed for the account, and the account balance of an account held by an obligor. Contact with a financial institution may be by telephone or by written communication. The financial institution may require positive voice recognition and may require the telephone number of the authorized person from the facility before releasing an obligor's account information by telephone.

b. The financial institution is immune from any civil or criminal liability which might otherwise be incurred or imposed for information released by the financial institution to the facility pursuant to this section.

c. The financial institution or the facility is not liable for the cost of any early withdrawal penalty of an obligor's certificate of deposit.

5. *Administrative levy — notice to financial institution.*

a. If an obligor is subject to this section, the facility may initiate an administrative action to levy against an account of the obligor.

b. The facility shall send a notice to the financial institution with which the account is placed, directing that the financial institution forward all or a portion of the moneys in the obligor's account to the facility.

c. The notice to the financial institution shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have an account at the financial institution.

(3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.

(4) The maximum amount that shall be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of

debt being collected by or owed to the state by the obligor.

(5) The prescribed time frame which the financial institution must meet in forwarding any amounts.

(6) The address of the facility and the account number utilized by the facility for the obligor.

(7) A telephone number, address, and contact name of the facility initiating the action.

6. *Administrative levy — notice to obligor and other account holders.*

a. The facility may administratively initiate an action to seize one or more accounts of an obligor who is subject to this section and section 421.17, subsection 27.

b. The facility shall notify an obligor subject to this section. The notice shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have an account at the financial institution.

(3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the state by the obligor.

(5) The prescribed time frames the financial institution must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) A telephone number, address, and contact name of the facility initiating the action.

c. The facility shall forward the notice to the obligor by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph "b".

d. The facility shall notify any party known to have an interest in the account. The notice shall contain all of the following:

(1) The name of the obligor.

(2) The name of the financial institution.

(3) A statement that the account in which the party is known to have an interest is subject to seizure.

(4) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the party known to have an interest.

(5) The address of the facility and the name of the obligor who also has an interest in the account.

(6) A telephone number, address, and contact name of the facility initiating the action.

e. The facility shall forward the notice to the

party known to have an interest by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph "b".

7. *Responsibilities of financial institution.* Upon receipt of a notice under subsection 5, paragraph "b", the financial institution shall do all of the following:

a. Immediately encumber funds in any account in which the obligor has an interest to the extent of the debt indicated in the notice from the facility.

b. No sooner than fifteen days, and no later than twenty days from the date the financial institution receives the notice under subsection 5, paragraph "b", unless notified by the facility of a challenge by the obligor or an account holder of interest, forward the moneys encumbered to the facility with the obligor's name and social security number, the facility's account number for the obligor, and any other information required in the notice.

c. The financial institution may assess a fee against the obligor, not to exceed twenty-five dollars, for forwarding of moneys to the facility. This fee is in addition to the amount owed to or being collected by the state by the obligor. If insufficient moneys are available in the debtor's account to cover the fee and the amount in the notice, the institution may deduct the fee amount prior to forwarding moneys to the facility and the amount credited to the obligor's account with the state shall be reduced by the fee amount.

8. *Challenges to action.*

a. Challenges under this section may be initiated only by an obligor or by an account holder of interest. Reviews by the facility under this section are not subject to chapter 17A.

b. The person challenging the action shall submit a written challenge to the person identified as the contact for the facility in the notice, within ten days of the date of the notice.

c. The facility, upon receipt of a written challenge, shall review the facts of the case with the challenging party within ten days of receipt of the challenge. If the challenging party is not available for the review on the scheduled date, the review shall take place without the challenging party being present. Information in favor of the challenging party shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the state shall be considered as a reason to dismiss or modify the action.

d. If the facility determines that a mistake of fact has occurred, the facility shall proceed as follows:

(1) If a mistake in identity has occurred or the obligor does not have a delinquent or accrued

amount being collected by or owed to the state, the facility shall notify the financial institution that the administrative levy has been released. The facility shall provide a copy of the notice to the obligor by regular mail.

(2) If the delinquent or accrued amount being collected by or owed to the state is less than the amount indicated in the notice, the facility shall provide a notice to the financial institution of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the financial institution shall release the funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative levy.

e. If the facility finds no mistake of fact, the facility shall provide a notice to that effect to the challenging party by regular mail and notify the financial institution to forward the moneys pursuant to the administrative levy.

f. The challenging party shall have the right to file an action for wrongful levy in district court within thirty days of the date of the notice in paragraph “e”, either in the county where the obligor or the party known to have an interest in the account resides or in Polk county where the facility is located.

2003 Acts, ch 145, §286  
See also chapter 2521 pertaining to collection of child support payments  
Terminology change applied

#### **421.17B Administrative wage assignment cooperative agreement.**

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. “*Employer*” means any person or entity that pays an obligor to do a specific task. “*Employer*” only includes such a person or entity in an employer-employee relationship and does not include an obligor acting as a contractor, distributor, agent, or in any representative capacity in which the obligor receives any form of consideration.

b. “*Employment*” means the performance of personal services for another. “*Employment*” only includes parties in an employer-employee relationship and does not include one acting as a self-employer, contractor, distributor, agent, or in any representative capacity.

c. “*Facility*” means the centralized debt collection facility of the department of revenue established pursuant to section 421.17, subsection 27.

d. “*Obligor*” means a person who is indebted to the state or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

e. “*Wage*” means any form of compensation due to an obligor. “*Wage*” includes, but is not limited to, wages, salary, bonus, commission, or other payment directly or indirectly related to employment. If a wage is assigned to the facility, wage only in-

cludes a payment in the form of money.

#### 2. *Purpose and use.*

a. Notwithstanding other statutory provisions which provide for the execution, attachment, garnishment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the facility or being collected by the facility provided all administrative remedies have been waived or exhausted by the obligor. Any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section.

Administrative wage assignment under this section is the equivalent of condemning funds under chapter 642.

The administrative wage assignment is to be considered an additional means of collection by the facility and not an exclusive means of collection. If the use of an administrative wage assignment is not successful in collecting an outstanding debt due the facility, the facility may use the collection provisions set forth in chapters 626 and 642.

b. An obligor is subject to this section if the obligor’s debt is being collected by the facility.

c. Any amount forwarded to the facility by an employer under this section shall not exceed the delinquent or accrued amount of the obligor’s debt being collected by the facility.

#### 3. *Notice to the obligor.*

a. The facility may proceed under this section only if a ten-day notice has been provided to the obligor. Notice by the facility may be by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section. If the facility determines that collection of the debt may be in jeopardy, the facility may request that the employer deliver notice of the wage assignment simultaneous with the remainder of or in lieu of the obligor’s compensation due from the employer.

The facility may obtain one or more wage assignments of an obligor who is subject to this section. If the obligor has more than one employer, the facility may receive wage assignments from one or all of the employers until the full debt obligation of the obligor is satisfied. If an obligor has more than one employer, the facility shall give notice to all employers that the facility seeks to have an assignment of wages.

b. The notice from the facility to the obligor shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have employment with the stated employer.

(3) A statement that pursuant to the provisions of this section, the obligor’s wages will be assigned to the facility for payment of the specified debts and that the employer is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.

(5) The prescribed time frames the employer must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) A telephone number, address, and contact name of the facility initiating the action.

4. *Verification of employment and immunity from liability.*

a. The facility may contact an employer to obtain verification of employment, and any specific information from the employer that the facility needs to initiate, effectuate, or maintain collection of the obligation. Contact with an employer may be by telephone, fax, or by written communication. The employer may require proof of authority from the person from the facility and the telephone number of the authorized person from the facility before releasing an obligor's employment information by telephone.

b. The employer is immune from any civil or criminal liability for information released by the employer to the facility pursuant to this section.

5. *Costs.* The facility is not liable for any costs incurred or imposed for initiating, effectuating, or maintaining an administrative wage assignment under this section. Such costs will be the sole responsibility of the obligor and will be added to the amount to be collected by the facility.

6. *Administrative wage assignment — notice to the employer.*

a. If an obligor is subject to this section, the facility may initiate an administrative wage assignment to have compensation due the obligor to be assigned by the employer to the facility up to the amount of the full debt to be collected by the facility.

b. The facility shall send a notice to the employer within fourteen days of sending notice of the wage assignment to the obligor. The notice shall inform the employer of the amount to be assigned to the facility from each wage, salary, or payment period that is due the obligor. The facility may receive assignment of up to one hundred percent of the obligor's disposable income, salary, or payment for any given period until the full obligation to the facility is paid in full.

c. The notice to the employer shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to be employed by the employer.

(3) A statement that pursuant to the provisions of this section, the obligor's wages are sub-

ject to assignment and the employer is authorized and required to forward moneys to the facility.

(4) The maximum amount that shall be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.

(5) The prescribed time frame the employer must meet in forwarding any amounts.

(6) The address of the facility and the account number utilized by the facility for the obligor.

(7) A telephone number, address, and name of a contact person with the facility.

7. *Responsibilities of employer.* Upon receipt of the notice of wage assignment from the facility, the employer shall do all of the following:

a. Immediately give effect to the wage assignment and hold compensation which the obligor has owing to the extent of the debt indicated in the notice from the facility.

b. No sooner than ten days, and no later than twenty days from the date the employer receives the notice of wage assignment, unless notified by the facility of a challenge of the wage assignment by the obligor, the employer shall begin forwarding the obligor's compensation, to the extent required in the notice, to the facility with the obligor's name and social security number, the facility's account number for the obligor, and any other information required in the notice.

c. The employer may assess a fee against the obligor, not to exceed twenty-five dollars, for forwarding of moneys to the facility. This fee is in addition to the amount owed to or being collected by the facility from the obligor. If insufficient moneys are available from the obligor's compensation to cover the fee and the amount in the notice, the employer may deduct the fee amount prior to forwarding moneys to the facility and the amount credited to the obligor's account with the facility shall be reduced by the fee amount. However, if the employer can present evidence to the facility that the employer's costs were in excess of twenty-five dollars and that such costs were necessary and reasonable, then the employer may impose a fee in excess of the twenty-five dollar fee limit.

8. *Challenges to action.*

a. Challenges under this section may be initiated only by an obligor. An administrative wage assignment only occurs after the obligor has waived or exhausted administrative remedies. Reviews by the facility of a challenge to an administrative wage assignment are not subject to chapter 17A unless the challenge is regarding the validity of the assignment. Actions under this section are in equity and not actions at law.

b. The obligor challenging the administrative wage assignment shall submit a written challenge to the person identified as the contact for the facility in the notice, within ten days of the date of the notice to the obligor.

c. The facility, upon receipt of a written challenge, shall review the facts of the case with the ob-

ligor within ten days of receipt of the challenge. If the obligor is not available for the review on the scheduled date, the review shall take place without the obligor being present. Information in favor of the obligor shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the facility shall be considered as a reason to dismiss or modify the administrative wage assignment.

*d.* If the facility determines that a mistake of fact has occurred, the facility shall proceed as follows:

(1) If a mistake in identity has occurred or the obligor does not have a delinquent or accrued amount being collected by or owed to the facility, the facility shall notify the employer that the administrative wage assignment has been released. The facility shall provide a copy of the notice to the obligor by regular mail.

(2) If the delinquent or accrued amount being collected by or owed to the facility is less than the amount indicated in the notice, the facility shall provide a notice to the employer of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the employer shall release the funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative wage assignment.

(3) Any moneys received by the facility in excess of the amount owed to or to be collected by the facility shall be returned to the obligor.

*e.* If the facility finds no mistake of fact, the facility shall provide a notice to that effect to the obligor by regular mail and notify the employer to forward the moneys pursuant to the administrative wage assignment.

*f.* The obligor shall have the right to file an action for wrongful assignment in district court within thirty days of the date of the notice to the obligor, either in the county where the obligor is located or in Polk county where the facility is located.

9. *Validity and duration of a wage assignment notice.* A notice of wage assignment given to the obligor is effective without the serving of another notice until the earliest of either of the following:

*a.* The debt owed to the facility is paid in full.

*b.* The obligor receives notice that the wage assignment shall cease.

Expiration of the wage assignment does not affect the obligor's duties and liabilities respecting the wages already withheld pursuant to the wage assignment.

2003 Acts, ch 145, §286  
Terminology change applied

#### **421.18 Duties of public officers and employees.**

It shall be the duty of all public officers and employees of the state and local governments to give to the director of revenue information in their possession relating to taxation when required by the director, and to cooperate with and aid the director's efforts to secure a fair, equitable, and just enforcement of the taxation and revenue laws.

2003 Acts, ch 145, §286  
Terminology change applied

#### **421.19 Counsel.**

It shall be the duty of the attorney general and of the county attorneys in their respective counties to commence and prosecute actions, prosecutions, and complaints, when so directed by the director of revenue and to represent the director in any litigation arising from the discharge of the director's duties.

2003 Acts, ch 145, §286  
Assistant attorney general assigned, §13.5  
Terminology change applied

#### **421.20 Actions.**

The director of revenue may bring actions of mandamus or injunction or any other proper actions in the district court to compel the performance of any order made by the director or to require any board or any other officer or person to perform any duty required by this chapter. The director shall commence an action only in the district court in the county in which the defendant or defendants in the action perform their official duties.

Upon the filing of an action in the county required by this section the director may move to change the action to another county, and the motion shall be granted upon a showing of good cause. As used in this section, good cause shall mean those grounds for change specified in rule of civil procedure 1.801; however, the director shall not be required to submit affidavits of disinterested persons in order to prevail in the motion.

2003 Acts, ch 145, §286  
Garnishment proceedings for collection of tax, §626.29 – 626.31  
Terminology change applied

#### **421.21 Administration of oaths.**

The director of revenue, or the deputies and other employees of the department when duly authorized by the director, shall have the power to administer all oaths authorized and required under the provisions of this chapter.

Each county treasurer, each deputy treasurer, and each automobile clerk of each county treasurer's office shall have the power to administer all oaths authorized and required by the director in connection with the issuance in this state of an original certificate of registration for motor vehicles and trailers and concerning the collection

of, or exemption from, use tax thereon. The personal signature of the person administering such an oath shall be subscribed to the jurat thereof and the seal of the county treasurer shall be affixed thereto.

2003 Acts, ch 145, §286  
Terminology change applied

#### 421.26 Personal liability for tax due.

If a licensee or other person under section 452A.65, a retailer or purchaser under chapter 422A or 422B, or section 422.52, or a retailer or purchaser under section 423.13 or a user under section 423.14 fails to pay a tax under those sections when due, an officer of a corporation or association, notwithstanding sections 490A.601 and 490A.602, a member or manager of a limited liability company, or a partner of a partnership, having control or supervision of or the authority for remitting the tax payments and having a substantial legal or equitable interest in the ownership of the corporation, association, limited liability company, or partnership, who has intentionally failed to pay the tax is personally liable for the payment of the tax, interest, and penalty due and unpaid. However, this section shall not apply to taxes on accounts receivable. The dissolution of a corporation, association, limited liability company, or partnership shall not discharge a person's liability for failure to remit the tax due.

For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §181, 205  
Section not amended; footnote added

#### 421.28 Exceptions to successor liability.

The immediate successor to a licensee's or retailer's business or stock of goods under chapter 422A or 422B, or section 422.52, 423.13, 423.14, or 452A.65 is not personally liable for the amount of delinquent tax, interest, or penalty due and unpaid if the immediate successor shows that the purchase of the business or stock of goods was made in good faith that no delinquent tax, interest, or penalty was due and unpaid. For purposes of this section the immediate successor shows good faith by evidence that the department had provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid, or that the immediate successor had taken in good faith a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid. When requested to do so by a person with whom the licensee or retailer is negotiating the sale of the business or stock of goods, the director of revenue shall, upon being satisfied that such a situation exists, inform that person as to the amount of unpaid delinquent tax, interest, or penalty due by the licensee or the retailer. The giving of the information under this circumstance is not a violation of section 422.20, 422.72, or 452A.63.

2003 Acts, ch 145, §286

For future amendment to this section effective July 1, 2004, see 2003

Acts, 1st Ex, ch 2, §182, 205  
Terminology change applied

#### 421.30 Reassessment expense fund.

1. There is created in the office of the treasurer of state a "reassessment expense fund" for the purpose of providing loans to a city and county conference board for conducting reassessments of property. There is appropriated to the reassessment expense fund from the general fund of the state from any unappropriated funds in the general fund of the state such funds as are necessary to carry out the provisions of this section, section 421.17, subsection 19, and the last paragraph of section 441.19, subject to the approval of the director of revenue. Repayment of loans shall be credited to the fund.

2. The director of revenue shall maintain and administer the reassessment expense fund created pursuant to subsection 1.

3. Within sixty days of the receipt of an order of the director to reassess all or part of the property in an assessing jurisdiction, the conference board and assessor of the assessing jurisdiction shall submit to the director a detailed proposal for complying with the order. The proposal shall contain specifications for the completion of the reassessment project, the financial condition of the assessing jurisdiction, and any other information deemed necessary by the director.

4. Each proposal submitted pursuant to subsection 3 shall be reviewed by the director to determine if the proposal will result in compliance with the reassessment order. The director shall approve or disapprove each proposal and shall notify the appropriate conference board and assessor of the decision. If the director determines the proposal will not result in compliance with the reassessment order, the notice shall contain the reasons for the director's determination and an explanation as to how the proposal shall be corrected in order to be approved by the director.

5. If the notice to the conference board and the assessor states that the director has determined that the proposal will result in compliance with the reassessment order, the conference board may, if it lacks the financial resources to comply in all respects with the reassessment order, file with the director an application for a loan from the reassessment expense fund. The loan to the conference board may be for all or part of the funds required to comply with the reassessment order. The director shall approve, amend and approve, or reject each application and notify the conference board and assessor of its decision. If the application is amended or rejected, the notice shall contain the director's reasons for the amendment or rejection.

6. Upon the director's approval of the advancement of funds from the reassessment expense fund, the director shall certify to the appropriate conference board and assessor a schedule for dis-

bursing the loan to the assessing jurisdiction's appraiser fund authorized by section 441.50. The schedule shall provide for the disbursement of funds over the period of the reassessment project, except that ten percent of the funds shall not be disbursed until the project is completed. The conference board shall at its next opportunity levy pursuant to section 441.50 sufficient funds for purposes of repaying the loan made from the reassessment expense fund. The amount levied shall be sufficient to repay the loan in semiannual installments during the course of the reappraisal project as specified by a repayment schedule established by the director. The repayment schedule shall provide for repayment of the loan not later than one year following the completion of the reassessment. Semiannual repayments of the proceeds of the loan shall be made on or before December 1 and May 1 of each year.

7. Any reassessment of property ordered by the director, whether or not undertaken with funds provided in this section, shall be conducted by the assessor in accordance with the Iowa real property appraisal manual issued under authority of section 421.17, subsection 17, the assessment laws of this state, and any reassessment order issued by the director under authority of this chapter. The conference board may employ appraisers or other expert help to assist the assessor in completing the reassessment, except that no conference board receiving funds under this section shall enter into a contract for the reassessment of property until the board's proposal for completing the reassessment is approved. The director shall supervise the conduct of all reassessments of property and issue to the assessor or conference board such instructions, directives, or orders as are necessary to ensure compliance with the provisions of this section and the assessment laws of this state.

8. The assessor of each assessing jurisdiction receiving funds under this section shall submit to the director, in the form and manner prescribed by the director, reports showing the progress of the reassessment. If the director determines that a reassessment undertaken with funds provided in this section is not being conducted in accordance with the proposal submitted pursuant to subsection 3, the director shall notify the appropriate conference board and assessor of the director's determination. The notice shall contain an explanation as to how the deficiencies in the reassessment may be corrected. If the deficiencies noted by the director are not corrected within sixty days of the date the assessor and conference board are notified of their existence, the director shall suspend payments from the reassessment expense fund until the deficiencies have been corrected.

9. Funds obtained under this section shall be used only to conduct reassessments of property as

approved and conducted pursuant to this section.

2003 Acts, ch 145, §286  
Terminology change applied  
Internal reference changes applied

**421.31 through 421.45** Repealed by 2003 Acts, ch 145, § 291. See § 8A.502, 8A.506 – 8A.519.

**421.46 Terminal liability health insurance fund.**

1. A terminal liability health insurance fund is created in the state treasury under the control of the department of administrative services. The proceeds of the terminal liability health insurance fund shall be used by the department of administrative services to pay the state's share of the terminal liability of the existing health insurance contract administered by the department of administrative services. The moneys appropriated to the terminal liability health insurance fund plus any additional moneys appropriated or collected pursuant to 2001 Acts, chapter 190, or other Acts of the general assembly shall constitute the total amount due to pay the terminal liability specified in this section.

2. Notwithstanding section 8.33, any unencumbered or unobligated balance remaining in the terminal liability health insurance fund at the close of a fiscal year shall not revert.

2003 Acts, ch 145, §286  
Terminology change applied

**421.70 Electronic commerce data collection.**

1. *Short title.* This section shall be known and may be cited as the "Electronic Commerce and New Economy Data Collection Act".

2. *Purpose.* The purpose of this section is to require the department of revenue to begin collecting valid Iowa-specific data concerning the extent of electronic commerce within Iowa, and to expand the number of factors used when projecting estimated net gains or losses in tax revenues from electronic commerce.

3. *Definitions.* As used in this section:

a. "Electronic commerce" means business-to-consumer sales conducted via the internet that are subject to taxation levied under chapter 422, division IV, or chapter 423. Electronic commerce includes, but is not limited to, the sale of tangible and intangible goods.

b. "Electronic commerce vendor" means a person engaged in business-to-consumer sales of goods or services.

c. "Person" means a natural person or via the internet any other entity subject to retail sales and use taxation under chapter 422, division IV, or chapter 423.

4. *Annual report.* The department shall collect primary and supplementary data to accurate-

ly measure the level of electronic commerce activity within the state. The primary data set shall include, but is not limited to, the number of electronic commerce vendors domiciled within the state, if obtainable; gross retail sales of electronic commerce vendors domiciled within the state; an estimate of the number of in-state electronic commerce transactions conducted by persons within the state boundaries based on accepted standards of scientific sampling; an estimate of the number of out-of-state electronic commerce transactions conducted by persons within the state boundaries based on accepted standards of scientific sampling; an estimate of the total value of electronic commerce transactions conducted by persons within state boundaries during a fiscal year; a reliable estimate of the use tax revenue that is uncollected due to out-of-state electronic commerce; and a reliable estimate of income, property, excise, and other revenues paid to the state and its political subdivisions by electronic commerce vendors. Collection of primary data shall be considered part of the department's normal duties and shall not require an additional budgetary appropriation. The department shall supplement primary data with

information supplied by the United States department of commerce, the United States census bureau, the United States small business administration, any other federal agency collecting electronic commerce data, and if obtainable, affiliated state data centers. The department may use information gathered from private, academic, and nongovernmental entities provided that the source and methodology is clearly stated within the text of the report. The department shall not cite, as authoritative sources, studies conducted by private, academic, and nongovernmental entities that are speculative in nature or based on unscientific methods. In addition, the department shall include an analysis of the financial impact increased sales and use tax collection requirements would have on in-state companies engaged in electronic commerce. The data shall be compiled in the form of an annual report to be delivered to the general assembly no later than February 1 of each year.

5. *Repeal.* This section is repealed March 1, 2005.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 421A

### EXCISE TAX ON UNLAWFUL DEALING IN CONTROLLED AND OTHER SUBSTANCES

Transferred to chapter 453B  
For future transfer of chapter 423A to this chapter,  
see 2003 Acts, 1st Ex, ch 2, §203, 205

## CHAPTER 421B

### CIGARETTE SALES

#### 421B.10 Injunction.

The director of revenue, or any person or persons injured by any violation, or who would suffer injury from any threatened violation of this chapter, may maintain an action in any equity court to enjoin such actual or threatened violation. If a violation or threatened violation of this chapter shall be established, the court shall enjoin such violation or threatened violation, and, in addition thereto, the court shall assess in favor of the plaintiff and against the defendant the costs of suit including reasonable attorney fees. Where alleged and proved, the plaintiff, in addition to such injunctive relief and costs of suit, including reasonable attorney fees, shall be entitled to recover from the defendant the actual damages sustained by the plaintiff.

2003 Acts, ch 145, §286  
Terminology change applied

#### 421B.11 Director of revenue — powers and duties.

The director of revenue may adopt rules for the enforcement of this chapter and the director is empowered to and may from time to time undertake and make or cause to be made such cost surveys for the state or such trading area or areas as the director shall deem necessary and it shall be permissible to use such cost survey as provided in section 421B.7, subsection 2, and section 421B.8, subsection 2.

The director of revenue may, upon notice and after hearing, suspend or revoke any permit issued under the provisions of the cigarette tax chapter and the rules of the director promulgated thereunder, for failure of the permit holder to comply with any provision of this unfair cigarette sales chapter or any rule adopted thereunder. The sus-

pension or revocation of a permit shall be for a period of not less than six months from the date of suspension or revocation, and no permit shall be issued for the location designated in the suspended or revoked permit, during the period of suspension or revocation.

Judicial review of the actions of the director may

be sought in accordance with chapter 17A, and section 422.55.

2003 Acts, ch 44, §114; 2003 Acts, ch 108, §71; 2003 Acts, ch 145, §286  
For future amendment to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §183, 205  
Terminology change applied  
Code chapter reference added  
Unnumbered paragraph 3 amended

## CHAPTER 422

### INCOME, SALES, SERVICES, AND FRANCHISE TAXES

#### 422.3 Definitions controlling chapter.

For the purpose of this chapter and unless otherwise required by the context:

1. “*Book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. “*Court*” means the district court in the county of the taxpayer’s residence.

3. “*Department*” means the department of revenue.

4. “*Director*” means the director of revenue.

5. “*Internal Revenue Code*” means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 2003, whichever is applicable.

6. The word “*taxpayer*” includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.

2003 Acts, ch 139, §3; 2003 Acts, ch 145, §286

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Code for that year

2000 amendment to subsection 5 takes effect April 26, 2000, and applies retroactively to tax years beginning on or after January 1, 1999; 2000 Acts, ch 1146, §9, 11

2001 amendment to subsection 5 is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

2002 amendment to subsection 5 takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1009, §10, 14

2003 amendment to subsection 5 takes effect May 21, 2003, and applies retroactively to tax years beginning on or after January 1, 2002; 2003 Acts, ch 139, §11, 12

Terminology change applied

Subsection 5 amended

#### 422.5 Tax imposed — exclusions — alternative minimum tax.

1. A tax is imposed upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined in this division at rates as follows:

a. On all taxable income from zero through one thousand dollars, thirty-six hundredths of one percent.

b. On all taxable income exceeding one thousand dollars but not exceeding two thousand dollars, seventy-two hundredths of one percent.

c. On all taxable income exceeding two thousand dollars but not exceeding four thousand dollars, two and forty-three hundredths percent.

d. On all taxable income exceeding four thousand dollars but not exceeding nine thousand dollars, four and one-half percent.

e. On all taxable income exceeding nine thousand dollars but not exceeding fifteen thousand dollars, six and twelve hundredths percent.

f. On all taxable income exceeding fifteen thousand dollars but not exceeding twenty thousand dollars, six and forty-eight hundredths percent.

g. On all taxable income exceeding twenty thousand dollars but not exceeding thirty thousand dollars, six and eight-tenths percent.

h. On all taxable income exceeding thirty thousand dollars but not exceeding forty-five thousand dollars, seven and ninety-two hundredths percent.

i. On all taxable income exceeding forty-five thousand dollars, eight and ninety-eight hundredths percent.

j. (1) The tax imposed upon the taxable income of a nonresident shall be computed by reducing the amount determined pursuant to paragraphs “a” through “i” by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the nonresident’s net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph “a”, is the numerator and the nonresident’s total net income computed under section 422.7 is the denominator. This provision also applies to individuals who are residents of Iowa for less than the entire tax year.

(2) The tax imposed upon the taxable income of a resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state may be computed by reducing the amount determined pursuant to paragraphs “a” through “i” by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the resident’s net income allocated to Iowa, as determined in section

422.8, subsection 2, paragraph “b”, is the numerator and the resident’s total net income computed under section 422.7 is the denominator. If a resident shareholder has elected to take advantage of this subparagraph, and for the next tax year elects not to take advantage of this subparagraph, the resident shareholder shall not reelect to take advantage of this subparagraph for the three tax years immediately following the first tax year for which the shareholder elected not to take advantage of this subparagraph, unless the director consents to the reelection. This subparagraph also applies to individuals who are residents of Iowa for less than the entire tax year.

This subparagraph shall not affect the amount of the taxpayer’s checkoff to the Iowa election campaign fund under section 68A.601, the checkoff for the fish and game fund in section 456A.16, the credits from tax provided in sections 422.10, 422.11A, and 422.12 and the allocation of these credits between spouses if the taxpayers filed separate returns or separately on combined returns.

k. There is imposed upon every resident and nonresident of this state, including estates and trusts, the greater of the tax determined in paragraphs “a” through “j” or the state alternative minimum tax equal to seventy-five percent of the maximum state individual income tax rate for the tax year, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer as computed under this paragraph.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer’s state taxable income, as computed with the deductions in section 422.9, with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1), (a)(2), and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (b)(1)(C)(iii), and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. To the extent that any preference or adjustment is determined by an individual’s federal adjusted gross income, the individual’s federal adjusted gross income is computed in accordance with section 422.7, subsection 39. In the case of an estate or trust, the items of tax preference, adjustments, and losses shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director.

(2) Subtract the applicable exemption amount as follows:

(a) Seventeen thousand five hundred dollars for a married person who files separately or for an estate or trust.

(b) Twenty-six thousand dollars for a single person or an unmarried head of household.

(c) Thirty-five thousand dollars for a married

couple which files a joint return.

(d) The exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph, exceeds the following:

(i) Seventy-five thousand dollars in the case of a taxpayer described in subparagraph subdivision (a).

(ii) One hundred twelve thousand five hundred dollars in the case of a taxpayer described in subparagraph subdivision (b).

(iii) One hundred fifty thousand dollars in the case of a taxpayer described in subparagraph subdivision (c).

(3) In the case of a net operating loss computed for a tax year beginning after December 31, 1982, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of the items of tax preference arising in such year which was taken into account in computing the net operating loss in section 422.9, subsection 3. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

The state alternative minimum tax of a taxpayer whose net capital gain deduction includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure, where the fair market value of the taxpayer’s assets exceeds the taxpayer’s liabilities immediately before such forfeiture, transfer, or sale or exchange, shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange.

In the case of a resident, including a resident estate or trust, the state’s apportioned share of the state alternative minimum tax is one hundred percent of the state alternative minimum tax computed in this subsection. In the case of a resident or part-year resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state, a nonresident, including a nonresident estate or trust, or an individual, estate, or trust that is domiciled in the state for less than the entire tax year, the state’s apportioned share of the state alternative minimum tax is the amount of tax computed under this subsection, reduced by the applicable credits in sections 422.10 through 422.12 and this result multiplied by a fraction with a nu-

erator of the sum of state net income allocated to Iowa as determined in section 422.8, subsection 2, paragraph “a” or “b” as applicable, plus tax preference items, adjustments, and losses under subparagraph (1) attributable to Iowa and with a denominator of the sum of total net income computed under section 422.7 plus all tax preference items, adjustments, and losses under subparagraph (1). In computing this fraction, those items excludable under subparagraph (1) shall not be used in computing the tax preference items. Married taxpayers electing to file separate returns or separately on a combined return must allocate the minimum tax computed in this subsection in the proportion that each spouse’s respective preference items, adjustments, and losses under subparagraph (1) bear to the combined preference items, adjustments, and losses under subparagraph (1) of both spouses.

2. However, the tax shall not be imposed on a resident or nonresident whose net income, as defined in section 422.7, is thirteen thousand five hundred dollars or less in the case of married persons filing jointly or filing separately on a combined return, unmarried heads of household, and surviving spouses or nine thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than thirteen thousand five hundred dollars or nine thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of thirteen thousand five hundred dollars or nine thousand dollars as applicable. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a husband and wife exceeds thirteen thousand five hundred dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of thirteen thousand five hundred dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable or the person claiming the dependent and the person’s spouse have com-

bined net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable.

In addition, if the married persons’, filing jointly or filing separately on a combined return, unmarried head of household’s, or surviving spouse’s net income exceeds thirteen thousand five hundred dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of thirteen thousand five hundred dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

3. The tax herein levied shall be computed and collected as hereinafter provided.

4. The provisions of this division shall apply to all salaries received by federal officials or employees of the United States government as provided for herein.

5. Upon determination of the latest cumulative inflation factor, the director shall multiply each dollar amount set forth in subsection 1, paragraphs “a” through “i” of this section by this cumulative inflation factor, shall round off the resulting product to the nearest one dollar, and shall incorporate the result into the income tax forms and instructions for each tax year.

6. The state income tax of a taxpayer whose net income includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure where the fair market value of the taxpayer’s assets exceeds the taxpayer’s liabilities immediately before such forfeiture, transfer, or sale or exchange shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered in determining if the fair market value of the taxpayer’s assets exceed the taxpayer’s liabilities.

7. In addition to the other taxes imposed by this section, a tax is imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code to be separately taxed for federal income tax purposes for the tax year. The rate of tax is equal to twenty-five percent of the separate federal tax imposed on the amount of the lump sum distribution. A nonresident is liable for this tax only on that portion of the lump sum distribution allo-

cable to Iowa. The total amount of the lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining eligibility under the thirteen thousand five hundred dollar or less or nine thousand dollar or less exclusion, as applicable.

8. In the case of income derived from the sale or exchange of livestock which qualifies under section 451(e) of the Internal Revenue Code because of drought, the taxpayer may elect to include the income in the taxpayer's net income in the tax year following the year of the sale or exchange in accordance with rules prescribed by the director.

9. If an individual's federal income tax was forgiven for a tax year under section 692 of the Internal Revenue Code, because the individual was killed while serving in an area designated by the president of the United States or the United States Congress as a combat zone, the individual was missing in action and presumed dead, or the individual was killed outside the United States in a terroristic or military action while the individual was a military or civilian employee of the United States, the individual's Iowa income tax is also forgiven for the same tax year.

10. If a taxpayer repays in the current tax year certain amounts of income that were subject to tax under this division in a prior year and a tax benefit would be allowed under similar circumstances under section 1341 of the Internal Revenue Code, a tax benefit shall be allowed on the Iowa return. The tax benefit shall be the reduced tax for the current tax year due to the deduction for the repaid income or the reduction in tax for the prior year or years due to exclusion of the repaid income. The reduction in tax shall qualify as a refundable tax credit on the return for the current year pursuant to rules prescribed by the director.

2003 Acts, ch 139, §4

2003 amendment to subsection 1, paragraph k, subparagraph (1), takes effect May 21, 2003, and applies retroactively to tax years beginning on or after September 10, 2001; 2003 Acts, ch 139, §11, 12

Internal reference change applied

Subsection 1, paragraph k, subparagraph (1) amended

#### 422.7 "Net income" — how computed.

The term "*net income*" means the adjusted gross income before the net operating loss deduction as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.
2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code.
3. Where the adjusted gross income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules prescribed by the direc-

tor, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract payments received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan when the commuted value of the installments has been included as a part of the decedent employee's estate for Iowa inheritance tax purposes.

5. Individual taxpayers and married taxpayers who file a joint federal income tax return and who elect to file a joint return, separate returns, or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the disability income exclusion and shall compute the amount of the disability income exclusion subject to the limitations for joint federal income tax return filers provided by section 105(d) of the Internal Revenue Code. The disability income exclusion provided in section 105(d) of the Internal Revenue Code, as amended up to and including December 31, 1982, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1984.

6. Reserved.

7. Married taxpayers who file a joint federal income tax return and who elect to file separate returns or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the expensing of business assets and capital loss provisions of sections 179(a) and 1211(b) respectively of the Internal Revenue Code and shall compute the amount of expensing of business assets and capital loss subject to the limitations for joint federal income tax return filers provided by sections 179(b) and 1211(b) respectively of the Internal Revenue Code.

8. Subtract the amount of the work opportunity tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.

9. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.

10. Notwithstanding the method for computing the amount of travel expenses that may be deducted under section 162(h) of the Internal Revenue Code, for tax years beginning on or after January 1, 1987, a member of the general assembly whose place of residence within the legislative district is greater than fifty miles from the capitol building of the state may deduct the total amount per day determined under section 162(h)(1)(B) of

the Internal Revenue Code and a member of the general assembly whose place of residence within the legislative district is fifty or fewer miles from the capitol building of the state may deduct fifty dollars per day. This subsection does not apply to a member of the general assembly who elects to itemize for state tax purposes the member's travel expenses.

11. Add the amounts deducted and subtract the amounts included as income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property included in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

12. If the adjusted gross income includes income or loss from a small business operated by the taxpayer, an additional deduction shall be allowed in computing the income or loss from the small business if the small business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year any of the following:

a. An individual with a disability domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

The amount of the additional deduction is equal to sixty-five percent of the wages paid to individu-

als, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a", "b", and "c" who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the department of workforce development, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

For purposes of this subsection, "physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

For purposes of this subsection, "small business" means small business as defined in section 16.1, subsection 36, except that it shall also include the operation of a farm.

12A. If the adjusted gross income includes income or loss from a business operated by the taxpayer, and if the business does not qualify for the adjustment under subsection 12, an additional deduction shall be allowed in computing the income or loss from the business if the business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year either of the following:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a" and "b" who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the department of workforce development, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs "a" and "b".

13. Subtract, to the extent included, the amount of additional social security benefits taxable under the Internal Revenue Code for tax years beginning on or after January 1, 1994. The amount of social security benefits taxable as provided in section 86 of the Internal Revenue Code, as amended up to and including January 1, 1993, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1994. Married taxpayers, who file a joint federal income tax return and who elect to file separate returns or who elect separate filing on a combined return for state income tax purposes, shall allocate between the spouses the amount of benefits subtracted from net income in the ratio of the social security benefits received by each spouse to the total of these benefits received by both spouses.

14. Add the amount of intangible drilling and development costs optionally deducted in the year

paid or incurred as described in section 57(a)(2) of the Internal Revenue Code. This amount may be recovered through cost depletion or depreciation, as appropriate under rules prescribed by the director.

15. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well as described in section 57(a)(1) of the Internal Revenue Code.

16. Subtract the income resulting from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure if all of the following conditions are met:

a. The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

b. Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt to asset ratio exceeded ninety percent as computed under generally accepted accounting practices.

c. The taxpayer's net worth at the end of the tax year is less than seventy-five thousand dollars. In determining a taxpayer's net worth at the end of the tax year a taxpayer shall include any asset transferred within one hundred twenty days prior to the end of the tax year without adequate and full consideration in money or money's worth. In determining the taxpayer's debt to asset ratio, the taxpayer shall include any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange without adequate and full consideration in money or money's worth. For purposes of this subsection, actual notice of foreclosure includes, but is not limited to, bankruptcy or written notice from a creditor of the creditor's intent to foreclose where there is a reasonable belief that the creditor can force a sale of the asset. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered for purposes of determining the taxpayer's net worth or the taxpayer's debt to asset ratio.

17. Add interest and dividends from regulated investment companies exempt from federal income tax under the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

18. Reserved.

19. Subtract interest earned on bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

20. Subtract, to the extent included, the proceeds received pursuant to a judgment in or settle-

ment of a lawsuit against the manufacturer or distributor of a Vietnam herbicide for damages resulting from exposure to the herbicide. This subsection applies to proceeds received by a taxpayer who is a disabled veteran or who is a beneficiary of a disabled veteran.

For purposes of this subsection:

*a.* “*Vietnam herbicide*” means a herbicide, defoliant or other causative agent containing dioxin, including, but not limited to, Agent Orange, used in the Vietnam Conflict beginning December 22, 1961, and ending May 7, 1975, inclusive.

*b.* “*Agent Orange*” means the herbicide composed of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid and the contaminant dioxin (TCDD).

21. Subtract the net capital gain from the following:

*a.* (1) Net capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years, or from the sale of a business, as defined in section 422.42, in which the taxpayer was employed or in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years. The sale of a business means the sale of all or substantially all of the tangible personal property or service of the business.

However, where the business is sold to individuals who are all lineal descendants of the taxpayer, the taxpayer does not have to have materially participated in the business in order for the net capital gain from the sale to be excluded from taxation.

However, in lieu of the net capital gain deduction in this paragraph and paragraphs “*b*”, “*c*”, and “*d*”, where the business is sold to individuals who are all lineal descendants of the taxpayer, the amount of capital gain from each capital asset may be subtracted in determining net income.

(2) For purposes of this paragraph, “*lineal descendant*” means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

*b.* Net capital gain from the sale of cattle or horses held by the taxpayer for breeding, draft, dairy, or sporting purposes for a period of twenty-four months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer’s gross income from farming or ranching operations during the tax year.

*c.* Net capital gain from the sale of breeding livestock, other than cattle or horses, if the livestock is held by the taxpayer for a period of twelve months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer’s gross income from farming or ranching operations during the tax year.

*d.* Net capital gain from the sale of timber as defined in section 631(a) of the Internal Revenue Code.

However, to the extent otherwise allowed, the deduction provided in this subsection is not allowed for purposes of computation of a net operating loss in section 422.9, subsection 3, and in computing the income for the taxable year or years for which a net operating loss is deducted.

22. Subtract, to the extent included, the amounts paid to an eligible individual under section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100-383, Title I, as satisfaction for a claim against the United States arising out of the confinement, holding in custody, relocation, or other deprivation of liberty or property of an individual of Japanese ancestry.

23. Reserved.

24. Subtract to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for services performed on or after August 2, 1990, pursuant to military orders related to the Persian Gulf Conflict.

25. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for service performed on or after November 21, 1995, pursuant to military orders related to peacekeeping in Bosnia-Herzegovina.

26. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property under the accelerated cost recovery system of the Internal Revenue Code during the period during which it is owned by the for-profit entity and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the for-profit entity, subsidiary of the for-profit entity, or majority owners of the for-profit entity, for other than as a speculative shell building, as defined in section 427.1, subsection 27.

27. Subtract, to the extent included, payments received by an individual providing unskilled in-home health-related care services pursuant to section 249.3, subsection 2, paragraph “*a*”, subparagraph (2), to a member of the individual caregiver’s family. For purposes of this subsection, a member of the individual caregiver’s family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor, or lineal descendant, and such persons by marriage or adoption. A health care professional licensed by an examination board designated in section 147.13, subsections 1 through 10, is not eligible for the exemption authorized in this subsection.

28. If the taxpayer is owner of an individual development account certified under chapter 541A at any time during the tax year, deductions of all of the following shall be allowed:

*a.* Contributions made to the account by persons and entities, other than the taxpayer, as authorized in chapter 541A.

*b.* The amount of any savings refund authorized under section 541A.3, subsection 1.

*c.* Earnings from the account.

29. Subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts paid by the taxpayer for the purchase of health benefits coverage or insurance for the taxpayer or taxpayer's spouse or dependent.

30. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal adjusted gross income.

31. For a person who is disabled, or is fifty-five years of age or older, or is the surviving spouse of an individual or a survivor having an insurable interest in an individual who would have qualified for the exemption under this subsection for the tax year, subtract, to the extent included, the total amount of a governmental or other pension or retirement pay, including, but not limited to, defined benefit or defined contribution plans, annuities, individual retirement accounts, plans maintained or contributed to by an employer, or maintained or contributed to by a self-employed person as an employer, and deferred compensation plans or any earnings attributable to the deferred compensation plans, up to a maximum of six thousand dollars for a person, other than a husband or wife, who files a separate state income tax return and up to a maximum of twelve thousand dollars for a husband and wife who file a joint state income tax return. However, a surviving spouse who is not disabled or fifty-five years of age or older can only exclude the amount of pension or retirement pay received as a result of the death of the other spouse. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined maximum exclusion under this subsection of up to twelve thousand dollars. The twelve thousand dollar exclusion shall be allocated to the husband or wife in the proportion that each spouse's respective pension and retirement pay received bears to total combined pension and retirement pay received.

32. *a.* Subtract the maximum contribution that may be deducted for Iowa income tax purposes as a participant in the Iowa educational savings plan trust pursuant to section 12D.3, subsection 1, paragraph "a".

*b.* Add the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Iowa educational savings plan trust to the extent previously deducted as a contribution to the trust.

33. Subtract, to the extent included, income from interest and earnings received from the Iowa educational savings plan trust created in chapter 12D.

34. Subtract, to the extent not deducted for federal income tax purposes, the amount of any gift, grant, or donation made to the Iowa educational savings plan trust for deposit in the endowment fund of that trust.

35. Subtract, to the extent included, the following:

*a.* Payments made to the taxpayer because of the taxpayer's status as a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or as an heir of such victim.

*b.* Items of income attributable to, derived from, or in any way related to assets stolen from, hidden from, or otherwise lost to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime immediately prior to, during, and immediately after World War II, including, but not limited to, interest on the proceeds receivable as insurance under policies issued to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime by European insurance companies immediately prior to and during World War II. However, income from assets acquired with such assets or with the proceeds from the sale of such assets shall not be subtracted. This paragraph shall only apply to a taxpayer who was the first recipient of such assets after recovery of the assets and who is a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or is an heir of such victim.

36. Add, to the extent not already included, income from the sale of obligations of the state and its political subdivisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state individual income tax.

37. Notwithstanding the method for computing income from an installment sale under section 453 of the Internal Revenue Code, as defined in section 422.3, the method to be used in computing income from an installment sale shall be the method under section 453 of the Internal Revenue Code, as amended up to and including January 1, 2000. A taxpayer affected by this subsection shall make adjustments in the adjusted gross income pursuant to rules adopted by the director.

The adjustment to net income provided in this subsection is repealed for tax years beginning on or after January 1, 2002. However, to the extent that a taxpayer using the accrual method of accounting reported the entire capital gain from the sale or exchange of property on the Iowa return for the tax year beginning in the 2001 calendar year and the capital gain was reported on the installment method on the federal income tax return,

any additional installment from the capital gain reported for federal income tax purposes is not to be included in net income in tax years beginning on or after January 1, 2002.

38. Subtract, to the extent not otherwise excluded, the amount of withdrawals from qualified retirement plan accounts made during the tax year if the taxpayer or taxpayer's spouse is a member of the Iowa national guard or reserve forces of the United States who is ordered to active state service or federal service or duty. In addition, a penalty for such withdrawals shall not be assessed by the state.

39. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, section 101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing federal adjusted gross income, the following adjustments shall be made:

*a.* Add the total amount of depreciation taken on all property for which the election under section 168(k) of the Internal Revenue Code was made for the tax year.

*b.* Subtract an amount equal to depreciation taken on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

*c.* Any other adjustments to gains or losses to reflect the adjustments made in paragraphs "a" and "b" pursuant to rules adopted by the director.

40. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for service performed on or after January 1, 2003, pursuant to military orders related to Operation Iraqi Freedom, Operation Noble Eagle, and Operation Enduring Freedom.

41. Subtract, not to exceed one thousand five hundred dollars, the overnight transportation, meals, and lodging expenses, to the extent not reimbursed, incurred by the taxpayer for travel away from home of more than one hundred miles for the performance of services by the taxpayer as a member of the national guard or armed forces military reserve.

42. Subtract, to the extent included, military student loan repayments received by the taxpayer serving on active duty in the national guard or armed forces military reserve or on active duty status in the armed forces.

43. Subtract, to the extent not otherwise excluded, the amount of the death gratuity payable under 10 U.S.C. § § 1475 – 1491 for deaths occurring after September 10, 2001.

2003 Acts, ch 139, §5, 11, 12; 2003 Acts, ch 142, §5, 6, 11  
2000 amendment to subsection 31 applies to tax years beginning on or after January 1, 2001; 2000 Acts, ch 1194, §21

2000 amendment adding new subsection 35 is effective April 14, 2000, and applies retroactively to tax years beginning on or after January 1, 2000;

2000 Acts, ch 1103, §3

2001 amendments striking former subsection 6 and adding subsection 37 take effect May 16, 2001, and apply retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

Subsection 36 takes effect May 3, 2001, and applies retroactively to tax years beginning on or after January 1, 2001; 2001 Acts, ch 116, §28

2001 amendments to subsection 12, paragraph c, and subsection 12A, paragraph b, take effect the later of July 1, 2002, or upon enactment of the interstate compact for adult offender supervision by the thirty-fifth jurisdiction; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37; 2003 Acts, ch 44, §109, 116

Subsection 37, unnumbered paragraph 2, takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1069, §11, 14

Subsection 38 applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1151, §36

For future amendments to subsection 21, paragraph a, effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §184, 205

2003 amendment to subsection 39 takes effect May 21, 2003, and applies retroactively to tax years ending on or after September 10, 2001; 2003 Acts, ch 139, §11, 12

2003 amendments to subsections 40 – 42 take effect May 21, 2003, and apply retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 142, §11

2003 amendment to subsection 43 takes effect May 21, 2003, and applies retroactively to tax years ending on or after September 10, 2001; 2003 Acts, ch 142, §11

NEW subsections 39 – 43

#### 422.9 Deductions from net income.

In computing taxable income of individuals, there shall be deducted from net income the larger of the following amounts:

1. An optional standard deduction, after deduction of federal income tax, equal to one thousand two hundred thirty dollars for a married person who files separately or a single person or equal to three thousand thirty dollars for a husband and wife who file a joint return, a surviving spouse, or an unmarried head of household. The optional standard deduction shall not exceed the amount remaining after deduction of the federal income tax.

2. The total of contributions, interest, taxes, medical expense, nonbusiness losses, and miscellaneous expenses deductible for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

*a.* Subtract the deduction for Iowa income taxes.

*b.* Add the amount of federal income taxes paid or accrued as the case may be, during the tax year, adjusted by any federal income tax refunds. Provided, however, that where married persons, who have filed a joint federal income tax return, file separately, such total shall be divided between them according to the portion thereof paid or accrued, as the case may be, by each.

*c.* Add the amount by which expenses paid or incurred in connection with the adoption of a child by the taxpayer exceed three percent of the net income of the taxpayer, or of the taxpayer and spouse in the case of a joint return. The expenses may include medical and hospital expenses of the biological mother which are incident to the child's birth and are paid by the taxpayer, welfare agency fees, legal fees, and all other fees and costs relating to the adoption of a child if the child is placed by a child-placing agency licensed under chapter 238 or by a person making an independent placement

according to the provisions of chapter 600.

*d.* Add an additional deduction for mileage incurred by the taxpayer in voluntary work for a charitable organization consisting of the excess of the state employee mileage reimbursement over the amount deductible for federal income tax purposes. The deduction shall be proven by the keeping of a contemporaneous diary by the person throughout the period of the voluntary work in the tax year.

*e.* Add the amount, not to exceed five thousand dollars, of expenses not otherwise deductible under this section actually incurred in the home of the taxpayer for the care of a person who is the grandchild, child, parent, or grandparent of the taxpayer or the taxpayer's spouse and who is unable, by reason of physical or mental disability, to live independently and is receiving, or would be eligible to receive if living in a health care facility licensed under chapter 135C, medical assistance benefits under chapter 249A. In the event that the person being cared for is receiving assistance benefits under chapter 239B, the expenses not otherwise deductible shall be the net difference between the expenses actually incurred in caring for the person and the assistance benefits received under chapter 239B.

*f.* Add the amount of the mortgage interest credit allowable for the tax year under section 25 of the Internal Revenue Code to the extent the credit decreased the amount of interest deductible under section 163(g) of the Internal Revenue Code.

*g.* To the extent not otherwise included pursuant to section 164 of the Internal Revenue Code, add the amount of the annual registration fee paid for a motor vehicle pursuant to section 321.113, subsection 4, or section 321.113, subsection 5, paragraph "b", which is based upon the value of the vehicle. For purposes of this paragraph, sixty percent of the amount of the registration fee is based upon the value of the motor vehicle.

*h.* To the extent not otherwise included pursuant to section 164 of the Internal Revenue Code, add the amount of the annual registration fee paid for a multipurpose vehicle pursuant to section 321.124, subsection 3, paragraph "h", which is based upon the value of the vehicle. For purposes of this paragraph, sixty percent of the amount of the registration fee is based upon the value of the multipurpose vehicle.

*i.* If the taxpayer has a deduction for medical care expenses under section 213 of the Internal Revenue Code, the taxpayer shall recompute for the purposes of this subsection the amount of the deduction under section 213 by excluding from medical care, as defined in section 213, the amount subtracted under section 422.7, subsection 29.

*j.* For purposes of calculating the deductions in this subsection that are authorized under the In-

ternal Revenue Code, and to the extent that any of such deductions is determined by an individual's federal adjusted gross income, the individual's federal adjusted gross income is computed in accordance with section 422.7, subsection 39.

*k.* If the taxpayer has a deduction for miscellaneous expenses under section 67 of the Internal Revenue Code, the taxpayer shall recompute for the purposes of this subsection the amount of the deduction under section 67 by excluding from the expenses, the amount subtracted under section 422.7, subsection 41.

3. If, after applying all of the adjustments provided for in section 422.7, the allocation provisions of section 422.8, and the deductions allowable in this section subject to the modifications provided in section 172(d) of the Internal Revenue Code, the taxable income results in a net operating loss, the net operating loss shall be deducted as follows:

*a.* The Iowa net operating loss shall be carried back three taxable years for an individual taxpayer with a casualty or theft property loss or for a net operating loss in a presidentially declared disaster area incurred by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the taxpayer first earned income in Iowa whichever year is the later.

*b.* The Iowa net operating loss remaining after being carried back as required in paragraph "a" or "d" or if not required to be carried back shall be carried forward twenty taxable years.

*c.* If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward twenty taxable years.

*d.* Notwithstanding paragraph "a", for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

4. Where married persons file separately, both must use the optional standard deduction if either elects to use it.

5. A taxpayer affected by section 422.8 shall, if the optional standard deduction is not used, be permitted to deduct only such portion of the total referred to in subsection 2 above as is fairly and equitably allocable to Iowa under the rules prescribed by the director.

6. In determining the amount of deduction for federal income tax under subsection 1 or subsection 2, paragraph "b", for tax years beginning in the 2001 calendar year, the amount of the deduc-

tion shall not be adjusted by the amount received during the tax year of the advanced refund of the rate reduction tax credit provided pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, and the advanced refund of such credit shall not be subject to taxation under this division.

7. In determining the amount of deduction for federal income tax under subsection 1 or subsection 2, paragraph “b”, for tax years beginning in the 2002 calendar year, the amount of the deduction for the tax year shall not be adjusted by the amount of the rate reduction credit received in the tax year to the extent that the credit is attributable to the rate reduction credit provided pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, and the amount of such credit shall not be taxable under this division.

2003 Acts, ch 139, §6, 11, 12; 2003 Acts, ch 142, §7, 11  
Subsection 2, paragraph g, takes effect January 1, 2002; 2001 Acts, ch 132, §24

Subsection 6 applies retroactively to tax years beginning on or after January 1, 2001, and before January 1, 2002; 2001 Acts, 1st Ex, ch 3, §2

Subsection 7 takes effect April 4, 2002, and applies retroactively to January 1, 2002, for tax years beginning in the 2002 calendar year; 2002 Acts, ch 1069, §13, 14

2003 amendment to subsection 2, paragraph j, takes effect May 21, 2003, and applies retroactively to tax years ending on or after September 10, 2001; 2003 Acts, ch 139, §11, 12

2003 amendment to subsection 2, paragraph k, takes effect May 21, 2003, and applies retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 142, §11

Subsection 2, NEW paragraphs j and k

#### 422.10 Research activities credit.

1. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state.

a. For individuals, the credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph “a”, subparagraph (1), a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer’s federal income tax. The election made under this

paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph “b”, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

2. For purposes of this section, an individual may claim a research credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of a partnership, S corporation, limited liability company, estate, or trust.

3. For purposes of this section, “base amount”, “basic research payment”, and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state.

For purposes of this section, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, 2003.

4. Any credit in excess of the tax liability imposed by section 422.5 less the credits allowed under sections 422.11A, 422.12, and 422.12B for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer’s final, completed return credited to the tax liability for the following taxable year.

2003 Acts, ch 139, §7, 11, 12  
2003 amendment to subsection 3 takes effect May 21, 2003, and applies retroactively to January 1, 2002, for tax years beginning on or after that date; 2003 Acts, ch 139, §11, 12  
Subsection 3 amended

#### 422.11C Ethanol blended gasoline tax credit.

1. As used in this section, unless the context otherwise requires:

a. “Ethanol blended gasoline” means the same as defined in section 452A.2.

b. “Gasoline” means gasoline that meets the specifications required by the department of agriculture and land stewardship pursuant to section 214A.2 and that is dispensed through a metered pump.

c. “Metered pump” means a motor vehicle fuel pump licensed by the department of agriculture and land stewardship pursuant to chapter 214.

d. “Retail dealer” means a retail dealer as defined in section 214A.1 who operates a metered pump at a service station.

e. “Sell” means to sell on a retail basis.

f. “Service station” means each geographic location in this state where a retail dealer sells and dispenses gasoline on a retail basis.

g. “Tax credit” means the designated ethanol blended gasoline tax credit as provided in this section.

2. The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by an ethanol blended gasoline tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this section. In order to be eligible, all of the following must apply:

a. The taxpayer is a retail dealer.

b. The taxpayer operates at least one service station at which more than sixty percent of the total gallons of gasoline sold and dispensed through one or more metered pumps by the taxpayer in the tax year is ethanol blended gasoline.

c. The taxpayer complies with requirements of the department required to administer this section.

3. The tax credit shall be calculated separately for each service station site operated by the taxpayer. The amount of the tax credit for each eligible service station is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at that service station during the tax year in excess of sixty percent of all gasoline sold and dispensed through metered pumps at that service station during the tax year.

4. Any credit in excess of the taxpayer’s tax liability shall be refunded. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer’s final, completed return credited to the tax liability for the following tax year.

5. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of a partnership, limited liability company, S corporation, estate, or trust.

Ethanol blended gasoline tax credit applies beginning January 1, 2002; implementation; refunds; retroactivity; 2001 Acts, ch 123, §6; 2003 Acts, ch 167, §2 – 4

Section not amended; footnote revised

#### **422.11E Assistive device tax credit — small business.**

1. The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by an assistive device tax credit. A small business purchasing, renting, or modifying an assistive device or making workplace modifications for an individual with a disability who is employed or will be employed by the small business is eligible, subject to availability of

credits, to receive this assistive device tax credit which is equal to fifty percent of the first five thousand dollars paid during the tax year for the purchase, rental, or modification of the assistive device or for making the workplace modifications. Any credit in excess of the tax liability shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer’s final, completed return credited to the tax liability for the following tax year. If the small business elects to take the assistive device tax credit, the small business shall not deduct for Iowa tax purposes any amount of the cost of an assistive device or workplace modifications which is deductible for federal tax purposes.

2. To receive the assistive device tax credit, the eligible small business must submit an application to the department of economic development. If the taxpayer meets the criteria for eligibility, the department of economic development shall issue to the taxpayer a certification of entitlement for the assistive device tax credit. However, the combined amount of tax credits that may be approved for a fiscal year under this section and section 422.33, subsection 9, shall not exceed five hundred thousand dollars. Tax credit certificates shall be issued on an earliest filed basis. The certification shall contain the taxpayer’s name, address, tax identification number, the amount of the credit, and tax year for which the certificate applies. The taxpayer must file the tax credit certificate with the taxpayer’s individual income tax return in order to claim the tax credit. The departments of economic development and revenue shall each adopt rules to jointly administer this section and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are approved.

3. An individual may claim an assistive device tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of the partnership, limited liability company, S corporation, estate, or trust.

4. For purposes of this section:

a. “Assistive device” means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. “Assistive device” does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. “Assistive device” does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of “assistive device” that is incorporated, attached,

or included as a modification in or to such a device issued a certificate of title.

b. “Disability” means the same as defined in section 225C.46.

c. “Small business” means a business that either had gross receipts for its preceding tax year of three million dollars or less or employed not more than fourteen full-time employees during its preceding tax year.

d. “Workplace modifications” means physical alterations to the work environment.

2003 Acts, ch 145, §286  
Section applies retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1194, §21  
Terminology change applied

**422.11H Endow Iowa tax credit.**

The tax imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

2003 Acts, 1st Ex, ch 2, §84, 89  
Section effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date; 2003 Acts, 1st Ex, ch 2, §89  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93  
NEW section

**422.11I University-based research utilization program tax credit.**

The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B, shall be reduced by a university-based research utilization program tax credit authorized pursuant to section 262B.11.

2003 Acts, 1st Ex, ch 1, §112, 133  
For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114  
NEW section

**422.12A Income tax refund checkoff for keep Iowa beautiful fund.**

1. A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate one dollar or more to be paid to the keep Iowa beautiful fund as created in section 314.28. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the keep Iowa beautiful fund, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return. The designation of a contribution to the keep Iowa beautiful fund under this section is irrevocable.

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the keep Iowa beautiful fund on the tax return. The department of revenue, on or before January 31, shall certify the total amount designated on the tax return forms due in the preceding calendar year and shall report the amount to the treasurer of state. The treasurer of state shall credit the amount to the keep Iowa beautiful fund.

However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and accounts identified as owing under section 421.17 and the political contribution allowed under section 68A.601 shall be satisfied.

3. Moneys in the fund are subject to appropriation as provided in section 314.28.

4. The department of revenue shall adopt rules to administer this section.

5. This section is subject to repeal under section 422.12E.

2003 Acts, ch 145, §255, 286  
Section applies retroactively to January 1, 2001, for tax years beginning on or after that date; 2001 Acts, ch 160, §3  
Terminology change applied  
Subsection 2 amended

**422.12D Income tax checkoff for the Iowa state fair foundation.**

1. A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate one dollar or more to be paid to the Iowa state fair foundation as established in section 173.22. If the refund due on the return or the payment remitted with the return is insufficient to pay the amount designated by the taxpayer to the Iowa state fair foundation, the amount designated shall be reduced to the remaining amount of the refund or the remaining amount remitted with the return. The designation of a contribution to the Iowa state fair foundation under this section is irrevocable.

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the Iowa state fair foundation on the tax return. The department, on or before January 31, shall transfer the total amount designated on the tax form due in the preceding year to the foundation fund created pursuant to section 173.22.

3. The Iowa state fair board may authorize payment from the foundation fund for purposes of supporting foundation activities.

4. The department shall adopt rules to implement this section. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and accounts identified as owing under section 421.17 and the political contribution allowed under section 68A.601 shall be satisfied.

2003 Acts, ch 145, §286  
Limitation on number of income tax return checkoffs; automatic repeal of certain checkoffs; see §422.12E  
Terminology change applied

**422.12E Income tax return checkoffs limited.**

For tax years beginning on or after January 1, 1995, there shall be allowed no more than three income tax return checkoffs on each income tax return. When the same three income tax return checkoffs have been provided on the income tax return for three consecutive years, the checkoff for which the least amount has been contributed, in

the aggregate for the first two tax years and through March 15 of the third tax year, shall be repealed. This section does not apply to the income tax return checkoff provided in section 68A.601.

Checkoff for keep Iowa beautiful fund; §422.12A

Checkoff for Iowa state fair foundation; §422.12D

Checkoff for fish and game fund; §456A.16

Section not amended; internal reference change applied

**422.16 Withholding of income tax at source — penalties — interest — declaration of estimated tax — bond.**

1. Every withholding agent and every employer as defined in this chapter and further defined in the Internal Revenue Code, with respect to income tax collected at source, making payment of wages to a nonresident employee working in Iowa, or to a resident employee, shall deduct and withhold from the wages an amount which will approximate the employee's annual tax liability on a calendar year basis, calculated on the basis of tables to be prepared by the department and schedules or percentage rates, based on the wages, to be prescribed by the department. Every employee or other person shall declare to the employer or withholding agent the number of the employee's or other person's personal exemptions and dependency exemptions or credits to be used in applying the tables and schedules or percentage rates. However, no greater number of personal or dependency exemptions or credits may be declared by the employee or other person than the number to which the employee or other person is entitled except as allowed under section 3402(m)(1) of the Internal Revenue Code and as allowed for the child and dependent care credit provided in section 422.12C. The claiming of exemptions or credits in excess of entitlement is a serious misdemeanor.

Nonresidents engaged in any facet of feature film, television, or educational production using the film or videotape disciplines in the state are not subject to Iowa withholding if the employer has applied to the department for exemption from the withholding requirement and the department has determined that any nonresident receiving wages would be entitled to a credit against Iowa income taxes paid.

For the purposes of this subsection, state income tax shall be withheld from pensions, annuities, other similar periodic payments, and other income payments of those persons whose primary residence is in Iowa in those circumstances in which those persons have federal income tax withheld from pensions, annuities, other similar periodic payments, and other income payments under sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code at a rate to be specified by the department.

For the purposes of this subsection, state income tax shall be withheld on winnings in excess of six hundred dollars derived from gambling activities authorized under chapter 99B or 99G.

State income tax shall be withheld on winnings in excess of one thousand dollars from gambling activities authorized under chapter 99D. State income tax shall be withheld on winnings in excess of twelve hundred dollars derived from slot machines authorized under chapter 99F.

For the purposes of this subsection, state income tax at the rate of six percent shall be withheld from supplemental wages of employees in those circumstances in which the employer treats the supplemental wages as wholly separate from regular wages for purposes of withholding and federal income tax is withheld from the supplemental wages under section 3402(g) of the Internal Revenue Code.

2. A withholding agent required to deduct and withhold tax under subsections 1 and 12, except those required to deposit on a semimonthly basis, shall deposit for each calendar quarterly period, on or before the last day of the month following the close of the quarterly period, on a quarterly deposit form as prescribed by the director and shall pay to the department, in the form of remittances made payable to "Treasurer, State of Iowa", the tax required to be withheld, or the tax actually withheld, whichever is greater, under subsections 1 and 12. However, a withholding agent who withholds more than fifty dollars in any one month, except those required to deposit on a semimonthly basis, shall deposit with the department the amount withheld, with a monthly deposit form as prescribed by the director. The monthly deposit form is due on or before the fifteenth day of the month following the month of withholding, except that a deposit is not required for the amount withheld in the third month of the quarter but the total amount of withholding for the quarter shall be computed and the amount by which the deposits for that quarter fail to equal the total quarterly liability is due with the filing of the quarterly deposit form. The quarterly deposit form is due within the month following the end of the quarter. A withholding agent who withholds more than eight thousand dollars in a semimonthly period shall deposit with the department the amount withheld, with a semimonthly deposit form as prescribed by the director. The first semimonthly deposit form for the period from the first of the month through the fifteenth of the month is due on the twenty-fifth day of the month in which the withholding occurs. The second semimonthly deposit form for the period from the sixteenth of the month through the end of the month is due on the tenth day of the month following the month in which the withholding occurs.

Every withholding agent on or before the end of the second month following the close of the calendar year in which the withholding occurs shall make an annual reporting of taxes withheld and other information prescribed by the director and send to the department copies of wage and tax

statements with the return. At the discretion of the director, the withholding agent shall not be required to send wage statements and tax statements with the annual reporting return form if the information is available from the internal revenue service or other state or federal agencies.

If the director has reason to believe that the collection of the tax provided for in subsections 1 and 12 is in jeopardy, the director may require the employer or withholding agent to make the report and pay the tax at any time, in accordance with section 422.30. The director may authorize incorporated banks, trust companies, or other depositories authorized by law which are depositories or financial agents of the United States or of this state, to receive any tax imposed under this chapter, in the manner, at the times, and under the conditions the director prescribes. The director shall also prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

The director, in cooperation with the department of management, may periodically change the filing and remittance thresholds by administrative rule if in the best interest of the state and the taxpayer.

3. Every withholding agent employing not more than two persons who expects to employ either or both of such persons for the full calendar year may, with respect to such persons, pay with the withholding tax return due for the first calendar quarter of the year the full amount of income taxes required to be withheld from the wages of such persons for the full calendar year. The amount to be paid shall be computed as if the employee were employed for the full calendar year for the same wages and with the same pay periods as prevailed during the first quarter of the year with respect to such employee. No such lump sum payment of withheld income tax shall be made without the written consent of all employees involved. The withholding agent shall be entitled to recover from the employee any part of such lump sum payment that represents an advance to the employee. If a withholding agent pays a lump sum with the first quarterly return the withholding agent shall be excused from filing further quarterly returns for the calendar year involved unless the withholding agent hires other or additional employees.

4. Every withholding agent who fails to withhold or pay to the department any sums required by this chapter to be withheld and paid, shall be personally, individually, and corporately liable therefor to the state of Iowa, and any sum or sums withheld in accordance with the provisions of subsections 1 and 12, shall be deemed to be held in trust for the state of Iowa. Notwithstanding sections 490A.601 and 490A.602, this subsection applies to a member or manager of a limited liability company.

5. In the event a withholding agent fails to

withhold and pay over to the department any amount required to be withheld under subsections 1 and 12 of this section, such amount may be assessed against such employer or withholding agent in the same manner as prescribed for the assessment of income tax under the provisions of divisions II and VI of this chapter.

6. Whenever the director determines that any employer or withholding agent has failed to withhold or pay over to the department sums required to be withheld under subsections 1 and 12 of this section the unpaid amount thereof shall be a lien as defined in section 422.26, shall attach to the property of said employer or withholding agent as therein provided, and in all other respects the procedure with respect to such lien shall apply as set forth in said section 422.26.

7. Every withholding agent required to deduct and withhold a tax under subsections 1 and 12 of this section shall furnish to such employee, nonresident, or other person in respect of the remuneration paid by such employer or withholding agent to such employee, nonresident, or other person during the calendar year, on or before January 31 of the succeeding year, or, in the case of employees, if the employee's employment is terminated before the close of such calendar year, within thirty days from the day on which the last payment of wages is made, if requested by such employee, but not later than January 31 of the following year, a written statement showing the following:

a. The name and address of such employer or withholding agent, and the identification number of such employer or withholding agent.

b. The name of the employee, nonresident, or other person and that person's federal social security account number, together with the last known address of such employee, nonresident, or other person to whom wages have been paid during such period.

c. The gross amount of wages, or other taxable income, paid to the employee, nonresident, or other person.

d. The total amount deducted and withheld as tax under the provisions of subsections 1 and 12 of this section.

e. The total amount of federal income tax withheld.

The statements required to be furnished by this subsection in respect of any wages or other taxable Iowa income shall be in such form or forms as the director may, by regulation, prescribe.

8. An employer or withholding agent shall be liable for the payment of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, under subsections 1 and 12 of this section; and any amount deducted and withheld as tax under subsections 1 and 12 of this section during any calendar year upon the wages of any employee, nonresident, or other person shall be allowed as a credit to the employee,

nonresident, or other person against the tax imposed by section 422.5, irrespective of whether or not such tax has been, or will be, paid over by the employer or withholding agent to the department as provided by this chapter.

9. The amount of any overpayment of the individual income tax liability of the employee taxpayer, nonresident, or other person which may result from the withholding and payment of withheld tax by the employer or withholding agent to the department under subsections 1 and 12, as compared to the individual income tax liability of the employee taxpayer, nonresident, or other person properly and correctly determined under the provisions of section 422.4, to and including section 422.25, may be credited against any income tax or installment thereof then due the state of Iowa and any balance of one dollar or more shall be refunded to the employee taxpayer, nonresident or other person with interest at the rate in effect under section 421.7 for each month or fraction of a month, the interest to begin to accrue on the first day of the second calendar month following the date the return was due to be filed or was filed, whichever is the later date. Amounts less than one dollar shall be refunded to the taxpayer, nonresident, or other person only upon written application, in accordance with section 422.73, and only if the application is filed within twelve months after the due date of the return. Refunds in the amount of one dollar or more provided for by this subsection shall be paid by the treasurer of state by warrants drawn by the director of revenue, or an authorized employee of the department, and the taxpayer's return of income shall constitute a claim for refund for this purpose, except in respect to amounts of less than one dollar. There is appropriated, out of any funds in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this subsection.

10. *a.* An employer or withholding agent required under this chapter to furnish a statement required by this chapter who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish the statement is, for each failure, subject to a civil penalty of five hundred dollars, the penalty to be in addition to any criminal penalty otherwise provided by the Code.

*b.* In addition to the tax or additional tax, any person or withholding agent shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the semimonthly, monthly, or quarterly deposit form was required to be filed. The penalty and interest become a part of the tax due from the withholding agent.

*c.* If any withholding agent, being a domestic or foreign corporation, required under the provisions of this section to withhold on wages or other taxable Iowa income subject to this chapter, fails

to withhold the amounts required to be withheld, make the required returns or remit to the department the amounts withheld, the director may, having exhausted all other means of enforcement of the provisions of this chapter, certify such fact or facts to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights of such corporation to carry on business in the state of Iowa shall thereupon cease. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by the secretary of state. The provisions of section 422.40, subsection 3, shall be applicable.

*d.* The department shall upon request of any fiduciary furnish said fiduciary with a certificate of acquittance showing that no liability as a withholding agent exists with respect to the estate or trust for which said fiduciary acts, provided the department has determined that there is no such liability.

11. *a.* A person or married couple filing a return shall make estimated tax payments if the person's or couple's Iowa income tax attributable to income other than wages subject to withholding can reasonably be expected to amount to two hundred dollars or more for the taxable year, except that, in the cases of farmers and fishermen, the exceptions provided in the Internal Revenue Code with respect to making estimated payments apply. The estimated tax shall be paid in quarterly installments. The first installment shall be paid on or before the last day of the fourth month of the taxpayer's tax year for which the estimated payments apply. The other installments shall be paid on or before the last day of the sixth month of the tax year, the last day of the ninth month of the tax year, and the last day of the first month after the tax year. However, at the election of the person or married couple, an installment of the estimated tax may be paid prior to the date prescribed for its payment. If a person or married couple filing a return has reason to believe that the person's or couple's Iowa income tax may increase or decrease, either for purposes of meeting the requirement to make estimated tax payments or for the purpose of increasing or decreasing estimated tax payments, the person or married couple shall increase or decrease any subsequent estimated tax payments accordingly.

*b.* In the case of persons or married couples filing jointly, the total balance of the tax payable after credits for taxes paid through withholding, as provided in subsection 1 of this section, or through payment of estimated tax, or a combination of withholding and estimated tax payments is due and payable on or before April 30 following the close of the calendar year, or if the return is to be made on the basis of a fiscal year, then on or before the last day of the fourth month following the close of the fiscal year.

c. If a taxpayer is unable to make the taxpayer's estimated tax payments, the payments may be made by a duly authorized agent, or by the guardian or other person charged with the care of the person or property of the taxpayer.

d. Any amount of estimated tax paid is a credit against the amount of tax found payable on a final, completed return, as provided in subsection 9, relating to the credit for the tax withheld against the tax found payable on a return properly and correctly prepared under sections 422.5 through 422.25, and any overpayment of one dollar or more shall be refunded to the taxpayer and the return constitutes a claim for refund for this purpose. Amounts less than one dollar shall not be refunded. The method provided by the Internal Revenue Code for determining what is applicable to the addition to tax for underpayment of the tax payable applies to persons required to make payments of estimated tax under this section except the amount to be added to the tax for underpayment of estimated tax is an amount determined at the rate in effect under section 421.7. This addition to tax specified for underpayment of the tax payable is not subject to waiver provisions relating to reasonable cause, except as provided in the Internal Revenue Code. Underpayment of estimated tax shall be determined in the same manner as provided under the Internal Revenue Code and the exceptions in the Internal Revenue Code also apply.

e. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return for the taxable year credited to the taxpayer's tax liability for the following taxable year.

12. In the case of nonresidents having income subject to taxation by Iowa, but not subject to withholding of such tax under subsection 1 hereof, withholding agents shall withhold from such income at the same rate as provided in subsection 1 hereof, and such withholding agents and such nonresidents shall be subject to the provisions of this section, according to the context, except that such withholding agents may be absolved of such requirement to withhold taxes from such nonresident's income upon receipt of a certificate from the department issued in accordance with the provisions of section 422.17, as hereby amended. In the case of nonresidents having income from a trade or business carried on by them in whole or in part within the state of Iowa, such nonresident shall be considered to be subject to the provisions of this subsection unless such trade or business is of such nature that the business entity itself, as a withholding agent, is required to and does withhold Iowa income tax from the distributions made to such nonresident from such trade or business.

Notwithstanding this subsection, withholding agents are not required to withhold state income tax from payments subject to taxation made to

nonresidents for commodity credit certificates, grain, livestock, domestic fowl, or other agricultural commodities or products sold to the withholding agents by the nonresidents or their representatives, if the withholding agents provide on forms prescribed by the department information relating to the sales required by the department to determine the state income tax liabilities of the nonresidents. However, the withholding agents may elect to make estimated tax payments on behalf of the nonresidents on the basis of the net incomes of the nonresidents from the agricultural commodities or products, if the estimated tax payments are made on or before the last day of the first month after the end of the tax years of the nonresidents.

13. The director shall enter into an agreement with the secretary of the treasury of the United States with respect to withholding of income tax as provided by this chapter, pursuant to an Act of Congress, section 1207 of the Tax Reform Act of 1976, Public Law 94-455, amending title 5, section 5517 of the United States Code.

14. The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the employer or withholding agent who deposited the securities.

If the withholding agent fails to file the bond as requested by the director to secure collection of the tax, the withholding agent is subject to penalty for failure to file the bond. The penalty is equal to fifteen percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty shall not exceed five thousand dollars.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §111, 121; 2003 Acts, ch 179, §142

Terminology change applied  
Subsection 1, unnumbered paragraph 4 amended

#### **422.16A Job training withholding — certification and transfer.**

Upon the completion by a business of its repayment obligation for a training project funded under chapter 260E, including a job training project funded under section 15A.8 or repaid in whole or in part by the supplemental new jobs credit from withholding under section 15A.7 or section 15.331,

the sponsoring community college shall report to the department of economic development the amount of withholding paid by the business to the community college during the final twelve months of withholding payments. The department of economic development shall notify the department of revenue of that amount. The department shall credit to the workforce development fund account established in section 15.342A twenty-five percent of that amount each quarter for a period of ten years. If the amount of withholding from the business or employer is insufficient, the department shall prorate the quarterly amount credited to the workforce development fund account. The maximum amount from all employers which shall be transferred to the workforce development fund account in any year is four million dollars.

2003 Acts, ch 145, §286  
For provisions effective May 18, 2000, until July 1, 2000, see 2000 Acts, ch 1196, §9  
Terminology change applied

#### **422.20 Information confidential — penalty.**

1. It shall be unlawful for any present or former officer or employee of the state to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person shall also be dismissed from office or discharged from employment. Nothing herein shall prohibit turning over to duly authorized officers of the United States or tax officials of other states state information and income returns pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

2. It is unlawful for an officer, employee, or agent, or former officer, employee, or agent of the state to disclose to any person, except as authorized in subsection 1 of this section, any federal tax return or return information as defined in section 6103(b) of the Internal Revenue Code. It is unlawful for a person to whom any federal tax return or return information, as defined in section 6103(b) of the Internal Revenue Code, is disclosed in a manner unauthorized by subsection 1 of this section to thereafter print or publish in any manner

not provided by law any such return or return information. A person violating this provision is guilty of a serious misdemeanor.

3. Unless otherwise expressly permitted by section 8A.504, section 421.17, subsections 22, 23, and 26, sections 252B.9, 421.19, 421.28, 422.72, and 452A.63, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

2003 Acts, ch 145, §256  
Internal reference changes applied  
Subsection 3, unnumbered paragraph 1 amended

#### **422.21 Form and time of return.**

Returns shall be in the form the director prescribes, and shall be filed with the department on or before the last day of the fourth month after the expiration of the tax year. However, co-operative associations as defined in section 6072(d) of the Internal Revenue Code shall file their returns on or before the fifteenth day of the ninth month following the close of the taxable year and nonprofit corporations subject to the unrelated business income tax imposed by section 422.33, subsection 1A, shall file their returns on or before the fifteenth day of the fifth month following the close of the taxable year. If, under the Internal Revenue Code, a corporation is required to file a return covering a tax period of less than twelve months, the state return shall be for the same period and is due forty-five days after the due date of the federal tax return, excluding any extension of time to file. In case of sickness, absence, or other disability, or if good cause exists, the director may allow further time for filing returns. The director shall cause to be prepared blank forms for the returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form does not relieve the taxpayer from the obligation of making a return that is required. The department may as far as consistent with the Code draft income tax forms to conform to the income tax forms of the internal revenue department of the United States govern-

ment. Each return by a taxpayer upon whom a tax is imposed by section 422.5 shall show the county of the residence of the taxpayer.

An individual in the armed forces of the United States serving in an area designated by the president of the United States or the United States Congress as a combat zone or as a qualified hazardous duty area, or deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the United States secretary of defense as a contingency operation as defined in 10 U.S.C. § 101(a)(13), or which became such a contingency operation by the operation of law, or an individual serving in support of those forces, is allowed the same additional time period after leaving the combat zone or the qualified hazardous duty area, or ceasing to participate in such contingency operation, or after a period of continuous hospitalization, to file a state income tax return or perform other acts related to the department, as would constitute timely filing of the return or timely performance of other acts described in section 7508(a) of the Internal Revenue Code. For the purposes of this paragraph, "other acts related to the department" includes filing claims for refund for any tax administered by the department, making tax payments other than withholding payments, filing appeals on the tax matters, filing other tax returns, and performing other acts described in the department's rules. The additional time period allowed applies to the spouse of the individual described in this paragraph to the extent the spouse files jointly or separately on the combined return form with the individual or when the spouse is a party with the individual to any matter for which the additional time period is allowed.

The department shall make available to persons required to make personal income tax returns under the provisions of this chapter, and when such income is derived mainly from salaries and wages or from the operation of a business or profession, a form which shall take into consideration the normal deductions and credits allowable to any such taxpayer, and which will permit the computation of the tax payable without requiring the listing of specific deductions and credits. In arriving at schedules for payment of taxation under such forms the department shall as nearly as possible base such schedules upon a total of deductions and credits which will result in substantially the same payment as would have been made by such taxpayer were the taxpayer to specifically list the taxpayer's allowable deductions and credits. In lieu of such return any taxpayer may elect to list permissible deductions and credits as provided by law. It is the intent and purpose of this provision to simplify the procedure of collection of personal income tax, and the director shall have the power in any case when deemed necessary or advisable to require any taxpayer, who has made a return in

accordance with the schedule herein provided for, to make an additional return in which all deductions and credits are specifically listed. The department may revise the schedules adopted in connection with such simplified form whenever such revision is necessitated by changes in federal income tax laws, or to maintain the collection of substantially the same amounts from taxpayers as would be received were the specific listing of deductions and credits required.

The department shall provide space on the prescribed income tax form, wherein the taxpayer shall enter the name of the school district of the taxpayer's residence. Such place shall be indicated by prominent type. A nonresident taxpayer shall so indicate. If such information is not supplied on the tax return it shall be deemed an incomplete return.

The director shall determine for the 1989 and each subsequent calendar year the annual and cumulative inflation factors for each calendar year to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts as specified to be adjusted in section 422.5 by the latest cumulative inflation factor and round off the result to the nearest one dollar. The annual and cumulative inflation factors determined by the director are not rules as defined in section 17A.2, subsection 11. The director shall determine for the 1990 calendar year and each subsequent calendar year the annual and cumulative standard deduction factors to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts of the standard deductions specified in section 422.9, subsection 1, by the latest cumulative standard deduction factor and round off the result to the nearest ten dollars. The annual and cumulative standard deduction factors determined by the director are not rules as defined in section 17A.2, subsection 11.

The department shall provide on income tax forms or in the instruction booklets in a manner that will be noticeable to the taxpayers a statement that, even though the taxpayer may not have any federal or state income tax liability, the taxpayer may be eligible for the federal earned income tax credit or state child and dependent care credit. The statement shall also contain notice of where the taxpayer may check on the taxpayer's eligibility for these credits.

If married taxpayers file a joint return or file separately on a combined return in accordance with rules prescribed by the director, both spouses are jointly and severally liable for the total tax due on the return, except when one spouse is considered to be an innocent spouse under criteria established pursuant to section 6015 of the Internal Revenue Code.

2003 Acts, ch 142, §8, 11

2000 amendment to unnumbered paragraph 2 takes effect April 26,

2000, and applies retroactively to tax years beginning on or after January 1, 1999; 2000 Acts, ch 1146, §7, 9, 11

2002 amendment to unnumbered paragraph 7 takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1069, §11, 14

2003 amendment to unnumbered paragraph 2 takes effect May 21, 2003, and applies to any period for performing an act that has not expired before May 21, 2003; 2003 Acts, ch 142, §11

Unnumbered paragraph 2 amended

#### **422.27 Final report of fiduciary — conditions.**

1. A final account of a personal representative, as defined in section 450.1, shall not be allowed by any court unless the account shows, and the judge of the court finds, that all taxes imposed by this division upon the personal representative, which have become payable, have been paid, and that all taxes which may become due are secured by bond or deposit, or are otherwise secured. The certificate of acquittances of the department of revenue is conclusive as to the payment of the tax to the extent of the acquittance. This subsection does not apply if all property in the estate of a decedent is held in joint tenancy with right of survivorship by husband and wife alone.

2. For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the director may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this division, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

2003 Acts, ch 145, §286  
Fiduciaries' reports, §636.33  
Similar provision, §450.58  
Terminology change applied

#### **422.32 Definitions.**

For the purpose of this division and unless otherwise required by the context:

1. The term "*affiliated group*" means a group of corporations as defined in section 1504(a) of the Internal Revenue Code.

2. "*Business income*" means income arising from transactions and activity in the regular course of the taxpayer's trade or business; or income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations; or gain or loss resulting from the sale, exchange, or other disposition of real property or of tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business carried on in Iowa or operationally related to sources within Iowa, or the property was operationally related to sources outside this state and to the taxpayer's trade or business carried on in Iowa; or gain or loss resulting from the sale, exchange, or other disposition of stock in another corporation if the activities of the other corporation were operationally related to the taxpayer's trade or business carried on

in Iowa while the stock was owned by the taxpayer. A taxpayer may have more than one regular trade or business in determining whether income is business income.

It is the intent of the general assembly to treat as apportionable business income all income that may be treated as apportionable business income under the Constitution of the United States.

The filing of an Iowa income tax return on a combined report basis is neither allowed nor required by this subsection.

3. "*Commercial domicile*" means the principal place from which the trade of business of the taxpayer is directed or managed.

4. "*Corporation*" includes joint stock companies, and associations organized for pecuniary profit, and partnerships and limited liability companies taxed as corporations under the Internal Revenue Code.

5. The words "*domestic corporation*" mean any corporation organized under the laws of this state.

6. The words "*foreign corporation*" mean any corporation other than a domestic corporation.

7. "*Internal Revenue Code*" means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 2003, whichever is applicable.

8. "*Nonbusiness income*" means all income other than business income.

9. "*State*" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

10. "*Taxable in another state*". For purposes of allocation and apportionment of income under this division, a taxpayer is taxable in another state if:

a. In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

b. That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

11. The term "*unitary business*" means a business carried on partly within and partly without a state where the portion of the business carried on within the state depends on or contributes to the business outside the state.

The words, terms, and phrases defined in division II, section 422.4, subsections 4 to 6, 8, 9, 13, and 15 to 17, when used in this division, shall have the meanings ascribed to them in said section except where the context clearly indicates a different meaning.

2003 Acts, ch 139, §8, 11, 12  
2003 amendment adding new subsection 7 takes effect May 21, 2003, and applies retroactively to January 1, 2002, for tax years beginning on or after that date; 2003 Acts, ch 139, §11, 12

NEW subsection 7 and former subsections 7 – 10 renumbered as 8 – 11

**422.33 Corporate tax imposed — credit.**

1. A tax is imposed annually upon each corporation doing business in this state, or deriving income from sources within this state, in an amount computed by applying the following rates of taxation to the net income received by the corporation during the income year:

*a.* On the first twenty-five thousand dollars of taxable income, or any part thereof, the rate of six percent.

*b.* On taxable income between twenty-five thousand dollars and one hundred thousand dollars or any part thereof, the rate of eight percent.

*c.* On taxable income between one hundred thousand dollars and two hundred fifty thousand dollars or any part thereof, the rate of ten percent.

*d.* On taxable income of two hundred fifty thousand dollars or more, the rate of twelve percent.

“Income from sources within this state” means income from real, tangible, or intangible property located or having a situs in this state.

1A. There is imposed upon each corporation exempt from the general business tax on corporations by section 422.34, subsection 2, a tax at the rates in subsection 1 upon the state’s apportioned share computed in accordance with subsections 2 and 3 of the unrelated business income computed in accordance with the Internal Revenue Code and with the adjustments set forth in section 422.35.

2. If the trade or business of the corporation is carried on entirely within the state, the tax shall be imposed on the entire net income, but if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state, the tax shall be imposed only on the portion of the net income reasonably attributable to the trade or business or sources within the state, with the net income attributable to the state to be determined as follows:

*a.* Nonbusiness interest, dividends, rents and royalties, less related expenses, shall be allocated within and without the state in the following manner:

(1) Nonbusiness interest, dividends, and royalties from patents and copyrights shall be allocable to this state if the taxpayer’s commercial domicile is in this state.

(2) Nonbusiness rents and royalties received from real property located in this state are allocable to this state.

(3) Nonbusiness rents and royalties received from tangible personal property are allocable to this state to the extent that the property is utilized in this state; or in their entirety if the taxpayer’s commercial domicile is in this state and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangi-

ble personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown, or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payor obtained possession.

(4) Nonbusiness capital gains and losses from the sale or other disposition of assets shall be allocated as follows:

Gains and losses from the sale or other disposition of real property located in this state are allocable to this state.

Gains and losses from the sale or other disposition of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale or disposition or if the taxpayer’s commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

Gains and losses from the sale or disposition of intangible personal property are allocable to this state if the taxpayer’s commercial domicile is in this state.

*b.* Net nonbusiness income of the above class having been separately allocated and deducted as above provided, the remaining net business income of the taxpayer shall be allocated and apportioned as follows:

(1) Business interest, dividends, rents, and royalties shall be reasonably apportioned within and without the state under rules adopted by the director.

(2) Capital gains and losses from the sale or other disposition of assets shall be apportioned to the state based upon the business activity ratio applicable to the year the gain or loss is determined if the corporation determines Iowa taxable income by a sales, gross receipts or other business activity ratio. If the corporation has only allocable income, capital gains and losses from the sale or other disposition of assets shall be allocated in accordance with paragraph “a”, subparagraph (4).

(3) Where income is derived from business other than the manufacture or sale of tangible personal property, the income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

(4) Where income is derived from the manufacture or sale of tangible personal property, the part attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

(5) Where income consists of more than one

class of income as provided in subparagraphs (1) to (4) of this paragraph, it shall be reasonably apportioned by the business activity ratio provided in rules adopted by the director.

(6) The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the f.o.b. point or other conditions of the sale, excluding deliveries for transportation out of the state.

For the purpose of this section, the word "sale" shall include exchange, and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing. The words "tangible personal property" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

3. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the director and applied to the taxpayer's business, has operated or will so operate as to subject the taxpayer to taxation on a greater portion of the taxpayer's net income than is reasonably attributable to business or sources within the state, the taxpayer shall be entitled to file with the director a statement of the taxpayer's objections and of such alternative method of allocation and apportionment as the taxpayer believes to be proper under the circumstances with such detail and proof and within such time as the director may reasonably prescribe; and if the director shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, the director shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

4. In addition to all taxes imposed under this division, there is imposed upon each corporation doing business within the state the greater of the tax determined in subsection 1, paragraphs "a" through "d" or the state alternative minimum tax equal to sixty percent of the maximum state corporate income tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.35 and with the following adjustments:

a. Add items of tax preference included in fed-

eral alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4) and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In making the adjustment under section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities and interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code, net of amortization of any discount or premium, shall be subtracted.

b. Apply the allocation and apportionment provisions of subsection 2.

c. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

d. In the case of a net operating loss computed for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which is taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

5. a. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to the total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph "a", subparagraph (1), a corporation may elect to compute the credit amount for quali-

fied research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph "b", the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

d. For purposes of this subsection, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state.

For purposes of this subsection, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2003.

e. Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following taxable year.

6. The taxes imposed under this division shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 260E and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 37, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. Any credit in ex-

cess of the tax liability for the tax year may be credited to the tax liability for the following ten tax years or until depleted in less than the ten years. For purposes of this section, "agreement", "industry", "new job" and "project" mean the same as defined in section 260E.2 and "base employment level" means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 260E on the date of that agreement.

7. a. There is allowed as a credit against the tax determined in subsection 1 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the adjusted net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b. The allowable credit under paragraph "a" for a tax year shall not exceed the excess, if any, of the tax determined in subsection 1 over the state alternative minimum tax as determined in subsection 4.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 4 for the tax year over the tax determined in subsection 1 for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

8. The taxes imposed under this division shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution. This recomputed tax shall be subtracted from the tax computed under this division and the resulting amount, which shall not exceed the taxpayer's pro rata share of franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

9. a. The taxes imposed under this division shall be reduced by an assistive device tax credit. A small business purchasing, renting, or modifying an assistive device or making workplace modifications for an individual with a disability who is employed or will be employed by the small business is eligible, subject to availability of credits, to receive this assistive device tax credit which is equal to fifty percent of the first five thousand dollars paid during the tax year for the purchase,

rental, or modification of the assistive device or for making the workplace modifications. Any credit in excess of the tax liability shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year. If the small business elects to take the assistive device tax credit, the small business shall not deduct for Iowa tax purposes any amount of the cost of an assistive device or workplace modifications which is deductible for federal income tax purposes.

b. To receive the assistive device tax credit, the eligible small business must submit an application to the department of economic development. If the taxpayer meets the criteria for eligibility, the department of economic development shall issue to the taxpayer a certification of entitlement for the assistive device tax credit. However, the combined amount of tax credits that may be approved for a fiscal year under this subsection and section 422.11E shall not exceed five hundred thousand dollars. Tax credit certificates shall be issued on an earliest filed basis. The certification shall contain the taxpayer's name, address, tax identification number, the amount of the credit, and tax year for which the certificate applies. The taxpayer must file the tax credit certificate with the taxpayer's corporate income tax return in order to claim the tax credit. The departments of economic development and revenue shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are approved.

c. For purposes of this subsection:

(1) "*Assistive device*" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "*Assistive device*" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "*Assistive device*" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "*assistive device*" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

(2) "*Disability*" means the same as defined in section 225C.46.

(3) "*Small business*" means a business that either had gross receipts for its preceding tax year of three million dollars or less or employed not more than fourteen full-time employees during its preceding tax year.

(4) "*Workplace modifications*" means physical alterations to the work environment.

10. a. The taxes imposed under this division shall be reduced by a property rehabilitation tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded as provided in section 404A.4, subsection 3.

b. For purposes of this subsection, "*eligible property*" means the same as used in section 404A.1.

11. a. As used in this subsection, unless the context otherwise requires:

(1) "*Ethanol blended gasoline*", "*gasoline*", "*metered pump*", "*retail dealer*", "*sell*", and "*service station*" mean the same as defined in section 422.11C.

(2) "*Tax credit*" means the designated ethanol blended gasoline tax credit as provided in this subsection.

b. The taxes imposed under this division shall be reduced by an ethanol blended gasoline tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection. In order to be eligible, all of the following must apply:

(1) The taxpayer is a retail dealer.

(2) The taxpayer operates at least one service station at which more than sixty percent of the total gallons of gasoline sold and dispensed through one or more metered pumps by the taxpayer is ethanol blended gasoline.

(3) The taxpayer complies with requirements of the department required to administer this subsection.

c. The tax credit shall be calculated separately for each service station site operated by the taxpayer. The amount of the tax credit for each eligible service station is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all metered pumps located at that service station during the tax year in excess of sixty percent of all gasoline sold and dispensed through metered pumps at that service station during the tax year.

d. Any credit in excess of the taxpayer's tax liability shall be refunded. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

12. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15E.43.

13. The taxes imposed under this division shall be reduced by a venture capital fund investment tax credit authorized pursuant to section 15E.51.

14. The taxes imposed under this division shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

15. The taxes imposed under this division shall be reduced by a university-based research utilization program tax credit authorized pursuant to section 262B.11.

2003 Acts, ch 139, §9, 11, 12; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 1, §113, 133; 2003 Acts, 1st Ex, ch 2, §85, 89

1999 amendment to subsection 2 applies retroactively to tax years beginning on or after January 1, 1999; 99 Acts, ch 151, §89

1999 amendment to subsection 5 and new subsection 8 apply retroactively to tax years beginning on or after January 1, 1998; 99 Acts, ch 95, §12, 13

For 2000 amendment to text of former unnumbered paragraph 1 of subsection 5, which provides for the reduction in taxes by a corporate tax credit for increasing research activities, takes effect April 26, 2000, and applies retroactively to tax years beginning on or after January 1, 1999, see 2000 Acts, ch 1146, §8, 9, 11

2000 amendment to subsection 5, which provides for alternative methods of computing the corporate tax credit for increasing research activities, applies retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1194, §21

2000 amendment adding new subsection 9, which provides for an assistive device tax credit for eligible small businesses, applies retroactively to tax years beginning on or after January 1, 2000; 2000 Acts, ch 1194, §21

2001 amendment to subsection 5, paragraph d, is effective May 16, 2001, and applies retroactively to tax years beginning on or after January 1, 2000; 2001 Acts, ch 127, §9, 10

Ethanol blended gasoline tax credit provided in subsection 11 applies beginning on or after January 1, 2002; implementation; refunds; retroactivity; 2001 Acts, ch 123, §6; 2003 Acts, ch 167, §2 - 4

2002 amendment to subsection 5, paragraph d, takes effect April 4, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1069, §10, 14

Subsection 12 takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

Subsection 13 takes effect May 8, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1156, §8

2003 amendments to subsection 5, paragraph d, take effect May 21, 2003, and apply retroactively to January 1, 2002, for tax years beginning on or after that date; 2003 Acts, ch 139, §11, 12

Subsection 14 is effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date; 2003 Acts, 1st Ex, ch 2, §89

For future repeal of subsection 14 effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93

For future repeal of subsection 15 effective June 30, 2010, see 2003 Acts, 1st Ex, ch 1, §114

Terminology change applied

Subsection 5, paragraph d amended

NEW subsections 14 and 15

**422.34 Exempted corporations and organizations.**

The following organizations and corporations shall be exempt from taxation under this division:

1. All state, national, private, co-operative, and savings banks, credit unions, title insurance and trust companies, savings and loan associations, production credit associations, insurance companies or insurance associations, reciprocal or inter-insurance exchanges, and fraternal beneficiary associations.

2. An organization described in section 501 of the Internal Revenue Code unless the exemption is denied under section 501, 502, 503, or 504 of the Internal Revenue Code.

An organization that would have qualified as an organization exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code but for the fact that the requirement that substantially all of the members who are not past or present members of the United States armed forces is not met because such members include ancestors or lineal descendants, shall be considered for purposes of the exemption from taxation under this division as an organization exempt

from federal income tax under section 501(c)(19) of the Internal Revenue Code.

2003 Acts, ch 142, §9

2003 amendment adding a new unnumbered paragraph 2 to subsection 2 takes effect May 21, 2003, and applies to tax years beginning after May 21, 2003; 2003 Acts, ch 142, §11

Subsection 2, NEW unnumbered paragraph 2

**422.35 Net income of corporation — how computed.**

The term “*net income*” means the taxable income before the net operating loss deduction, as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities, from securities of state and other political subdivisions, and from regulated investment companies exempt from federal income tax under the Internal Revenue Code.

3. Where the net income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules and regulations prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract fifty percent of the federal income taxes paid or accrued, as the case may be, during the tax year, adjusted by any federal income tax refunds; and add the Iowa income tax deducted in computing said taxable income.

5. Subtract the amount of the work opportunity tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

6. If the taxpayer is a small business corporation, subtract an amount equal to sixty-five percent of the wages paid to individuals, but not to exceed twenty thousand dollars per individual, named in paragraphs “a”, “b”, and “c” who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. An individual with a disability domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to chapter 906.
- (3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.
- (4) Is in a work release program pursuant to chapter 904, division IX.

c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs "a", "b", and "c" during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

For purposes of this subsection, "*physical or mental impairment*" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

For purposes of this subsection, "*small business*" means small business as defined in section 16.1, subsection 36, except that it shall also include the operation of a farm.

6A. If the taxpayer is a business corporation and does not qualify for the adjustment under subsection 6, subtract an amount equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a" and "b" who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to chapter 906.
- (3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.
- (4) Is in a work release program pursuant to chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs "a" and "b" during the twelve months following the date of first employment by the taxpayer and shall be de-

ducted in the tax years when paid.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs "a" and "b".

7. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

8. Add the amounts deducted and subtract the amounts included in income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the other provisions of the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property involved in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

9. Reserved.

10. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well using methods in section 613 of the Internal Revenue Code that is in excess of the cost depletion amount determined under section 611 of the Internal Revenue Code.

11. If after applying all of the adjustments provided for in this section and the allocation and apportionment provisions of section 422.33, the Iowa taxable income results in a net operating loss, such net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years for a net operating loss incurred in a presidentially declared disaster area by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the corporation first commenced doing business in this state, whichever is later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph "a" or "f" or if not required to be carried back shall be carried forward twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward twenty taxable years.

d. No portion of a net operating loss which was sustained from that portion of the trade or business carried on outside the state of Iowa shall be deducted.

e. The limitations on net operating loss carryback and carryforward under sections

172(b)(1)(E) and 172(h) of the Internal Revenue Code shall apply.

*f.* Notwithstanding paragraph “a”, for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

Provided, however, that a corporation affected by the allocation provisions of section 422.33 shall be permitted to deduct only such portion of the deductions for net operating loss and federal income taxes as is fairly and equitably allocable to Iowa, under rules prescribed by the director.

12. Subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

13. Subtract the interest earned from bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

14. Subtract, to the extent not deducted for federal income tax purposes, the amount of any gift, grant, or donation made to the Iowa educational savings plan trust, as created in chapter 12D, for deposit in the endowment fund of that trust.

15. To the extent not otherwise included pursuant to section 164 of the Internal Revenue Code, subtract the amount of the annual registration fee paid for a multipurpose vehicle pursuant to section 321.124, subsection 3, paragraph “h”, which is based upon the value of the vehicle. For purposes of this subsection, sixty percent of the amount of the registration fee is based upon the value of the vehicle.

16. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property during the period during which it is owned by the taxpayer and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the taxpayer, subsidiary of the taxpayer, or majority owners of the taxpayer, for other than as a speculative shell building, as defined in section 427.1, subsection 27.

17. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal adjusted

gross income.

18. Add, to the extent not already included, income from the sale of obligations of the state and its political divisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state corporate income tax.

19. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, section 101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing taxable income, the following adjustments shall be made:

*a.* Add the total amount of depreciation taken on all property for which the election under section 168(k) of the Internal Revenue Code was made for the tax year.

*b.* Subtract an amount equal to depreciation taken on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

*c.* Any other adjustments to gains or losses to reflect the adjustments made in paragraphs “a” and “b” pursuant to rules adopted by the director.

2003 Acts, ch 139, §10 – 12

Subsection 18 takes effect May 3, 2001, and applies retroactively to January 1, 2001, for tax years beginning on or after that date; 2001 Acts, ch 116, §28

2001 amendments to subsection 6, paragraph c, and subsection 6A, paragraph b, take effect the later of July 1, 2002, or upon enactment of the interstate compact for adult supervision by the thirty-fifth jurisdiction; 2001 Acts, 2nd Ex, ch 6, §25, 26, 37; 2003 Acts, ch 44, §109, 116

Subsection 19 takes effect May 21, 2003, and applies retroactively to tax years ending on or after September 10, 2001; 2003 Acts, ch 139, §11, 12

NEW subsection 19

## DIVISION IV

### RETAIL SALES TAX

See also §453A.26

Multistate discussions to consider simplification and uniformity of sales and use tax administration;

2002 Acts, ch 1161, §4, 5

Industrial processing exemption study committee to study current exemption and rules; annual reports to

general assembly by January, through January 1, 2013;

2003 Acts, 1st Ex, ch 1, §73, 75

For future repeal effective July 1, 2004, of the provisions within this division and the enactment of new sales and use tax provisions, see 2003 Acts, 1st Ex, ch 2, §94 – 151, 205

### 422.43 Tax imposed.

1. There is imposed a tax of five percent upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this division, sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, pay television service, and communication service, including the gross receipts from such sales by any municipal corporation or joint water utility furnishing gas, electric-

ity, water, heat, pay television service, and communication service to the public in its proprietary capacity, except as otherwise provided in this division, when sold at retail in the state to consumers or users; a like rate of tax upon the gross receipts from all sales of tickets or admissions to places of amusement, fairs, and athletic events except those of elementary and secondary educational institutions; a like rate of tax on the gross receipts from an entry fee or like charge imposed solely for the privilege of participating in an activity at a place of amusement, fair, or athletic event unless the gross receipts from the sales of tickets or admissions charges for observing the same activity are taxable under this division; and a like rate of tax upon that part of private club membership fees or charges paid for the privilege of participating in any athletic sports provided club members.

2. There is imposed a tax of five percent upon the gross receipts derived from the operation of all forms of amusement devices and games of skill, games of chance, raffles, and bingo games as defined in chapter 99B, operated or conducted within the state, the tax to be collected from the operator in the same manner as for the collection of taxes upon the gross receipts of tickets or admission as provided in this section.

3. The tax thus imposed covers all receipts from the operation of games of skill, games of chance, raffles and bingo games as defined in chapter 99B, and musical devices, weighing machines, shooting galleries, billiard and pool tables, bowling alleys, pinball machines, slot-operated devices selling merchandise not subject to the general sales taxes and on all receipts from devices or systems where prizes are in any manner awarded to patrons and upon the receipts from fees charged for participation in any game or other form of amusement, and generally upon the gross receipts from any source of amusement operated for profit, not specified in this section, and upon the gross receipts from which no tax is collected for tickets or admission, but no tax shall be imposed upon any activity exempt from sales tax under section 422.45, subsection 3. Every person receiving gross receipts from the sources defined in this section is subject to all provisions of this division relating to retail sales tax and other provisions of this chapter as applicable.

4. There is imposed a tax of five percent upon the gross receipts from the sales of engraving, photography, retouching, printing, and binding services. For the purpose of this division, the sales of engraving, photography, retouching, printing, and binding services are sales of tangible property.

5. There is imposed a tax of five percent upon the gross receipts from the sales of vulcanizing, recapping, and retreading services. For the purpose of this division, the sales of vulcanizing, recapping, and retreading services are sales of tangible property.

6. There is imposed a tax of five percent upon

the gross receipts from the sales of optional service or warranty contracts, except residential service contracts regulated under chapter 523C, which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under this section. The gross receipts are subject to tax even if some of the services furnished are not enumerated under this section. For the purpose of this division, the sale of an optional service or warranty contract, other than a residential service contract regulated under chapter 523C, is a sale of tangible personal property. Additional sales, services, or use taxes shall not be levied on services, parts, or labor provided under optional service or warranty contracts which are subject to tax under this section.

If the optional service or warranty contract is a computer software maintenance or support service contract and there is no separately stated fee for the taxable personal property or for the non-taxable service, the tax of five percent imposed by this subsection shall be imposed on fifty percent of the gross receipts from the sale of such contract. If the contract provides for technical support services only, no tax shall be imposed under this subsection. The provisions of this subsection also apply to the tax imposed by chapter 423.

7. There is imposed a tax of five percent upon the gross receipts from the renting of rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, manufactured or mobile home which is tangible personal property, or tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. "Renting" and "rent" include any kind of direct or indirect charge for such rooms, apartments, or sleeping quarters, or their use. For the purposes of this division, such renting is regarded as a sale of tangible personal property at retail. However, this tax does not apply to the gross receipts from the renting of a room, apartment, or sleeping quarters while rented by the same person for a period of more than thirty-one consecutive days.

8. All revenues arising under the operation of the provisions of this section shall become part of the state general fund.

9. Nothing herein shall legalize any games of skill or chance or slot-operated devices which are now prohibited by law.

10. There is imposed a tax of five percent upon the gross receipts from the rendering, furnishing, or performing of services as defined in section 422.42.

11. The following enumerated services are subject to the tax imposed on gross taxable services: alteration and garment repair; armored car; vehicle repair; battery, tire, and allied; investment counseling; service charges of all financial institutions; barber and beauty; boat repair; vehicle wash and wax; carpentry; roof, shingle, and

glass repair; dance schools and dance studios; dating services; dry cleaning, pressing, dyeing, and laundering; electrical and electronic repair and installation; rental of tangible personal property, except manufactured or mobile homes which are tangible personal property; excavating and grading; farm implement repair of all kinds; flying service; furniture, rug, upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial recreation; house and building moving; household appliance, television, and radio repair; jewelry and watch repair; limousine service, including driver; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking facilities; pipe fitting and plumbing; wood preparation; executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside of the state; sewage services for nonresidential commercial operations; sewing and stitching; shoe repair and shoeshine; sign construction and installation; storage of household goods, mini-storage, and warehousing of raw agricultural products; swimming pool cleaning and maintenance; taxidermy services; telephone answering service; test laboratories, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish baths, massage, and reducing salons, excluding services provided by massage therapists licensed under chapter 152C; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables; wrecking service; wrecker and towing; pay television; campgrounds; carpet and upholstery cleaning; gun and camera repair; janitorial and building maintenance or cleaning; lawn care, landscaping, and tree trimming and removal; pet grooming; reflexology; security and detective services; tanning beds or salons; and water conditioning and softening.

For purposes of this subsection, gross taxable services from rental includes rents, royalties, and copyright and license fees. For purposes of this subsection, “*financial institutions*” means all national banks, federally chartered savings and loan associations, federally chartered savings banks, federally chartered credit unions, banks organized under chapter 524, savings and loan associations and savings banks organized under chapter 534, and credit unions organized under chapter 533.

12. A tax of five percent is imposed upon the gross receipts from the sales of prepaid telephone calling cards and prepaid authorization numbers. For the purpose of this division, the sales of prepaid telephone calling cards and prepaid authori-

zation numbers are sales of tangible personal property.

13. *a.* A tax of five percent is imposed upon the gross receipts from the sales, furnishing, or service of solid waste collection and disposal service.

For purposes of this subsection, “*solid waste*” means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include auto hulks; street sweepings; ash; construction debris; mining waste; trees; tires; lead acid batteries; used oil; hazardous waste; animal waste used as fertilizer; earthen fill, boulders, rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, dissolved materials in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954.

A recycling facility that separates or processes recyclable materials and that reduces the volume of the waste by at least eighty-five percent is exempt from the tax imposed by this subsection if the waste exempted is collected and disposed of separately from other solid waste.

*b.* A person who transports solid waste generated by that person or another person without compensation shall pay the tax imposed by this subsection at the collection or disposal facility based on the disposal charge or tipping fee. However, the costs of a service or portion of a service to collect and manage recyclable materials separated from solid waste by the waste generator is exempt from the tax imposed by this subsection.

14. An increase or decrease in the retail sales tax rate shall only be effective on January 1 or July 1, but not sooner than ninety days after enactment of the rate increase or decrease.

15. For purposes of this division, a sale of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or utilizing cable, or by radio waves, microwaves, satellites, or fiber optics.

16. *a.* A tax of five percent is imposed upon the gross receipts from sales of bundled services contracts. For purposes of this subsection, a “*bundled services contract*” means an agreement providing for a retailer’s performance of services, one or more of which is a taxable service enumerated in this section and one or more of which is not, in return for a consumer’s or user’s single payment for the performance of the services, with no separate statement to the consumer or user of what portion

of that payment is attributable to any one service which is a part of the contract.

b. For purposes of the administration of the tax on bundled services contracts, the director may enter into agreements of limited duration with individual retailers, groups of retailers, or organizations representing retailers of bundled services contracts. Such an agreement shall impose the tax rate only upon that portion of the gross receipts from a bundled services contract which is attributable to taxable services provided under the contract.

17. A tax of five percent is imposed upon the gross receipts from any mobile telecommunication service which this state is allowed to tax by the provisions of the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 116 et seq. For purposes of this subsection, taxes on mobile telecommunications service, as defined under the federal Mobile Telecommunications Sourcing Act, that are deemed to be provided by the customer's home service provider shall be paid to the taxing jurisdiction whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunication service originates, terminates, or passes through and shall in all other respects be taxed in conformity with the federal Mobile Telecommunications Sourcing Act. All other provisions of the federal Mobile Telecommunications Sourcing Act are adopted by the state of Iowa and incorporated into this subsection by reference. With respect to mobile telecommunications service under the federal Mobile Telecommunications Sourcing Act the director shall, if requested, enter into agreements consistent with the provisions of the federal Act.

2003 Acts, ch 178, §112, 121; 2003 Acts, ch 179, §142

Local sales and services tax; §422B.8 et seq.

Subsection 14 is effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §1, 23

Subsection 15 is effective May 16, 2000, and applies retroactively to March 15, 1995; 2000 Acts, ch 1195, §7

Abatement of taxes owed or refund of taxes paid by foundries located in Lee or Jefferson county on certain purchases of tangible personal property between July 1, 1997, and May 6, 2002; filing deadline and limitation on claims for refunds; 2002 Acts, ch 1151, §33, 36

For future repeal effective July 1, 2004, of the provisions within this division and enactment of new sales and use tax provisions, see 2003 Acts, 1st Ex, ch 2, §94 – 151, 205

Subsection 2 amended

Subsection 11, paragraph 3 stricken per its own terms

#### 422.45 Exemptions.

There are hereby specifically exempted from the provisions of this division and from the computation of the amount of tax imposed by it, the following:

1. The gross receipts from sales of tangible personal property and services rendered, furnished, or performed, which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

2. The gross receipts from the sales, furnishing, or service of transportation service except the rental of recreational vehicles or recreational

boats, except the rental of motor vehicles subject to registration which are registered for a gross weight of thirteen tons or less for a period of sixty days or less, and except the rental of aircraft for a period of sixty days or less. This exemption does not apply to the transportation of electric energy. This exemption does not apply to the transportation of natural gas.

2A. The gross receipts from charges paid for the delivery of electricity or natural gas if the sale, furnishing, or service of the electricity or natural gas or its use is exempt from the tax on gross receipts imposed under this division or from the use tax imposed under chapter 423.

3. The gross receipts from sales or rental of tangible personal property, or services rendered by any entity where the profits from the sales or rental of the tangible personal property or services rendered are used by or donated to a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a government entity, or a nonprofit private educational institution, and where the entire proceeds from the sales, rental, or services are expended for any of the following purposes:

a. Educational.

b. Religious.

c. Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add or improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

This exemption does not apply to the gross receipts from games of skill, games of chance, raffles, and bingo games as defined in chapter 99B. This exemption is disallowed on the amount of the gross receipts only to the extent the profits from the sales, rental, or services are not used by or donated to the appropriate entity and expended for educational, religious, or charitable purposes.

4. The gross receipts from sales of vehicles subject to registration or subject only to the issuance of a certificate of title and sales of aircraft subject to registration under section 328.20.

5. The gross receipts from services rendered, furnished, or performed and of all sales of goods, wares, or merchandise used for public purposes to a tax-certifying or tax-levying body of the state or a governmental subdivision of the state, including regional transit systems, as defined in section 324A.1, the state board of regents, department of human services, state department of transportation, any municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except sales of goods, wares, or merchandise or from services rendered, furnished, or performed and used

by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, heat, or pay television service to the general public; except the sales, furnishing or providing of sewage services to a county or municipality on behalf of nonresidential commercial operations; and except the sales, furnishing, or service of solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality.

The exemption provided by this subsection shall also apply to all such sales of goods, wares or merchandise or from services rendered, furnished, or performed and subject to use tax under the provisions of chapter 423.

6. The gross receipts from “casual sales”.

7. A private nonprofit educational institution in this state, nonprofit private museum in this state, tax-certifying or tax-levying body or governmental subdivision of the state, including the state board of regents, state department of human services, state department of transportation, a municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which do not have earnings going to the benefit of an equity investor or stockholder, may make application to the department for the refund of the sales, services, or use tax upon the gross receipts of all sales of goods, wares, or merchandise, or from services rendered, furnished, or performed, to a contractor, used in the fulfillment of a written contract with the state of Iowa, any political subdivision of the state, or a division, board, commission, agency, or instrumentality of the state or a political subdivision, a private nonprofit educational institution in this state, or a nonprofit private museum in this state if the property becomes an integral part of the project under contract and at the completion of the project becomes public property, is devoted to educational uses, or becomes a nonprofit private museum; except goods, wares, or merchandise, or services rendered, furnished, or performed used in the performance of any contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public or in connection with the operation of a municipal pay television system; and except goods, wares, and merchandise used in the performance of a contract for a “project” under chapter 419 as defined in that chapter other than goods, wares, or merchandise used in the performance of a contract for a “project” under chapter 419 for which a bond issue was approved by a municipality prior to July 1, 1968, or for which the goods, wares, or merchandise becomes an integral part of the project under contract and at the completion of the project becomes public property or is devoted to educational uses.

a. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares, or merchandise or services rendered, furnished, or performed and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit, private nonprofit educational institution, or nonprofit private museum which has made any written contract for performance by the contractor. The forms shall be filed by the contractor with the governmental unit, educational institution, or nonprofit private museum before final settlement is made.

b. Such governmental unit, educational institution, or nonprofit private museum shall, not more than one year after the final settlement has been made, make application to the department for any refund of the amount of the sales or use tax which shall have been paid upon any goods, wares, or merchandise, or services rendered, furnished, or performed, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to the governmental unit, educational institution, or nonprofit private museum in the amount of the sales or use tax which has been paid to the state of Iowa under the contract.

Refunds authorized under this subsection shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

c. Any contractor who shall willfully make false report of tax paid under the provisions of this subsection shall be guilty of a simple misdemeanor and in addition thereto shall be liable for the payment of the tax and any applicable penalty and interest.

7A. The refund of sales and use tax paid on transportation construction projects let by the state department of transportation is subject to the special provisions of this subsection.

a. A contractor awarded a contract for a transportation construction project is considered the consumer of all building materials, building supplies and equipment and shall pay sales tax to the supplier or remit consumer use tax directly to the department.

b. The contractor is not required to file information with the department of transportation stating the amount of goods, wares, or merchandise, or services rendered, furnished, or performed and used in the performance of the contract or the amount of sales or use tax paid.

c. The department of transportation shall file a refund claim based on a formula that considers the following:

(1) The quantity of material to complete the contract, and quantities of items of work.

(2) The estimated cost of these materials included in the items of work, and the state sales or

use tax to be paid on the tax rate in effect in section 422.43.

The quantity of materials shall be determined after each letting based on the contract quantities of all items of work let to contract. The quantity of individual component materials required for each item shall be determined and maintained in a database. The total quantities of materials shall be determined by multiplying the quantities of component materials for each contract item of work by the total quantities of each contract item for each letting. Where variances exist in the cost of materials, the lowest cost shall be used as the base cost.

d. Only the state sales or use tax is refundable. Local option taxes paid by the contractor are not refundable.

7B. The gross receipts from the sale of building materials, supplies, or equipment sold to rural water districts organized under chapter 504A as provided in chapter 357A and used for the construction of facilities of a rural water district.

8. The gross receipts of all sales of goods, wares, merchandise, or services, used for educational purposes to any private nonprofit educational institution in this state. For the purpose of this subsection, "educational institution" means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution and the curriculum must include basic courses which are offered every year. "Educational institution" includes an institution primarily functioning as a library.

9. Gross receipts from the sales of newspapers, free newspapers or shoppers guides and the printing and publishing thereof, and envelopes for advertising.

10. The gross receipts from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

11. The gross receipts from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed and the gross receipts from the sales of ethanol blended gasoline, as defined in section 452A.2.

12. Gross receipts from the sale of all foods for human consumption which are eligible for purchase with food coupons issued by the United States department of agriculture pursuant to regulations in effect on July 1, 1974, regardless of whether the retailer from which the foods are purchased is participating in the food stamp program. However, as used in this subsection, "foods" does not include candy, candy-coated items, and other candy products; beverages, excluding tea and coffee, and all mixes and ingredients used to produce such beverages, which do not contain a primary

dairy product or dairy ingredient base or which contain less than fifteen percent natural fruit or vegetable juice; foods prepared on or off the premises of the retailer which are consumed on the premises of the retailer; foods sold by caterers and hot or cold foods prepared for immediate consumption off the premises of the retailer. "Foods prepared for immediate consumption" include any food product upon which an act of preparation, including but not limited to, cooking, mixing, sandwich making, blending, heating, or pouring, has been performed by the retailer so the food product may be immediately consumed by the purchaser.

12A. The gross receipts from the sale of foods purchased with coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. § 2011, et seq.

13. The gross receipts from the sale or rental of prescription drugs or medical devices intended for human use or consumption.

For the purposes of this subsection:

a. "Medical device" means equipment or a supply, intended to be prescribed by a practitioner, including orthopedic or orthotic devices. However, "medical device" also includes prosthetic devices, ostomy, urological, and tracheostomy equipment and supplies, and diabetic testing materials, hypodermic syringes and needles, anesthesia trays, biopsy trays and biopsy needles, cannula systems, catheter trays and invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, intraocular lenses, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets, venous blood sets, and oxygen equipment, intended to be dispensed for human use with or without a prescription to an ultimate user.

b. "Practitioner" means a practitioner as defined in section 155A.3, or a person licensed to prescribe drugs.

c. "Prescription drug" means a drug intended to be dispensed to an ultimate user pursuant to a prescription drug order or medication order from a practitioner, or oxygen or insulin dispensed for human consumption with or without a prescription drug order or medication order.

d. "Ultimate user" means an individual who has lawfully obtained and possesses a prescription drug or medical device for the individual's own use or for the use of a member of the individual's household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed, or prescribed.

14. Reserved.

15. Reserved.

16. The gross receipts from the sale of feed and feed supplements and additives when used for consumption by farm deer or bison.

17. The gross receipts from the sale of horses, commonly known as draft horses, when purchased for use and so used as a draft horse.

18. Gross receipts from the sale of tangible personal property, except vehicles subject to registration, to a person regularly engaged in the business of leasing if the period of the lease is for more than five months, or in the consumer rental purchase business if the property is to be utilized in a transaction involving a consumer rental purchase agreement as defined in section 537.3604, subsection 8, and the leasing or consumer rental of the property is subject to taxation under this division. If tangible personal property exempt under this subsection is made use of for any purpose other than leasing, renting, or consumer rental purchase, the person claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price. The aggregate of the tax paid on the leasing, renting, or rental purchase of such tangible personal property, not to exceed the amount of the sales tax owed, shall be credited against the tax. This sales tax is in addition to any sales or use tax that may be imposed as a result of the disposal of such tangible personal property.

19. The gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping paper, twine, bag, bottle, shipping case, or other similar article or receptacle sold to retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing.\*

20. The gross receipts from sales or services rendered, furnished, or performed by a county or city. This exemption does not apply to the tax specifically imposed under section 422.43 on the gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, pay television service, and communication service to the public by a municipal corporation in its proprietary capacity; does not apply to the sales, furnishing, or service of solid waste collection and disposal service to nonresidential commercial operations; does not apply to the sales, furnishing, or service of sewage service for nonresidential commercial operations; and does not apply to fees paid to cities and counties for the privilege of participating in any athletic sports.

21. The gross receipts from sales or rentals to a printer or publisher of the following: acetate; anti-halation backing; anti-static spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modu-

lation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; laser images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models, modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; pH-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and paste-ups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; varnishes; veloxes; wood mounts; and any other items used in a like capacity to any of the above enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies which are not enumerated in this subsection are excluded from the exemption. "Printer" means that portion of a person's business engaged in printing that completes a finished product for ultimate sale at retail or means that portion of a person's business used to complete a finished printed packaging material used to package a product for ultimate sale at retail. "Printer" does not mean an in-house printer who prints or copyrights its own materials.

22. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to the following nonprofit corporations:

a. Residential care facilities and intermediate care facilities for persons with mental retardation and residential care facilities for persons with mental illness licensed by the department of inspections and appeals under chapter 135C.

b. Residential facilities licensed by the department of human services pursuant to chapter 237, other than those maintained by individuals as defined in section 237.1, subsection 7.

c. Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the accreditation council for services for persons with mental retardation and other persons with developmental disabilities and adult day services approved for reimbursement by the state department of human services.

d. Community mental health centers accredited by the department of human services pursuant to chapter 225C.

e. Community health centers as defined in 42 U.S.C. § 254c and migrant health centers as defined in 42 U.S.C. § 254b.

23. The gross receipts from the sales of special fuel for diesel engines consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire on rivers bordering on the state if the fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such a river.

24. The gross receipts from the rental of motion picture films, video and audio tapes, video and audio discs, records, photos, copy, scripts or other media used for the purpose of transmitting that which can be seen, heard or read, if either of the following conditions are met:

a. The lessee imposes a charge for the viewing or the rental of such media and the charge for the viewing or the rental is subject to taxation under this division or chapter 423.

b. The lessee broadcasts the contents of such media for public viewing or listening.

25. The gross receipts from services rendered, furnished or performed by specialized flying implements of husbandry used for agricultural aerial spraying and aerial commercial and charter transportation services.

26. The gross receipts from the sale or rental of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and replacement parts, if the following conditions are met:

a. The farm machinery and equipment shall be directly and primarily used in production of agricultural products.

b. The farm machinery and equipment shall constitute self-propelled implements or implements customarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in the production of agricultural products.

Vehicles subject to registration, as defined in section 423.1, or replacement parts for such vehicles, shall not be eligible for this exemption.

26A. The gross receipts from the sale or rental of irrigation equipment, whether installed above or below ground, to a contractor or farmer if the equipment will be primarily used in agricultural operations.

27. a. The gross receipts from the sale or rental of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery,

and equipment if such items are any of the following:

(1) Directly and primarily used in processing by a manufacturer.

(2) Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.

(3) Directly and primarily used in research and development of new products or processes of processing.

(4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

(5) Directly and primarily used in recycling or reprocessing of waste products.

(6) Pollution control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government.

b. The gross receipts from the sale of fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph "a", subparagraph (1), (2), (3), (5), or (6).

c. However, the gross receipts from the sale or rental of the following shall not be exempt from the tax imposed by this division:

(1) Hand tools.

(2) Point-of-sale equipment and computers.

(3) Industrial machinery, equipment, and computers, including pollution control equipment, within the scope of section 427A.1, subsection 1, paragraphs "h" and "i".

(4) Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

d. As used in this subsection:

(1) "*Commercial enterprise*" includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers but excludes professions and occupations and nonprofit organizations.

(2) "*Financial institution*" means as defined in section 527.2.

(3) "*Insurance company*" means an insurer organized or operating under chapter 508, 514, 515, 518, 518A, 519, or 520, or authorized to do business in Iowa as an insurer or an insurance producer under chapter 522B.

(4) "*Manufacturer*" means as defined in section 428.20, but also includes contract manufacturers. A contract manufacturer is a manufacturer that otherwise falls within the definition of manufacturer under section 428.20, except that a

contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers. A business engaged in activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials, is a manufacturer with respect to these activities.

(5) “*Processing*” means a series of operations in which materials are manufactured, refined, purified, created, combined, or transformed by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes but is not limited to refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; and construction of packaging and shipping devices, placement into shipping containers or any type of shipping devices or medium, and the movement of materials, components, or products until shipment from the processor.

(6) “*Receipt or producing of raw materials*” means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, the receipt or producing of raw materials is deemed to occur immediately following the severance of the raw materials from the real estate.

28. Reserved.

29. The gross receipts from the rendering, furnishing or performing of the following service: design and installation of new industrial machinery or equipment, including electrical and electronic installation.

30. The gross receipts from the sale of wood chips, sawdust, hay, straw, paper, or other materials used for bedding in the production of agricultural livestock or fowl.

31. Reserved.

32. Gross receipts from the sale of raffle tickets for a raffle licensed pursuant to section 99B.5.

33. The gross receipts from the sale of automotive fluids to a retailer to be used either in providing a service which includes the installation or application of the fluids in or on a motor vehicle, which service is subject to section 422.43, subsection 11, or to be installed in or applied to a motor vehicle which the retailer intends to sell, which sale is subject to section 423.7. For purposes of this subsection, automotive fluids are all those which are refined, manufactured or otherwise processed and packaged for sale prior to their installation in or application to a motor vehicle. They include but are not limited to motor oil and other lu-

bricants, hydraulic fluids, brake fluid, transmission fluid, sealants, undercoatings, antifreeze and gasoline additives.

33A. The gross receipts from the sale of electricity to water companies assessed for property tax pursuant to sections 428.24, 428.26, and 428.28 which is used solely for the purpose of pumping water from a river or well.

34. The gross receipts from the sale, furnishing, or service of gas, electricity, water, or heat to be used in implements of husbandry engaged in agricultural production.

35. The gross receipts from the sale of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in chapter 99B.

36. Gross receipts from the sale of tangible personal property to a nonprofit organization which was organized for the purpose of lending the tangible personal property to the general public for use by them for nonprofit purposes.

37. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to nonprofit legal aid organizations.

38. The gross receipts from the sale of aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

38A. The gross receipts from the sale or rental of aircraft; the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the gross receipts of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, “*aircraft*” means aircraft used in a scheduled interstate federal aviation administration certificated air carrier operation.

38B. The gross receipts from the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the gross receipts of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, “*aircraft*” means aircraft used in a nonscheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

38C. The gross receipts from the sale of aircraft to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

a. The aircraft is kept in the inventory of the dealer for sale at all times.

b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs “a”, “b”, and “c” are not continuously met, the dealer claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price.

39. The gross receipts from the sale or rental of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and replacement parts, if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production, used in aquaculture production, or in the production of flowering, ornamental, or vegetable plants.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is essential to any repair or reconstruction necessary to the farm machinery’s or equipment’s exempt use in livestock or dairy production, use in aquaculture production, or in the production of flowering, ornamental, or vegetable plants.

40. The gross receipts from the sale of a modular home, as defined in section 435.1, to the extent of the portion of the purchase price of the modular home which is not attributable to the cost of the tangible personal property used in the processing of the modular home. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the modular home is forty percent.

41. The gross receipts from the sale of motion picture films, video and audio tapes, video and audio discs and records, or other media which can be seen, heard, or read, to a person regularly engaged in the business of leasing, renting, or selling this property if the ultimate leasing, renting, or selling of the property is subject to tax under this division.

42. The gross receipts from the sale or rental of irrigation equipment used in farming operations.

43. The gross receipts of all sales of goods, wares, merchandise, or services, used for educational, scientific, historic preservation, or aesthetic purpose to a nonprofit private museum.

44. The gross receipts from the sale of tangible personal property or the sale, furnishing, or servicing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state if the other state provides a similar reciprocal exemption for this state and political subdivisions of this state.

45. The gross receipts from the sale of tangible personal property consisting of advertising material including paper to a person in Iowa if that person or that person’s agent will, subsequent to the sale, send that advertising material outside this state and the material is subsequently used solely outside of Iowa. For the purpose of this subsection, “*advertising material*” means any brochure, catalog, leaflet, flyer, order form, return envelope, or similar item used to promote sales of property or services.

46. The gross receipts from the sale of property or of services performed on property which the retailer transfers to a carrier for shipment to a point outside of Iowa, places in the United States mail or parcel post directed to a point outside of Iowa, or transports to a point outside of Iowa by means of the retailer’s own vehicles, and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption shall not apply if the purchaser, consumer, or their agent, other than a carrier, takes physical possession of the property in Iowa.

47. Reserved.

48. The gross receipts from the sale of wind energy conversion property to be used as an electric power source and the sale of the materials used to manufacture, install, or construct wind energy conversion property used or to be used as an electric power source.

For purposes of this section, “*wind energy conversion property*” means any device, including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, which converts wind energy to a form of usable energy.

49. The gross receipts from services rendered, furnished, or performed, by the notification center established pursuant to section 480.3, and the vendor selected pursuant to section 480.3 to provide the notification service.

50. The gross receipts from sales or services rendered, furnished, or performed by the state fair organized under chapter 173 or a fair society organized under chapter 174.

51. The gross receipts from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production.

52. The gross receipts from the sales of food and beverages for human consumption by a nonprofit organization which principally promotes a food or beverage product for human consumption produced, grown, or raised in this state and whose income is exempt from federal taxation under section 501(c) of the Internal Revenue Code.

53. The gross receipts from the sale of tangible property or from services performed, rendered, or furnished to a statewide nonprofit organ procure-

ment organization, as defined in section 142C.2.

54. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital.

54A. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a freestanding nonprofit hospice facility which operates a hospice program as defined in 42 C.F.R. ch. IV, § 418.3, which property or services are to be used in the hospice program.

54B. The gross receipts from all sales of goods, wares, or merchandise, or from services rendered, furnished, or performed which are used in the fulfillment of a written construction contract with a nonprofit hospital licensed pursuant to chapter 135B if all of the following apply:

a. The sales and delivery of the goods, wares, or merchandise, or the services rendered, furnished, or performed occurred between July 1, 1998, and December 31, 2001.

b. The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.

c. The sales or services were purchased by a contractor as the agent for the hospital or were purchased directly by the hospital.

55. The gross receipts from the sale of argon and other similar gases to be used in the manufacturing process.

56. The gross receipts from charges paid to a provider for access to on-line computer services. For purposes of this subsection, "on-line computer service" means a service that provides or enables computer access by multiple users to the internet or to other information made available through a computer server.

57. The gross receipts from the sales of live-stock ear tags by a nonprofit organization whose income is exempt from federal taxation under section 501(c)(6) of the Internal Revenue Code where the proceeds are used in bovine research programs selected or approved by such organization.

58. The gross receipts from the services rendered, furnished, or performed of the sale or rental of information services. "Information services" means every business activity, process, or function by which a seller or its agent accumulates, prepares, organizes, or conveys data, facts, knowledge, procedures, and like services to a buyer or its agent of such information through any tangible or intangible medium. Information accumulated, prepared, or organized for a buyer or its agent is an information service even though it may incorporate preexisting components of data or other information. Information services include, but are not limited to, database files, mailing lists, subscription files, market research, credit reports, surveys, real estate listings, bond rating reports,

abstracts of title, bad check lists, broadcasting rating services, wire services, and scouting reports, or other similar items.

59. a. The gross receipts from the sale of an article of clothing or footwear designed to be worn on or about the human body if all of the following apply:

(1) The sales price of the article is less than one hundred dollars.

(2) The sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Saturday.

b. This subsection does not apply to any of the following:

(1) Special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed.

(2) Accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

(3) The rental of clothing or footwear.

60. a. The gross receipts from the sale, furnishing, or service of metered gas to provide energy for residential customers and the gross receipts from the sale, furnishing, or service of fuel, including propane and heating oil, used to provide heat for residential dwellings and units of apartment and condominium complexes used for human occupancy.

b. Paragraph "a" applies to the gross receipts from the sale, furnishing, or service of metered gas for energy if the date of the utility billing of the customer is during March 2001, or April 2001, or applies to the gross receipts from the sale, furnishing, or service of fuel used for heating purposes if such sale, furnishing, or service occurs during the period beginning with February 5, 2001, and ending on March 31, 2001.

61. a. Subject to paragraph "b", the gross receipts from the sale, furnishing, or service of metered gas, electricity, and fuel, including propane and heating oil to residential customers which is used to provide energy for residential dwellings and units of apartment and condominium complexes used for human occupancy.

b. The exemption in this subsection shall be phased in by means of a reduction in the tax rate as follows:

(1) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2002, through December 31, 2002, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2002, through December 31, 2002, the rate of tax is four percent of the gross receipts.

(2) If the date of the utility billing or meter

reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2003, through December 31, 2003, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2003, through December 31, 2003, the rate of tax is three percent of the gross receipts.

(3) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2004, through December 31, 2004, the rate of tax is two percent of the gross receipts.

(4) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2005, through December 31, 2005, the rate of tax is one percent of the gross receipts.

(5) If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2006, the rate of tax is zero percent of the gross receipts.

c. The exemption in this subsection does not apply to local option sales and services tax imposed pursuant to chapters 422B and 422E.

62. The gross receipts from sales of goods, wares, or merchandise, or from services performed, rendered, or furnished to a nonprofit private art center to be used in the operation of the art center.

63. The gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a recognized community action agency as provided in section 216A.93 to be used for the purposes of the agency.

64. The gross receipts from the sale or rental of core and mold making equipment and sand handling equipment directly and primarily used in the mold making process by a foundry.

65. The gross receipts from noncustomer point of sale or noncustomer automated teller machine access or service charges assessed by a financial institution. For purposes of this subsection, "financial institution" means the same as defined in section 527.2.

2003 Acts, ch 164, §1, 3; 2003 Acts, ch 179, §126

\*See 88 Acts, ch 1182, §4 and 5, for amendment to subsection 19 and addition of subsections 19A and 19B, effective on a date to be established by rule of laboratory division of the department of agriculture and land stewardship upon determination that degradable products are available to a degree which makes compliance reasonably possible; 88 Acts, ch 1182, §6; 89

Acts, ch 83, §86

1999 amendment to subsection 2, relating to the transportation of natural gas, takes effect April 1, 2000; 99 Acts, ch 151, §89

Subsection 54B takes effect May 19, 2000, and applies retroactively to July 1, 1998; refunds limited to aggregate of \$25,000; filing deadline; 2000 Acts, ch 1207, §2, 3

Subsection 58 takes effect May 16, 2000, and applies retroactively to March 15, 1995; refunds limited to aggregate of \$25,000; filing deadline; 2000 Acts, ch 1195, §6, 7

2001 amendments to subsections 3 and 8 are effective January 1, 2002; 2001 Acts, ch 150, §26

Subsection 26A is effective May 18, 2001, and applies retroactively to April 1, 1995; refunds limited to aggregate of \$25,000; filing deadline; 2001 Acts, ch 149, §2, 3

2001 amendment to subsection 27, paragraph d, subparagraph (3) is effective January 1, 2002; 2001 Acts, ch 16, §37

Alternative billing procedure for utilities to provide exemption in subsection 60; 2001 Acts, ch 1, §3, 4

Subsection 16 takes effect March 6, 2002, and applies retroactively to April 1, 1995; 2002 Acts, ch 1010, §4

Limitation on refunds for claims arising under subsection 16 for sales occurring between April 1, 1995, and March 6, 2002; 2002 Acts, ch 1010, §3, 4

Refunds of taxes, interest, or penalties arising from enactment of subsection 64, in 2003 Acts, ch 164, §1, are limited to \$600,000 in the aggregate; refund claims to be filed prior to October 1, 2003; prorating of claims if total exceeds aggregate limitation; 2003 Acts, ch 164, §2, 3

For future repeal of provisions within this chapter division and enactment of new sales and use tax provisions, see 2003 Acts, 1st Ex, ch 2, §94 - 151, 205

Subsection 64 takes effect May 30, 2003, and applies retroactively to July 1, 1997; 2003 Acts, ch 164, §3

NEW subsections 64 and 65

#### 422.60 Imposition of tax — credit.

1. A franchise tax according to and measured by net income is imposed on financial institutions for the privilege of doing business in this state as financial institutions.

2. In addition to all taxes imposed under this division, there is imposed upon each financial institution doing business within the state the greater of the tax determined in section 422.63 or the state alternative minimum tax equal to sixty percent of the maximum state franchise tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.61, subsection 3, and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (c)(1), (d), (f), and (g), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code.

b. Make the adjustments provided in section 56(c)(1) of the Internal Revenue Code, except that in making the calculation under sections 56(f)(1) and 56(g)(1) of the Internal Revenue Code the state alternative minimum taxable income, computed without regard to the adjustments made by this paragraph, the exemption provided for in paragraph "d", and the state alternative tax net operating loss described in paragraph "e", shall be

substituted for the items described in sections 56(f)(1)(B) and 56(g)(1)(B) of the Internal Revenue Code.

c. Apply the allocation and apportionment provisions of section 422.63.

d. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

e. In the case of a net operating loss beginning after December 31, 1986 which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which was taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986 which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

3. a. There is allowed as a credit against the tax determined in section 422.63 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the adjusted net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b. The allowable credit under paragraph "a" for a tax year shall not exceed the excess, if any, of the tax determined in section 422.63 over the state alternative minimum tax as determined in subsection 2.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 2 for the tax year over the tax determined in section 422.63 for the tax year.

The adjusted net minimum tax for a tax year is the net minimum tax for the tax year reduced by the amount which would be the net minimum tax if the only item of tax preference taken into account was that described in paragraph (6) of section 57(a) of the Internal Revenue Code.

4. a. The taxes imposed under this division shall be reduced by a property rehabilitation tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded as provided in section 404A.4, subsection 3.

b. For purposes of this subsection, "eligible

property" means the same as used in section 404A.1.

5. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15E.43.

6. The taxes imposed under this division shall be reduced by a venture capital fund investment tax credit authorized pursuant to section 15E.51.

7. The taxes imposed under this division shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

2003 Acts, 1st Ex, ch 2, §86, 89

Subsection 4 takes effect February 21, 2002, and applies retroactively to tax years beginning on or after January 1, 2001; 2002 Acts, ch 1003, §5

Subsection 5 takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

Subsection 6 takes effect May 8, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1156, §8

Subsection 7 is effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date; 2003 Acts, 1st Ex, ch 2, §89

For future repeal of subsection 7 effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93

NEW subsection 7

**422.65 Allocation of revenue.** Repealed by 2003 Acts, ch 178, § 11.

**422.72 Information deemed confidential — informational exchange agreement — subpoenas.**

1. It is unlawful for the director, or any person having an administrative duty under this chapter, or any present or former officer or other employee of the state authorized by the director to examine returns, to divulge in any manner whatever, the business affairs, operations, or information obtained by an investigation under this chapter of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy of a return or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law. It is unlawful for any person to willfully inspect, except as authorized by the director, any return or return information. However, the director may authorize examination of such state returns and other state information which is confidential under this section, if a reciprocal arrangement exists, by tax officers of another state or the federal government. The director may, by rules adopted pursuant to chapter 17A, authorize examination of state information and returns by other officers or employees of this state to the extent required by their official duties and responsibilities. Disclosure of state information to tax officers of another state is limited to disclosures which have a tax administrative purpose and only to officers of those states which by agreement with this state limit the disclosure of the information as strictly as the laws of this state protecting the confidentiality of

returns and information. The director shall place upon the state tax form a notice to the taxpayer that state tax information may be disclosed to tax officials of another state or of the United States for tax administrative purposes.

The department shall not authorize the examination of tax information by officers and employees of this state, another state, or of the United States if the officers or employees would otherwise be required to obtain a judicial order to examine the information if it were to be obtained from another source, and if the purpose of the examination is other than for tax administration. However, the director may provide sample individual income tax information to be used for statistical purposes to the legislative services agency. The information shall not include the name or mailing address of the taxpayer or the taxpayer's social security number. Any information contained in an individual income tax return which is provided by the director shall only be used as a part of a database which contains similar information from a number of returns. The legislative services agency shall not have access to the income tax returns of individuals. Each request for individual income tax information shall contain a statement by the director of the legislative services agency that the individual income tax information received by the legislative services agency shall be used solely for statistical purposes. This subsection does not prevent the department from authorizing the examination of state returns and state information under the provisions of section 252B.9. This subsection prevails over any general law of this state relating to public records.

The director shall provide state tax returns and return information to the auditor of state, to the extent that the information is necessary to complete the annual audit of the department required by section 11.2. The state tax returns and return information provided by the director shall remain confidential and shall not be included in any public documents issued by the auditor of state.

2. Federal tax returns, copies of returns, and return information as defined in section 6103(b) of the Internal Revenue Code, which are required to be filed with the department for the enforcement of the income tax laws of this state, shall be held as confidential by the department and subject to the disclosure limitations in subsection 1.

3. Unless otherwise expressly permitted by section 8A.504, section 421.17, subsections 22, 23, and 26, sections 252B.9, 421.19, 421.28, 422.20, and 452A.63, and this section, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the in-

ternal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. A person violating subsection 1, 2, 3, or 6 is guilty of a serious misdemeanor.

5. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

6. The department may enter into a written informational exchange agreement for tax administration purposes with a city or county which is entitled to receive funds due to a local hotel and motel tax or a local sales and services tax. The written informational exchange agreement shall designate no more than two paid city or county employees that have access to actual return information relating to that city's or county's receipts from a local hotel and motel tax or a local sales and services tax.

City or county employees designated to have access to information under this subsection are deemed to be officers and employees of the state for purposes of the restrictions pursuant to subsection 1 pertaining to confidential information. The department may refuse to enter into a written informational exchange agreement if the city or county does not agree to pay the actual cost of providing the information and the department may refuse to abide by a written informational exchange agreement if the city or county does not promptly pay the actual cost of providing the information or take reasonable precautions to protect the information's confidentiality.

7. Notwithstanding subsection 3, the director shall provide state tax returns and return information in response to a subpoena issued by the court pursuant to rule of criminal procedure 2.5 commanding the appearance before the attorney general or an assistant attorney general if the subpoena is accompanied by affidavits from such person and from a sworn peace officer member of the department of public safety affirming that the information is necessary for the investigation of a felony violation of chapter 124 or chapter 706B. The affidavits accompanying the subpoenas and the information provided by the director shall remain a confidential record which may be disseminated only to a prosecutor or peace officer involved in the investigation, or to the taxpayer who filed the information and to the court in connection with the filing of criminal charges or institution of a forfeiture action. A person who knowingly files a false affidavit with the director to secure information or who divulges information received un-

der this subsection in a manner prohibited by this subsection commits a serious misdemeanor.

2003 Acts, ch 35, §45, 46, 49; 2003 Acts, ch 145, §257  
Terminology changes applied  
Internal reference changes applied  
Subsection 3, unnumbered paragraph 1 amended

#### **422.73 Correction of errors — refunds, credits and carrybacks.**

1. If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of division IV of this chapter or chapter 423, then such amount shall be credited against any tax due, or to become due, on the books of the department from the person who made the erroneous payment, or such amount shall be refunded to such person by the department. A claim for refund or credit that has not been filed with the department within four years after the tax payment for quarterly periods beginning on or after January 1, 2000, and before January 1, 2001, upon which a refund or credit is claimed became due, and within three years after the tax payment for quarterly periods beginning on or after January 1, 2001, upon which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later, shall not be allowed by the director.

2. If it appears that an amount of tax, penalty, or interest has been paid which was not due under division II, III or V of this chapter, then that amount shall be credited against any tax due on the books of the department by the person who made the excessive payment, or that amount shall be refunded to the person or with the person's approval, credited to tax to become due. A claim for refund or credit that has not been filed with the department within three years after the return upon which a refund or credit claimed became due, or within one year after the payment of the tax upon which a refund or credit is claimed was made, whichever time is the later, shall not be allowed by the director. If, as a result of a carryback of a net operating loss or a net capital loss, the amount of tax in a prior period is reduced and an overpayment results, the claim for refund or credit of the overpayment shall be filed with the department within the three years after the return for the taxable year of the net operating loss or net capital loss became due. Notwithstanding the period of limitation specified, the taxpayer shall have six

months from the day of final disposition of any income tax matter between the taxpayer and the internal revenue service with respect to the particular tax year to claim an income tax refund or credit.

The department shall enter into an agreement with the internal revenue service for the transmission of federal income tax reports on individuals required to file an Iowa income tax return who have been involved in an income tax matter with the internal revenue service. After final disposition of the income tax matter between the taxpayer and the internal revenue service, the department shall determine whether the individual is due a state income tax refund as a result of final disposition of such income tax matter. If the individual is due a state income tax refund, the department shall notify the individual within thirty days and request the individual to file a claim for refund or credit with the department.

3. Notwithstanding subsection 2, a claim for credit or refund of the income tax paid is considered timely if the claim is filed with the department on or before June 30, 1999, if the taxpayer's federal income tax was refunded due to a provision in the federal Taxpayer Relief Act of 1997, Pub. L. No. 105-34, which affected the federal adjusted gross incomes of individuals or estates and trusts, or affected the taxable incomes of corporate taxpayers.

1999 amendment to subsection 1 is effective January 1, 2000, for state sales and use taxes; 99 Acts, ch 156, §4, 23

For future amendment striking subsection 1 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §185, 205

Section not amended; footnote added

#### **422.75 Statistics — publication.**

The department shall prepare and publish an annual report which shall include statistics reasonably available, with respect to the operation of this chapter, including amounts collected, classification of taxpayers, and such other facts as are deemed pertinent and valuable. The annual report shall also include the reports and information required pursuant to section 421.1, subsection 5; section 421.17, subsection 13; section 421.17, subsection 27, paragraph "h"; section 421.60, subsection 2, paragraphs "i" and "l"; and 1997 Iowa Acts, chapter 211, section 22, subsection 5, paragraph "a".

Section not amended; internal reference change applied

## CHAPTER 422A

### HOTEL AND MOTEL TAX

Personal liability of officers and partners; see §421.26  
For future transfer of this chapter to ch 423A,  
see 2003 Acts, 1st Ex, ch 2, §203, 205

#### **422A.1 Hotel and motel tax.**

A city or county may impose by ordinance of the

city council or by resolution of the board of supervisors a hotel and motel tax, at a rate not to exceed

seven percent, which shall be imposed in increments of one or more full percentage points upon the gross receipts from the renting of sleeping rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, manufactured or mobile home which is tangible personal property, or tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals; except the gross receipts from the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state of Iowa and the guests of a religious institution if the property is exempt under section 427.1, subsection 8, and the purpose of renting is to provide a place for a religious retreat or function and not a place for transient guests generally. The tax when imposed by a city shall apply only within the corporate boundaries of that city and when imposed by a county shall apply only outside incorporated areas within that county. "Renting" and "rent" include any kind of direct or indirect charge for such sleeping rooms, apartments, or sleeping quarters, or their use. However, the tax does not apply to the gross receipts from the renting of a sleeping room, apartment, or sleeping quarters while rented by the same person for a period of more than thirty-one consecutive days.

Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the hotel and motel tax, the county auditor shall give written notice by sending a copy of the abstract of votes from the favorable election to the director of revenue.

A local hotel and motel tax shall be imposed on January 1, April 1, July 1, or October 1, following the notification of the director of revenue. Once imposed, the tax shall remain in effect at the rate imposed for a minimum of one year. A local hotel and motel tax shall terminate only on March 31, June 30, September 30, or December 31. At least forty-five days prior to the tax being effective or prior to a revision in the tax rate, or prior to the repeal of the tax, a city or county shall provide notice by mail of such action to the director of revenue.

A city or county shall impose a hotel and motel tax or increase the tax rate only after an election at which a majority of those voting on the question favors imposition or increase. However, a hotel and motel tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422A.2, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose. The election shall be held at the time of the regular city election or the county's general election or at the time of a special election.

The director of revenue shall administer a local

hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax law. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting local hotel and motel tax liability. All moneys received or refunded one hundred eighty days after the date on which a city or county terminates its local hotel and motel tax shall be deposited in or withdrawn from the state general fund.

The director, in consultation with local officials, shall collect and account for a local hotel and motel tax and shall credit all revenues to a "local transient guest tax fund" established by section 422A.2.

No tax permit other than the state tax permit required under section 422.53 may be required by local authorities.

The tax levied shall be in addition to any state sales tax imposed under section 422.43. Section 422.25, subsection 4, sections 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, and sections 422.70 to 422.75, consistent with the provisions of this chapter, apply with respect to the taxes authorized under this chapter, in the same manner and with the same effect as if the hotel and motel taxes were retail sales taxes within the meaning of those statutes. Notwithstanding this paragraph, the director shall provide for quarterly filing of returns as prescribed in section 422.51 and for other than quarterly filing of returns as prescribed in section 422.51, subsection 2. The director may require all persons, as defined in section 422.42, who are engaged in the business of deriving gross receipts subject to tax under this chapter, to register with the department.

2003 Acts, ch 145, §286  
For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §186, 205  
Terminology change applied

#### **422A.2 Local transient guest tax fund.**

1. There is created in the department of revenue a local transient guest tax fund which shall consist of all moneys credited to such fund under section 422A.1.

2. All moneys in the local transient guest tax fund shall be remitted at least quarterly by the department of revenue, pursuant to rules of the director of revenue, to each city in the amount collected from businesses in that city and to each county in the amount collected from businesses in the unincorporated areas of the county.

3. Moneys received by the city from this fund shall be credited to the general fund of the city, subject to the provisions of subsection 4.

4. The revenue derived from any hotel and motel tax authorized by this chapter shall be used as follows:

a. Each county or city which levies the tax shall spend at least fifty percent of the revenues derived therefrom for the acquisition of sites for, or

constructing, improving, enlarging, equipping, repairing, operating, or maintaining of recreation, convention, cultural, or entertainment facilities including but not limited to memorial buildings, halls and monuments, civic center convention buildings, auditoriums, coliseums, and parking areas or facilities located at those recreation, convention, cultural, or entertainment facilities or the payment of principal and interest, when due, on bonds or other evidence of indebtedness issued by the county or city for those recreation, convention, cultural, or entertainment facilities; or for the promotion and encouragement of tourist and convention business in the city or county and surrounding areas.

b. The remaining revenues may be spent by the city or county which levies the tax for any city or county operations authorized by law as a proper purpose for the expenditure within statutory limitations of city or county revenues derived from ad valorem taxes.

c. Any city or county which levies and collects the hotel and motel tax authorized by this chapter may pledge irrevocably an amount of the revenues derived therefrom for each of the years the bonds remain outstanding to the payment of bonds which the city or county may issue for one or more of the purposes set forth in paragraph "a" of this subsection. Any revenue pledged to the payment of such bonds may be credited to the spending requirement of paragraph "a" of this subsection.

d. The provisions of division III of chapter 384 relating to the issuance of corporate purpose bonds apply to the issuance by a city of bonds payable as provided in this section and the provisions of chapter 331, division IV, part 3, relating to the issuance of county purpose bonds apply to the issuance by a county of bonds payable as provided in this section. The provisions of chapter 76 apply to the bonds payable as provided in this section except that the mandatory levy to be assessed pursuant to section 76.2 shall be at a rate to generate an amount which together with the receipts from the pledged portion of the hotel and motel tax is sufficient to pay the interest and principal on the bonds. All amounts collected as a result of the levy assessed pursuant to section 76.2 and paid out in the first instance for bond principal and interest shall be repaid to the city or county which levied the tax from the first available hotel and motel tax collections received in excess of the requirement for the payment of the principal and interest of the bonds and when repaid shall be applied in reduction of property taxes.

The amount of bonds which may be issued under section 76.3 shall be the amount which could be retired from the actual collections of the hotel and motel tax for the last four calendar quarters, as certified by the director of revenue. The amount of tax revenues pledged jointly by other cities or counties may be considered for the purpose of de-

termining the amount of bonds which may be issued. If the hotel and motel tax has been in effect for less than four calendar quarters, the tax collected within the shorter period may be adjusted to project the collections for the full year for the purpose of determining the amount of the bonds which may be issued.

e. A city or county, jointly with one or more other cities or counties as provided in chapter 28E, may pledge irrevocably any amount derived from the revenues of the hotel and motel tax to the support or payment of bonds issued for a project within the purposes set forth in paragraph "a" of this subsection and located within one or more of the participatory cities or counties or may apply the proceeds of its bonds to the support of any such project. Revenue so pledged or applied shall be credited to the spending requirement of paragraph "a" of this subsection.

f. A city or county acting on behalf of an unincorporated area may, in lieu of calling an election, institute proceedings for the issuance of bonds under this section by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city or unincorporated area at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds.

If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by eligible electors residing in the city or the unincorporated area equal in number to at least three percent of the registered voters of the city or unincorporated area is filed, asking that the question of issuing the bonds be submitted to the registered voters of the city or unincorporated area, the council or board of supervisors acting on behalf of an unincorporated area shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds.

The proposition of issuing bonds under this section is not approved unless the vote in favor of the proposition is equal to a majority of the vote cast.

If no petition is filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the council or board of supervisors acting on behalf of an unincorporated area may proceed with the authorization and issuance of the bonds.

Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with this paragraph.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 422B

### LOCAL OPTION TAXES

Personal liability of officers and partners; see §421.26  
 Multistate discussions to consider simplification and uniformity  
 of sales and use tax administration; 2002 Acts, ch 1161, §4, 5  
 For future transfer of this chapter to ch 423B,  
 see 2003 Acts, 1st Ex, ch 2, §203, 205

#### **422B.1 Authorization — election — imposition and repeal.**

1. A county may impose by ordinance of the board of supervisors local option taxes authorized by this chapter, subject to this section and subject to the exception provided in subsection 2.

2. *a.* A city whose corporate boundaries include areas of two counties may impose by ordinance of its city council a local sales and services tax if all of the following apply:

(1) At least eighty-five percent of the residents of the city live in one county.

(2) The county in which at least eighty-five percent of the city residents reside has held an election on the question of the imposition of a local sales and services tax and a majority of those voting on the question in the city favored its imposition.

(3) The city has entered into an agreement on the distribution of the sales and services tax revenues collected from the area where the city tax is imposed with the county where such area is located.

*b.* The city council of a city authorized to impose a local sales and services tax pursuant to paragraph “*a*” shall only do so subject to all of the following restrictions:

(1) The tax shall only be imposed in the area of the city located in the county where not more than fifteen percent of the city’s residents reside.

(2) The tax shall be at the same rate and become effective at the same time as the county tax imposed in the other area of the city.

(3) The tax once imposed shall continue to be imposed until the county-imposed tax is reduced or increased in rate or repealed, and then the city-imposed tax shall also be reduced or increased in rate or repealed in the same amount and be effective on the same date.

(4) The tax shall be imposed on the same basis as provided in section 422B.8 and notification requirements in section 422B.9 apply.

(5) The city shall assist the department of revenue to identify the businesses in the area which are to collect the city-imposed tax. The process shall be ongoing as long as the city tax is imposed.

*c.* The agreement on the distribution of the revenues collected from the city-imposed tax shall provide that fifty percent of such revenues shall be remitted to the county in which the part of the city where the city tax is imposed is located.

*d.* The latest certified federal census preced-

ing the election held by the county on the question of imposition of the local sales and services tax shall be used in determining if the city qualifies under paragraph “*a*”, subparagraph (1), to impose its own tax and in determining the area where the city tax may be imposed under paragraph “*b*”, subparagraph (1).

*e.* A city is not authorized to impose a local sales and services tax under this subsection after July 1, 2000. A city that has imposed a local sales and services tax under this subsection on or before July 1, 2000, may continue to collect the tax until such time as the tax is repealed by the city and the fact that the area acquires more than fifteen percent of the city’s residents after the tax is imposed shall not affect the imposition or collection of the tax.

3. A local option tax shall be imposed only after an election at which a majority of those voting on the question favors imposition and shall then be imposed until repealed as provided in subsection 6, paragraph “*a*”. If the tax is a local vehicle tax imposed by a county, it shall apply to all incorporated and unincorporated areas of the county. If the tax is a local sales and services tax imposed by a county, it shall only apply to those incorporated areas and the unincorporated area of that county in which a majority of those voting in the area on the tax favors its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favors its imposition. For purposes of the local sales and services tax, a city is not contiguous to another city if the only road access between the two cities is through another state.

4. *a.* A county board of supervisors shall direct within thirty days the county commissioner of elections to submit the question of imposition of a local vehicle tax or a local sales and services tax to the registered voters of the incorporated and unincorporated areas of the county upon receipt of a petition, requesting imposition of a local vehicle tax or a local sales and services tax, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding state general election. In the case of a local vehicle tax, the petition requesting imposition shall specify the rate of tax and the classes, if any, that are to be exempt. If

more than one valid petition is received, the earliest received petition shall be used.

b. The question of the imposition of a local sales and services tax shall be submitted to the registered voters of the incorporated and unincorporated areas of the county upon receipt by the county commissioner of elections of the motion or motions, requesting such submission, adopted by the governing body or bodies of the city or cities located within the county or of the county, for the unincorporated areas of the county, representing at least one half of the population of the county. Upon adoption of such motion, the governing body of the city or county, for the unincorporated areas, shall submit the motion to the county commissioner of elections and in the case of the governing body of the city shall notify the board of supervisors of the adoption of the motion. The county commissioner of elections shall keep a file on all the motions received and, upon reaching the population requirements, shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the governing body which adopted the motion. The county commissioner of elections shall eliminate from the file any motion that ceases to be valid. The manner provided under this paragraph for the submission of the question of imposition of a local sales and services tax is an alternative to the manner provided in paragraph "a".

5. The county commissioner of elections shall submit the question of imposition of a local option tax at a state general election or at a special election held at any time other than the time of a city regular election. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the type and rate of tax and in the case of a vehicle tax the classes that will be exempt and in the case of a local sales and services tax the date it will be imposed which date shall not be earlier than ninety days following the election. The ballot proposition shall also specify the approximate amount of local option tax revenues that will be used for property tax relief and shall contain a statement as to the specific purpose or purposes for which the revenues shall otherwise be expended. If the county board of supervisors decides under subsection 6 to specify a date on which the local option sales and services tax shall automatically be repealed, the date of the repeal shall also be specified on the ballot. The rate of the vehicle tax shall be in increments of one dollar per vehicle as set by the petition seeking to impose the tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

6. a. If a majority of those voting on the ques-

tion of imposition of a local option tax favors imposition of a local option tax, the governing body of that county shall impose the tax at the rate specified for an unlimited period. However, in the case of a local sales and services tax, the county shall not impose the tax in any incorporated area or the unincorporated area if the majority of those voting on the tax in that area did not favor its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax shall be imposed in each of those contiguous cities only if the majority of those voting on the tax in the total area covered by the contiguous cities favored its imposition. The local option tax may be repealed or the rate increased or decreased or the use thereof changed after an election at which a majority of those voting on the question of repeal or rate or use change favored the repeal or rate or use change. The date on which the repeal, rate, or use change is to take effect shall not be earlier than ninety days following the election. The election at which the question of repeal or rate or use change is offered shall be called and held in the same manner and under the same conditions as provided in subsections 4 and 5 for the election on the imposition of the local option tax. However, in the case of a local sales and services tax where the tax has not been imposed countywide, the question of repeal or imposition or rate or use change shall be voted on only by the registered voters of the areas of the county where the tax has been imposed or has not been imposed, as appropriate. However, the governing body of the incorporated area or unincorporated area where the local sales and services tax is imposed may, upon its own motion, request the county commissioner of elections to hold an election in the incorporated or unincorporated area, as appropriate, on the question of the change in use of local sales and services tax revenues. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. If a majority of those voting in the incorporated or unincorporated area on the change in use favors the change, the governing body of that area shall change the use to which the revenues shall be used. The ballot proposition shall list the present use of the revenues, the proposed use, and the date after which revenues received will be used for the new use.

When submitting the question of the imposition of a local sales and services tax, the county board of supervisors may direct that the question contain a provision for the repeal, without election, of the local sales and services tax on a specific date, which date shall be as provided in section 422B.9, subsection 1.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of a local option tax, the county auditor shall give written notice of the result of the election by sending a copy

of the abstract of the votes from the favorable election to the director of revenue or, in the case of a local vehicle tax, to the director of the department of transportation.

7. More than one of the authorized local option taxes may be submitted at a single election and the different taxes shall be separately implemented as provided in this section.

Costs of local option tax elections shall be apportioned among jurisdictions within the county voting on the question at the same election on a pro rata basis in proportion to the number of registered voters in each taxing jurisdiction and the total number of registered voters in all of the taxing jurisdictions.

8. Local option taxes authorized to be imposed as provided in this chapter are a local sales and services tax and a local vehicle tax. The rate of the tax shall be in increments of one dollar per vehicle for a vehicle tax as set on the petition seeking to impose the vehicle tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body.

9. In a county that has imposed a local option sales and services tax, the board of supervisors shall, notwithstanding any contrary provision of this chapter, repeal the local option sales and services tax in the unincorporated areas or in an incorporated city area in which the tax has been imposed upon adoption of its own motion for repeal in the unincorporated areas or upon receipt of a motion adopted by the governing body of that incorporated city area requesting repeal. The board of supervisors shall repeal the local option sales and services tax effective on the later of the date of the adoption of the repeal motion or the earliest date specified in section 422B.9, subsection 1. For purposes of this subsection, incorporated city area includes an incorporated city which is contiguous to another incorporated city.

10. Notwithstanding subsection 9 or any other contrary provision of this chapter, a local option sales and services tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422B.12, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose.

2003 Acts, ch 145, §286

Amendments to subsection 5, subsection 6, paragraph a, and subsection 9 are effective April 1, 2000, for local sales and services taxes; 99 Acts, ch 156, §§, 9, 11, 23

Terminology change applied

#### **422B.8 Local sales and services tax.**

A local sales and services tax at the rate of not more than one percent may be imposed by a county on the gross receipts taxed by the state under chapter 422, division IV. A local sales and services tax shall be imposed on the same basis as the state sales and services tax or in the case of the use of natural gas, natural gas service, electricity, or

electric service on the same basis as the state use tax and shall not be imposed on the sale of any property or on any service not taxed by the state, except the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in chapter 452A which is consumed for highway use or in watercraft or aircraft if the fuel tax is paid on the transaction and a refund has not or will not be allowed, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A during the period the hotel and motel tax is imposed, on the gross receipts from the sale of equipment by the state department of transportation, on the gross receipts from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99G and except the tax shall not be imposed on the gross receipts from the sale or use of natural gas, natural gas service, electricity, or electric service in a city or county where the gross receipts from the sale of natural gas or electric energy are subject to a franchise fee or user fee during the period the franchise or user fee is imposed. A local sales and services tax is applicable to transactions within those incorporated and unincorporated areas of the county where it is imposed and shall be collected by all persons required to collect state gross receipts taxes. However, a person required to collect state retail sales tax under chapter 422, division IV, is not required to collect local sales and services tax on transactions delivered within the area where the local sales and services tax is imposed unless the person has physical presence in that taxing area. All cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favors its imposition.

The amount of the sale, for purposes of determining the amount of the local sales and services tax, does not include the amount of any state gross receipts taxes.

A tax permit other than the state tax permit required under section 422.53 or 423.10 shall not be required by local authorities.

If a local sales and services tax is imposed by a county pursuant to this chapter, a local excise tax at the same rate shall be imposed by the county on the purchase price of natural gas, natural gas service, electricity, or electric service subject to tax

under chapter 423 and not exempted from tax by any provision of chapter 423. The local excise tax is applicable only to the use of natural gas, natural gas service, electricity, or electric service within those incorporated and unincorporated areas of the county where it is imposed and, except as otherwise provided in this chapter, shall be collected and administered in the same manner as the local sales and services tax. For purposes of this chapter, “local sales and services tax” shall also include the local excise tax.

2003 Acts, ch 178, §113, 121; 2003 Acts, ch 179, §142  
 1999 amendments to unnumbered paragraph 1 relating to the sales and services tax on natural gas, natural gas service, electricity, and electric service, and 1999 amendments to unnumbered paragraph 3, and adding new unnumbered paragraph 4 are effective May 1, 1999; 99 Acts, ch 151, §31, 32, 89

Abatement of taxes owed or refund of taxes paid by foundries located in Lee or Jefferson county on certain purchases of tangible personal property between July 1, 1997, and May 6, 2002; filing deadline and limitation on claims for refunds; 2002 Acts, ch 1151, §33, 36

For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §187, 205

Unnumbered paragraph 1 amended

**422B.9 Administration.**

1. a. A local sales and services tax shall be imposed either January 1 or July 1 following the notification of the director of revenue but not sooner than ninety days following the favorable election. However, a jurisdiction which has voted to continue imposition of the tax may impose that tax without repeal of the prior tax.

b. A local sales and services tax shall be repealed only on June 30 or December 31 but not sooner than ninety days following the favorable election if one is held. However, a local sales and services tax shall not be repealed before the tax has been in effect for one year. At least forty days before the imposition or repeal of the tax, a county shall provide notice of the action by certified mail to the director of revenue.

c. If a local sales and services tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the local sales and services tax may be repealed on that date, notwithstanding paragraph “b”.

2. a. The director of revenue shall administer a local sales and services tax as nearly as possible in conjunction with the administration of state gross receipts tax laws. The director shall provide appropriate forms or provide on the regular state tax forms for reporting local sales and services tax liability.

b. The ordinance of a county board of supervisors imposing a local sales and services tax shall adopt by reference the applicable provisions of the appropriate sections of chapter 422, division IV, and chapter 423. All powers and requirements of the director to administer the state gross receipts tax law and use tax law are applicable to the administration of a local sales and services tax law and the local excise tax, including but not limited to, the provisions of section 422.25, subsection 4,

sections 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, sections 422.70 to 422.75, 423.6, subsections 2 to 4, and sections 423.11 to 423.18, and 423.21. Local officials shall confer with the director of revenue for assistance in drafting the ordinance imposing a local sales and services tax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

c. Frequency of deposits and quarterly reports of a local sales and services tax with the department of revenue are governed by the tax provisions in section 422.52. Local tax collections shall not be included in computation of the total tax to determine frequency of filing under section 422.52.

3. a. The director, in consultation with local officials, shall collect and account for a local sales and services tax. The director shall certify each quarter the amount of local sales and services tax receipts and any interest and penalties to be credited to the “local sales and services tax fund” established in the office of the treasurer of state.

b. All local tax moneys and interest and penalties received or refunded one hundred eighty days or more after the date on which the county repeals its local sales and services tax shall be deposited in or withdrawn from the state general fund.

2003 Acts, ch 145, §286  
 1999 amendment to subsection 1 is effective April 1, 2000; 99 Acts, ch 156, §23

1999 amendment to subsection 2, paragraph b is effective May 1, 1999; 99 Acts, ch 151, §33, 89

For future amendments to subsections 1 and 2 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §188, 205  
 Terminology change applied

**422B.10 Payment to local governments.**

1. The director shall credit the local sales and services tax receipts and interest and penalties from a county-imposed tax to the county’s account in the local sales and services tax fund and from a city-imposed tax under section 422B.1, subsection 2, to the city’s account in the local sales and services tax fund. If the director is unable to determine from which county any of the receipts were collected, those receipts shall be allocated among the possible counties based on allocation rules adopted by the director.

2. a. The director of revenue by August 15 of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the amount of tax moneys each city or county will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months.

b. The director of revenue shall remit ninety-five percent of the estimated tax receipts for the city or county to the city or county on or before August 31 of the fiscal year and on or before the last day of each following month.

c. The director of revenue shall remit a final payment of the remainder of tax moneys due the

city or county for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the November payment shall be adjusted to reflect any overpayment.

3. Seventy-five percent of each county's account shall be remitted on the basis of the county's population residing in the unincorporated area where the tax was imposed and those incorporated areas where the tax was imposed as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the above population of the county residing in the unincorporated area of the county where the tax was imposed according to the most recent certified federal census.

b. To each city in the county where the tax was imposed a pro rata share based upon the percentage of the city's population residing in the county to the above population of the county according to the most recent certified federal census.

c. If a subsequent certified census exists which modifies that most recent certified federal census for a participating jurisdiction under paragraphs "a" and "b", the computations under paragraphs "a" and "b" shall utilize the subsequent certified census in the distribution formula under rules established by the director of revenue.

4. Twenty-five percent of each county's account shall be remitted based on the sum of property tax dollars levied by the board of supervisors if the tax was imposed in the unincorporated areas and each city in the county where the tax was imposed during the three-year period beginning July 1, 1982, and ending June 30, 1985, as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the total property tax dollars levied by the board of supervisors during the above three-year period.

b. To each city council where the tax was imposed a pro rata share based upon the percentage of property tax dollars levied by the city during the above three-year period of the above total property tax dollars levied by the board of supervisors and each city where the tax was imposed during the above three-year period.

5. From each city's account, the percent of revenues agreed to be distributed to the county in the agreement entered into as provided in section 422B.1, subsection 2, paragraph "a", subparagraph (3), and paragraph "c", shall be deposited into the appropriate county's account to be remitted as provided in subsections 3 and 4. The remaining revenues in the city's account shall be remitted to the city council. If a county does not have an account, its percent of the revenues shall be remitted directly to the county board of supervisors.

6. Local sales and services tax moneys received by a city or county may be expended for any lawful purpose of the city or county.

2003 Acts, ch 145, §286  
Terminology change applied

#### 422B.12 Issuance of bonds.

1. For purposes of this section unless the context otherwise requires:

a. "Bond issuer" or "issuer" means a city, a county, or a secondary recipient.

b. "Designated portion" means the portion of the local option sales and services tax revenues which is authorized to be expended for one or a combination of purposes under an adopted public measure.

c. "Secondary recipient" means a political subdivision of the state which is to receive revenues from a local option sales and services tax over a period of years pursuant to the terms of a chapter 28E agreement with one or more cities or counties.

2. An issuer of public bonds which is a recipient of revenues from a local option sales and services tax imposed pursuant to this chapter may issue bonds in anticipation of the collection of one or more designated portions of the local option sales and services tax and may pledge irrevocably an amount of the revenue derived from the designated portions for each of the years the bonds remain outstanding to the payment of the bonds. Bonds may be issued only for one or more of the purposes set forth on the ballot proposition concerning the imposition of the local option sales and services tax, except bonds shall not be issued which are payable from that portion of tax revenues designated for property tax relief. The bonds may be issued in accordance with the procedures set forth in either subsection 3 or 4.

3. The governing body of an issuer may authorize the issuance of bonds which are payable from the designated portion of the revenues of the local option sales and services tax, and not from property tax, by following the authorization procedures set forth for cities in section 384.83. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

4. To authorize the issuance of bonds payable as provided in this subsection, the governing body of an issuer shall comply with all of the procedures as follows:

a. A bond issuer may institute proceedings for the issuance of bonds by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the political subdivision or unincorporated area at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds.

If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by eligible electors residing within the jurisdiction

seeking to issue the bonds in a number equal to at least three percent of the registered voters of the bond issuer is filed, asking that the question of issuing the bonds be submitted to the registered voters, the governing body shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. The proposition of issuing bonds under this subsection is not approved unless the vote in favor of the proposition is equal to at least sixty percent of the vote cast. If a petition is not filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the governing body acting on behalf of the issuer may proceed with the authorization and issuance of the bonds. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

b. The provisions of chapter 76 apply to the bonds payable as provided in this subsection, except that the mandatory levy to be assessed pursuant to section 76.2 shall be at a rate to generate an amount which together with the receipts from the pledged designated portion of the local option sales and services tax is sufficient to pay the interest and principal on the bonds. All amounts collected as a result of the levy assessed pursuant to section 76.2 and paid out in the first instance for bond principal and interest shall be repaid to the bond issuer which levied the tax from the first available designated portion of local option sales and services tax collections received in excess of the requirement for the payment of the principal and interest of the bonds and when repaid shall be applied in reduction of property taxes. The amount of bonds which may be issued under section 76.3 shall be the amount which could be retired from the actual collections of the designated portions of the local option sales and services tax for the last four calendar quarters, as certified by the director of revenue. The amount of tax revenues pledged jointly by other cities or counties may be considered for the purpose of determining the amount of bonds which may be issued. If the local option sales and services tax has been in effect for less than four calendar quarters, the tax collected within the shorter period may be ad-

justed to project the collections of the designated portion for the full year for the purpose of determining the amount of the bonds which may be issued. The provisions of this section constitute separate authorization for the issuance of bonds and shall prevail in the event of conflict with any other provision of the Code limiting the amount of bonds which may be issued or the source of payment of the bonds. Bonds issued under this section shall not limit or restrict the authority of the bond issuer to issue bonds under other provisions of the Code.

5. A city or county, jointly with one or more other political subdivisions as provided in chapter 28E, may pledge irrevocably any amount derived from the designated portions of the revenues of the local option sales and services tax to the support or payment of bonds of an issuer, issued for one or more purposes set forth on the ballot proposition concerning the imposition of the local option sales and services tax or a political subdivision may apply the proceeds of its bonds to the support of any such purpose.

6. Bonds issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued pursuant to this section are declared to be issued for an essential public and governmental purpose. Bonds issued pursuant to this section shall be authorized by resolution of the governing body and may be issued in one or more series and shall bear the date or dates, be payable on demand or mature at the time or times, bear interest at the rate or rates not exceeding that permitted by chapter 74A, be in the denomination or denominations, be in the form, have the rank or priority, be executed in the manner, be payable in the medium of payment, at the place or places, be subject to the terms of redemption, with or without premium, be secured in the manner, and have the other characteristics, as may be provided by the resolution authorizing their issuance. The bonds may be sold at public or private sale at a price as may be determined by the governing body.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 422C

### AUTOMOBILE RENTAL EXCISE TAX

For future transfer of this chapter to ch 423C,  
see 2003 Acts, 1st Ex, ch 2, §203, 205

#### 422C.2 Definitions.

For purposes of this chapter, unless the context

otherwise requires:

1. "Automobile" means a motor vehicle subject

to registration in any state designed primarily for carrying nine passengers or less, excluding motorcycles and motorized bicycles.

2. “*Department*” means the department of revenue.

3. “*Lessor*” means a person engaged in the business of renting automobiles to users. “*Lessor*” includes a motor vehicle dealer licensed pursuant to chapter 322 who rents automobiles to users. For this purpose, the objective of making a profit is not necessary to make the renting activity a business.

4. “*Person*” means person as defined in section 422.42.

5. “*Rental*” means a transfer of the possession or right to possession of an automobile to a user for a valuable consideration for a period of sixty days or less.

6. “*Rental price*” means the consideration for renting an automobile valued in money, and means the same as “*gross taxable services*” as defined in section 422.42.

7. “*User*” means a person to whom the possession or the right to possession of an automobile is transferred for a period of sixty days or less for a valuable consideration which is paid by the user or by another person.

2003 Acts, ch 145, §286

For future amendments to subsections 4 and 6 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §189, 205

Terminology change applied

#### 422C.3 Tax on rental of automobiles.

1. A tax of five percent is imposed upon the rental price of an automobile if the rental transac-

tion is subject to the sales and services tax under chapter 422, division IV, or the use tax under chapter 423. The tax shall not be imposed on any rental transaction not taxable under the state sales and services tax, as provided in section 422.45, or the state use tax, as provided in section 423.4, on automobile rental receipts.

2. The lessor shall collect the tax by adding the tax to the rental price of the automobile.

3. The tax, when collected, shall be stated as a distinct item separate and apart from the rental price of the automobile and the sales and services tax imposed under chapter 422, division IV, or the use tax imposed under chapter 423.

For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §190, 205

Section not amended; footnote added

#### 422C.4 Administration and enforcement.

All powers and requirements of the director of revenue to administer the state gross receipts tax law under chapter 422, division IV, are applicable to the administration of the tax imposed under section 422C.3, including but not limited to section 422.25, subsection 4, sections 422.30, 422.48 through 422.52, 422.54 through 422.58, 422.67, 422.68, 422.69, subsection 1, and sections 422.70 through 422.75. However, as an exception to the powers specified in section 422.52, subsection 1, the director shall only require the filing of quarterly reports.

2003 Acts, ch 145, §286

For future amendment to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §191, 205

Terminology change applied

## CHAPTER 422D

### OPTIONAL TAXES FOR EMERGENCY MEDICAL SERVICES

#### 422D.3 Administration.

A local income surtax shall be imposed January 1 of the fiscal year in which the favorable election was held for tax years beginning on or after January 1, and is repealed as provided in section 422D.1, subsection 4, as of December 31 for tax years beginning after December 31.

The director of revenue shall administer the local income surtax as nearly as possible in conjunction with the administration of state income tax laws. The director shall provide on the regular state tax forms for reporting local income surtax.

An ordinance imposing a local income surtax shall adopt by reference the applicable provisions of the appropriate sections of chapter 422, division II. All powers and requirements of the director in administering the state income tax law apply to the administration of a local income surtax, including but not limited to, the provisions of sections 422.4, 422.20 to 422.31, 422.68, 422.70, and

422.72 to 422.75. Local officials shall confer with the director of revenue for assistance in drafting the ordinance imposing a local income surtax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

The director, in consultation with local officials, shall collect and account for a local income surtax and any interest and penalties. The director shall credit local income surtax receipts and any interest and penalties collected from returns filed on or before November 1 of the calendar year following the tax year for which the local income surtax is imposed to a “local income surtax fund” established in the department of revenue. All local income surtax receipts and any interest and penalties received or refunded from returns filed after November 1 of the calendar year following the tax year for which the local income surtax is imposed shall be deposited in or withdrawn from the state general fund and shall be considered part of the

cost of administering the local income surtax.

2003 Acts, ch 145, §286  
Terminology change applied

**422D.4 Payment to local government — use of receipts.**

1. On or before December 15, the director of revenue shall make an accounting of the local income surtax receipts and any interest and penalties collected from returns filed on or before No-

vember 1 and shall certify to the treasurer of state this amount collected. The treasurer of state shall remit within fifteen days of the certification by the director to each county which has imposed a local income surtax the amount in the local income surtax fund collected as a result of its surtax.

2. Local income surtax moneys received by a county shall be deposited and used as provided in section 422D.6.

2003 Acts, ch 145, §286  
Terminology change applied

**CHAPTER 422E**

**SCHOOL INFRASTRUCTURE FUNDING**

Multistate discussions to consider simplification and uniformity of sales and use tax administration; 2002 Acts, ch 1161, §4, 5  
For future transfer of this chapter to ch 423E,  
see 2003 Acts, 1st Ex, ch 2, §203, 205

**422E.1 Authorization — rate of tax — use of revenues.**

1. A local sales and services tax for school infrastructure purposes may be imposed by a county on behalf of school districts as provided in this chapter.

If a local sales and services tax for school infrastructure is imposed by a county pursuant to this chapter, a local excise tax for school infrastructure at the same rate shall be imposed by the county on the purchase price of natural gas, natural gas service, electricity, or electric service subject to tax under chapter 423 and not exempted from tax by any provision of chapter 423. The local excise tax for school infrastructure is applicable only to the use of natural gas, natural gas service, electricity, or electric service within those incorporated and unincorporated areas of the county where it is imposed and, except as otherwise provided in this chapter, shall be collected and administered in the same manner as the local sales and services tax for school infrastructure. For purposes of this chapter, “*local sales and services tax for school infrastructure*” shall also include the local excise tax for school infrastructure.

2. The maximum rate of tax shall be one percent. The tax shall be imposed without regard to any other local sales and services tax authorized in chapter 422B, and is repealed at the expiration of a period of ten years of imposition or a shorter period as provided in the ballot proposition. However, all local option sales and services taxes for school infrastructure purposes are repealed December 31, 2022.

3. Local sales and services tax moneys received by a county for school infrastructure purposes pursuant to this chapter shall be utilized for school infrastructure needs or property tax relief. For purposes of this chapter, “*school infrastructure*” means those activities for which a school dis-

trict is authorized to contract indebtedness and issue general obligation bonds under section 296.1, except those activities related to a teacher’s or superintendent’s home or homes. These activities include the construction, reconstruction, repair, demolition work, purchasing, or remodeling of schoolhouses, stadiums, gyms, fieldhouses, and bus garages and the procurement of schoolhouse construction sites and the making of site improvements and those activities for which revenues under section 298.3 or 300.2 may be spent. Additionally, “*school infrastructure*” includes the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this subsection, and the payment or retirement of bonds issued under section 422E.4.

2003 Acts, ch 157, §1, 11  
Subsection 1, new unnumbered paragraph 2 is effective May 1, 1999; 1999 Acts, ch 151, §36, 89  
For future amendments to subsection 1 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §192, 205  
Subsections 2 and 3 amended

**422E.2 Imposition by county.**

1. *a.* A local sales and services tax shall be imposed by a county only after an election at which a majority of those voting on the question favors imposition. The effective date shall be either January 1 or July 1 but not sooner than ninety days following the favorable election. A local sales and services tax approved by a majority vote shall apply to all incorporated and unincorporated areas of that county.

*b.* A local sales and services tax shall be repealed on either June 30 or December 31 but not sooner than ninety days following the favorable election, if one is held.

*c.* If a local sales and services tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the local sales and services tax may be re-

pealed on that date, notwithstanding paragraph "b".

2. *a.* Upon receipt by a county board of supervisors of a petition requesting imposition of a local sales and services tax for infrastructure purposes, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding state general election, the board shall within thirty days direct the county commissioner of elections to submit the question of imposition of the tax to the registered voters of the whole county.

*b.* Alternatively, the question of imposition of a local sales and services tax for school infrastructure purposes may be proposed by motion or motions, requesting such submission, adopted by the governing body of a school district or school districts located within the county containing a total, or a combined total in the case of more than one school district, of at least one-half of the population of the county, or by the county board of supervisors. Upon adoption of such motion, the governing body of a school district shall notify the board of supervisors of the adoption of the motion. The county board of supervisors shall submit the motion to the county commissioner of elections, who shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the governing body which adopted the motion.

3. The county commissioner of elections shall submit the question of imposition of a local sales and services tax for school infrastructure purposes at a state general election or at a special election held at any time other than the time of a city regular election. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the rate of tax, the date the tax will be imposed and repealed, and shall contain a statement as to the specific purpose or purposes for which the revenues shall be expended. The content of the ballot proposition shall be substantially similar to the petition of the board of supervisors or motions of a school district or school districts requesting the election as provided in subsection 2, as applicable, including the rate of tax, imposition and repeal date, and the specific purpose or purposes for which the revenues will be expended. The dates for the imposition and repeal of the tax shall be as provided in subsection 1. The rate of tax shall not be more than one percent. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

4. *a.* Each school district located within the county may submit a revenue purpose statement to the county commissioner of elections no later than sixty days prior to the election indicating the specific purpose or purposes for which the local

sales and services tax for school infrastructure revenue and supplemental school infrastructure amount revenue will be expended. The revenues received pursuant to this chapter shall be expended for the purposes indicated in the revenue purpose statement. The revenue purpose statement may include information regarding the school district's use of the revenues to provide for property tax relief or debt reduction. A copy of the revenue purpose statement shall be made available for public inspection in accordance with chapter 22, shall be posted at the appropriate polling places of each school district during the hours that the polls are open, and be published in a newspaper of general circulation in the school district no sooner than twenty days and no later than ten days prior to the election.

*b.* If a revenue purpose statement is not submitted sixty days prior to the election or revenues remain after fulfilling the purpose specified in the revenue purpose statement, the revenues shall be used to reduce the following levies in the following order:

(1) Bond levies under sections 298.18 and 298.18A and all other debt levies, until the moneys received or the levies are reduced to zero.

(2) The regular physical plant and equipment levy under section 298.2, until the moneys received or the levy is reduced to zero.

(3) The voter-approved physical plant and equipment levy and income surtax, if any, under section 298.2, until the moneys received or the levy and income surtax, if any, are reduced to zero.

(4) The public educational and recreational levy under section 300.2, until the moneys received or the levy is reduced to zero.

(5) The schoolhouse tax levy under section 278.1, subsection 7, Code 1989, until the moneys received or the levy is reduced to zero.

Any money remaining after the reduction of the levies specified in this paragraph "b" may be used for any authorized infrastructure purpose of the school district.

*c.* Counties holding an election on the local sales and services tax for school infrastructure purposes on or after April 1, 2003, but before July 1, 2003, which approve the imposition of the tax at the election shall expend the revenues for any authorized infrastructure purpose of the school district.

5. *a.* The tax may be repealed or the rate increased, but not above one percent, or decreased, or the use of the revenues changed after an election at which a majority of those voting on the question of repeal, rate change, or change in use favored the repeal, rate change, or change in use. The election at which the question of repeal, rate change, or change in use is offered shall be called and held in the same manner and under the same conditions as provided in this section for the election on the imposition of the tax. However, an election on the change in use shall only be held in the

school district where the change in use is proposed to occur. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. However, the tax shall not be repealed before it has been in effect for one year.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the tax, the county auditor shall give written notice of the result of the election by sending a copy of the abstract of the votes from the favorable election to the director of revenue. Election costs shall be apportioned among school districts within the county on a pro rata basis in proportion to the number of registered voters in each school district who reside within the county and the total number of registered voters within the county.

c. A local option sales and services tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 422E.4, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose. However, this paragraph does not apply to the repeal of the tax on December 31, 2022, as specified in section 422E.1, subsection 2.

2003 Acts, ch 145, §286; 2003 Acts, ch 157, §2 - 4, 11  
2002 amendment to subsection 5, paragraph b, unnumbered paragraph 1, takes effect January 1, 2003, and applies to elections held on or after that date; 2002 Acts, ch 1134, §115

Terminology change applied  
Subsection 3 amended  
NEW subsection 4 and former subsection 4 amended and renumbered as 5

### 422E.3 Collection of tax.

1. If a majority of those voting on the question of imposition of a local sales and services tax for school infrastructure purposes favors imposition of the tax, the tax shall be imposed by the county board of supervisors within the county pursuant to section 422E.2, at the rate specified for a ten-year duration on the gross receipts taxed by the state under chapter 422, division IV.

2. The tax shall be imposed on the same basis as the state sales and services tax or in the case of the use of natural gas, natural gas service, electricity, or electric service on the same basis as the state use tax and shall not be imposed on the sale of any property or on any service not taxed by the state, except the tax shall not be imposed on the gross receipts from the sale of motor fuel or special fuel as defined in chapter 452A which is consumed for highway use or in watercraft or aircraft if the fuel tax is paid on the transaction and a refund has not or will not be allowed, on the gross receipts from the rental of rooms, apartments, or sleeping quarters which are taxed under chapter 422A during the period the hotel and motel tax is imposed, on the gross receipts from the sale of equipment by the state department of transportation, on the gross receipts from the sale of self-propelled building equipment, pile drivers, motorized scaffolding,

or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, and on the gross receipts from the sale of a lottery ticket or share in a lottery game conducted pursuant to chapter 99G and except the tax shall not be imposed on the gross receipts from the sale or use of natural gas, natural gas service, electricity, or electric service in a city or county where the gross receipts from the sale of natural gas or electric energy are subject to a franchise fee or user fee during the period the franchise or user fee is imposed.

3. The tax is applicable to transactions within the county where it is imposed and shall be collected by all persons required to collect state gross receipts or local excise taxes. However, a person required to collect state retail sales tax under chapter 422, division IV, is not required to collect local sales and services tax on transactions delivered within the area where the local sales and services tax is imposed unless the person has physical presence in that taxing area. The amount of the sale, for purposes of determining the amount of the tax, does not include the amount of any state gross receipts or excise taxes or other local option sales or excise taxes. A tax permit other than the state tax permit required under section 422.53 or 423.10 shall not be required by local authorities.

4. The director of revenue shall credit tax receipts and interest and penalties from the local sales and services tax for school infrastructure purposes to an account within the secure advanced vision for education fund, as provided in section 422E.3A, maintained in the name of the school district or school districts located within the county. If the director is unable to determine from which county any of the receipts were collected, those receipts shall be allocated among the possible counties based on allocation rules adopted by the director.

5. a. The director of revenue by August 15 of each fiscal year shall send to each school district where the tax is imposed an estimate of the amount of tax moneys each school district will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months.

b. The director shall remit ninety-five percent of the estimated tax receipts for the school district to the school district on or before August 31 of the fiscal year and on or before the last day of each following month.

c. The director shall remit a final payment of the remainder of tax moneys due for the fiscal year before November 10 of the next fiscal year. If an

overpayment has resulted during the previous fiscal year, the November payment shall be adjusted to reflect any overpayment.

*d.* (1) If more than one school district, or a portion of a school district, is located within the county, tax receipts shall be remitted to each school district or portion of a school district in which the county tax is imposed in a pro rata share based upon the ratio which the actual enrollment for the school district that attends school in the county bears to the total combined actual enrollments for all school districts that attend school in the county.

(2) The combined actual enrollment for a county, for purposes of this section, shall be determined for each county by the department of management based on the actual enrollment figures reported by October 1 to the department of management by the department of education pursuant to section 257.6, subsection 1. The combined actual enrollment count shall be forwarded to the director of revenue by March 1, annually, for purposes of supplying estimated tax payment figures and making estimated tax payments pursuant to this section for the following fiscal year.

*e.* Notwithstanding the amount of tax receipts credited to the account within the secure an advanced vision for education fund maintained in the name of a school district, the amount of tax receipts the school district shall receive from the tax imposed in the county shall be determined as provided in section 422E.3A, subsection 2.

6. The local sales and services tax for school infrastructure purposes shall be administered as provided in section 422B.9.

7. Construction contractors may make application to the department for a refund of the additional local sales and services tax paid under this chapter by reason of taxes paid on goods, wares, or merchandise under the conditions specified in section 422B.11. The refund shall be paid by the department from the appropriate school district's account in the secure an advanced vision for education fund. The penalty provisions contained in section 422B.11, subsection 3, shall apply regarding an erroneous application for refund of local sales and services tax paid under this chapter.

2003 Acts, ch 145, §286; 2003 Acts, ch 157, §5 - 7, 11; 2003 Acts, ch 178, §114, 121; 2003 Acts, ch 179, §142

For future amendments to subsections 1 - 3 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §193, 205

Terminology change applied

Subsection 2 amended

Subsection 4 amended

Subsection 5, unnumbered paragraph 1 amended and redesignated as paragraph d

Subsection 5, NEW paragraph e

Subsection 7 amended

#### **422E.3A Secure an advanced vision for education fund.**

1. A secure an advanced vision for education fund is created as a separate and distinct fund in the state treasury under the control of the depart-

ment of revenue. Moneys in the fund include revenues credited to the fund pursuant to this chapter, appropriations made to the fund, and other moneys deposited into the fund. Any amounts disbursed from the fund shall be utilized for school infrastructure purposes or property tax relief.

2. The moneys credited in a fiscal year to the secure an advanced vision for education fund shall be distributed as follows:

*a.* A school district that is located in whole or in part in a county that voted on and approved prior to April 1, 2003, the local sales and services tax for school infrastructure purposes and that has a sales tax capacity per student above the guaranteed school infrastructure amount shall receive for the remainder of the term of the tax an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 422E.3, subsection 5, paragraph "d", unless the school board passes a resolution by October 1, 2003, agreeing to receive a distribution pursuant to paragraph "b", subparagraph (1).

*b.* (1) A school district that is located in whole or in part in a county that voted on and approved prior to April 1, 2003, the local sales and services tax for school infrastructure purposes and that has a sales tax capacity per student below its guaranteed school infrastructure amount shall receive for the remainder of the term of the tax an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 422E.3, subsection 5, paragraph "d", plus an amount equal to its supplemental school infrastructure amount, unless the school district passes a resolution by October 1, 2003, agreeing to receive only an amount equal to its pro rata share as provided in section 422E.3, subsection 5, paragraph "d", in all subsequent years.

(2) A school district that is located in whole or in part in a county that voted on and approved on or after April 1, 2003, the local sales and services tax for school infrastructure purposes shall receive an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 422E.3, subsection 5, paragraph "d", not to exceed its guaranteed school infrastructure amount. However, if the school district's pro rata share is less than its guaranteed school infrastructure amount, the district shall receive an additional amount equal to its supplemental school infrastructure amount.

(3) A school district that is located in whole or in part in a county that voted on and approved the continuation of the tax on or after April 1, 2003, the local sales and services tax for school infrastructure purposes shall receive an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 422E.3, subsection 5, paragraph "d", not to exceed its guaranteed school infrastructure amount. However, if the school district's pro rata share is less than its guaranteed school infrastructure amount, the district

shall receive an additional amount equal to its supplemental school infrastructure amount.

(4) The amount distributed under this paragraph “b” which a school district receives shall not exceed the guaranteed school infrastructure amount. A school district qualifying for a supplemental school infrastructure amount pursuant to this paragraph “b” shall not receive more than the guaranteed school infrastructure amount in any subsequent year.

c. In the case of a school district located in more than one county, the amount to be distributed to the school district shall be separately computed for each county based upon the school district’s actual enrollment that attends school in the county.

3. a. The director of revenue by June 1 preceding each fiscal year shall compute the guaranteed school infrastructure amount for each school district, each school district’s sales tax capacity per student for each county, and the supplemental school infrastructure amount for the coming fiscal year.

b. For purposes of distributions under subsection 2:

(1) “*Guaranteed school infrastructure amount*” means for a school district the statewide tax revenues per student, multiplied by the quotient of the tax rate percent imposed in the county, divided by one percent and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year divided by four quarters.

(2) “*Sales tax capacity per student*” means for a school district the estimated amount of revenues that a school district receives or would receive if a local sales and services tax for school infrastructure purposes is imposed at one percent in the county pursuant to section 422E.2, divided by the school district’s actual enrollment as determined in section 422E.3, subsection 5, paragraph “d”.

(3) “*Statewide tax revenues per student*” means five hundred seventy-five dollars per student. The general assembly shall review this amount annually to determine its appropriateness.

(4) “*Supplemental school infrastructure amount*” means the guaranteed school infrastructure amount for the school district less its pro rata share of local sales and services tax for school infrastructure purposes as provided in section 422E.3, subsection 5, paragraph “d”.

4. a. For the purposes of distribution under subsection 2, paragraph “b”, subparagraph (1), a school district with a sales tax capacity per student below its guaranteed school infrastructure amount shall use the amount equal to the guaranteed school infrastructure amount less the pro rata share amount in accordance with section 422E.3, subsection 5, paragraph “d”, for the purpose of paying principal and interest on outstanding bonds previously issued for school infrastructure purposes as defined in section 422E.1, subsection

3. Any money remaining after the payment of all principal and interest on outstanding bonds previously issued for infrastructure purposes may be used for any authorized infrastructure purpose of the school district. If a majority of the voters in the school district approves the use of revenue pursuant to a revenue purpose statement in an election held after July 1, 2003, in the school district pursuant to section 422E.2, the school district may use the amount for the purposes specified in its revenue purpose statement.

b. Nothing in this section shall prevent a school district from using its sales tax capacity per student or guaranteed school infrastructure amount to pay principal and interest on obligations issued pursuant to section 422E.4.

5. In the case of a deficiency in the fund to pay the supplemental school infrastructure amounts in full, the amount available in the fund less the sales and services tax revenues for school infrastructure purposes attributed to each school district should be allocated first to increase the school district with the lowest sales tax capacity per student to an amount equal to the school district or school districts with the next lowest sales tax capacity per student and then increase the school districts to an amount equal to the school district or school districts with the next lowest sales tax capacity per student and continue on in this manner until money is no longer available or all school districts reach their guaranteed school infrastructure amount.

6. A school district shall not expend the supplemental school infrastructure amount received for new construction or for payments for bonds issued for new construction against the supplemental school infrastructure amount without prior application to the department of education and receipt of a certificate of need pursuant to this subsection. However, a certificate of need is not required for the payment of outstanding bonds issued for new construction pursuant to section 296.1, before April 1, 2003. A certificate of need is also not required for repairing schoolhouses or buildings, equipment, technology, or transportation equipment for transporting students as provided in section 298.3, or for construction necessary for compliance with the federal Americans With Disabilities Act pursuant to 42 U.S.C. § 12101–12117. In determining whether a certificate of need shall be issued or denied, the department shall consider all of the following:

a. Enrollment trends in the grades that will be served at the new construction site.

b. The infeasibility of remodeling, reconstructing, or repairing existing buildings.

c. The fire and health safety needs of the school district.

d. The distance, convenience, cost of transportation, and accessibility of the new construction site to the students to be served at the new construction site.

e. Availability of alternative, less costly, or more effective means of serving the needs of the students.

f. The financial condition of the district, including the effect of the decline of the budget guarantee and unspent balance.

g. Broad and long-term ability of the district to support the facility and the quality of the academic program.

h. Cooperation with other educational entities including other school districts, area education agencies, postsecondary institutions, and local communities.

2003 Acts, ch 145, §286; 2003 Acts, ch 157, §8, 11; 2003 Acts, 1st Ex, ch 2, §20 – 25, 209

NEW section

Terminology change applied

#### 422E.4 Bonding.

The board of directors of a school district shall be authorized to issue negotiable, interest-bearing school bonds, without election, and utilize tax receipts derived from the sales and services tax for school infrastructure purposes and the supplemental school infrastructure amount distributed pursuant to section 422E.3A, subsection 2, paragraph “b”, for principal and interest repayment. Proceeds of the bonds issued pursuant to this section shall be utilized solely for school infrastructure needs as school infrastructure is defined in section 422E.1, subsection 3. Issuance of bonds pursuant to this section shall be permitted only in a district which has imposed a local sales and services tax for school infrastructure purposes pursuant to section 422E.2. The provisions of sections 298.22 through 298.24 shall apply regarding the form, rate of interest, registration, redemption, and recording of bond issues pursuant to this section, with the exception that the maximum period during which principal on the bonds is payable shall not exceed the date of repeal stated on the ballot proposition.

A school district in which a local option sales tax for school infrastructure purposes has been imposed shall be authorized to enter into a chapter 28E agreement with one or more cities or a county

whose boundaries encompass all or a part of the area of the school district. A city or cities entering into a chapter 28E agreement shall be authorized to expend its designated portion of the local option sales and services tax revenues for any valid purpose permitted in this chapter or authorized by the governing body of the city. A county entering into a chapter 28E agreement with a school district in which a local option sales tax for school infrastructure purposes has been imposed shall be authorized to expend its designated portion of the local option sales and services tax revenues to provide property tax relief within the boundaries of the school district located in the county. A school district where a local option sales and services tax is imposed is also authorized to enter into a chapter 28E agreement with another school district, a community college, or an area education agency which is located partially or entirely in or is contiguous to the county where the tax is imposed. The school district or community college shall only expend its designated portion of the local option sales and services tax for infrastructure purposes. The area education agency shall only expend its designated portion of the local option school infrastructure sales tax for infrastructure and maintenance purposes.

The governing body of a city may authorize the issuance of bonds which are payable from its designated portion of the revenues of the local option sales and services tax, and not from property tax, by following the authorization procedures set forth for cities in section 384.83. A city may pledge irrevocably any amount derived from its designated portions of the revenues of the local option sales and services tax to the support or payment of such bonds.

2003 Acts, ch 157, §9, 11

1999 amendment to unnumbered paragraph 2 applies retroactively to July 1, 1998; 99 Acts, ch 156, §20, 23

Unnumbered paragraphs 1 and 2 amended

#### 422E.6 Repeal.

This chapter is repealed June 30, 2023, for fiscal years beginning after that date.

2003 Acts, ch 157, §10, 11

NEW section

## CHAPTER 423

### USE TAX

Refunds to governmental bodies, §422.45  
Multistate discussions to consider simplification and uniformity of sales and use tax administration; 2002 Acts, ch 1161, §4, 5

Industrial processing exemption study committee to study current exemption and rules; annual reports to general assembly by January, through January 1, 2013; 2003 Acts, 1st Ex, ch 1, §73, 75

For future chapter repeal and enactment of new provisions governing sales and use tax effective July 1, 2004;

Iowa streamlined sales tax advisory council; see 2003 Acts, 1st Ex, ch 2, §94 – 151, 204, 205

#### 423.4 Exemptions.

The use in this state of the following tangible

personal property is hereby specifically exempted from the tax imposed by this chapter:

1. Tangible personal property and enumerated services, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by division IV of chapter 422, if that tax has been paid to the department or paid to the retailer. This exemption does not include vehicles subject to registration or subject only to the issuance of a certificate of title.

2. All articles of tangible personal property brought into the state of Iowa by a nonresident individual thereof for the individual's use or enjoyment while within the state.

3. Services exempt from taxation by provisions of section 422.45.

4. The gross receipts from the sale or rental of tangible personal property or from the rendering, furnishing, or performing of services which are exempted from the retail sales tax by the terms of section 422.45, except subsection 4 and subsection 6 of section 422.45 as it relates to the sale of vehicles subject to registration or subject only to the issuance of a certificate of title and as it relates to aircraft subject to registration under section 328.20.

5. Advertisement and promotional material and matter, seed catalogs, envelopes for same, and other similar material temporarily stored in this state which are acquired outside of Iowa and which, subsequent to being brought into this state, are sent outside of Iowa, either singly or physically attached to other tangible personal property sent outside of Iowa.

6. Tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

7. Vehicles, as defined in section 321.1, subsections 41, 64A, 71, 85, and 88, except such vehicles subject to registration which are designed primarily for carrying persons, when purchased for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. This subsection shall be retroactive to January 1, 1973.

8. Tangible personal property which, by means of fabrication, compounding, or manufacturing, become an integral part of vehicles, as defined in section 321.1, subsections 41, 64A, 71, 85, and 88, manufactured for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. Vehicles subject to registration which are designed primarily for carrying persons are excluded from this subsection. This subsection shall be retroactive to January 1, 1973.

9. Vehicles subject to registration which are transferred from a business or individual conducting a business within this state as a sole proprietorship, partnership, or limited liability company

to a corporation formed by the sole proprietorship, partnership, or limited liability company for the purpose of continuing the business when all of the stock of the corporation so formed is owned by the sole proprietor and the sole proprietor's spouse, by all the partners in the case of a partnership, or by all of the members in the case of a limited liability company. This exemption is equally available where the vehicles subject to registration are transferred from a corporation to a sole proprietorship, partnership, or limited liability company formed by that corporation for the purpose of continuing the business when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

This exemption also applies where the vehicles subject to registration are transferred from a corporation as part of the liquidation of the corporation to its stockholders if within three months of such transfer the stockholders retransfer those vehicles subject to registration to a sole proprietorship, partnership, or limited liability company for the purpose of continuing the business of the corporation when all of the incidents of ownership are owned by the same person or persons who were stockholders of the corporation.

10. Vehicles subject to registration which are transferred from a corporation that is primarily engaged in the business of leasing vehicles subject to registration to a corporation that is primarily engaged in the business of leasing vehicles subject to registration when the transferor and transferee corporations are part of the same controlled group for federal income tax purposes.

11. Vehicles registered or operated under chapter 326 and used substantially in interstate commerce, section 423.5 notwithstanding. For purposes of this subsection, "*substantially in interstate commerce*" means that a minimum of twenty-five percent of the miles operated by the vehicle accrues in states other than Iowa. This subsection applies only to vehicles which are registered for a gross weight of thirteen tons or more.

For purposes of this subsection, trailers and semitrailers registered or operated under chapter 326 are deemed to be used substantially in interstate commerce and to be registered for a gross weight of thirteen tons or more.

For the purposes of this subsection, if a vehicle meets the requirement that twenty-five percent of the miles operated accrues in states other than Iowa in each year of the first four-year period of operation, the exemption from use tax shall continue until the vehicle is sold or transferred. If the vehicle is found to have not met the exemption requirements or the exemption was revoked, the value of the vehicle upon which the use tax shall be imposed is the book or market value, whichever is less, at the time the exemption requirements were not met or the exemption was revoked.

12. Mobile homes and manufactured homes the use of which has previously been subject to the tax imposed under this chapter and for which that tax has been paid.

13. Mobile homes to the extent of the portion of the purchase price of the mobile home which is not attributable to the cost of the tangible personal property used in the processing of the mobile home and manufactured home to the extent of the purchase price or the installed purchase price of the manufactured home which is not attributable to the cost of the tangible personal property used in the processing of the manufactured home. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the mobile home is forty percent and the portion of the purchase price or installed purchase price which is not attributable to the cost of the tangible personal property used in the processing of the manufactured home is forty percent.

14. Tangible personal property used or to be used as a ship, barge, or waterborne vessel which is used or to be used primarily in or for the transportation of property or cargo for hire on the rivers bordering the state or as materials or parts of such ship, barge, or waterborne vessel.

15. Vehicles subject to registration in any state when purchased for rental or registered and titled by a motor vehicle dealer licensed pursuant to chapter 322 for rental use, and held for rental for a period of one hundred twenty days or more and actually rented for periods of sixty days or less by a person regularly engaged in the business of renting vehicles including, but not limited to, motor vehicle dealers licensed pursuant to chapter 322 who rent automobiles to users, if the rental of the vehicles is subject to taxation under chapter 422C.

16. Motor vehicles subject to registration which were registered and titled between July 1, 1982, and July 1, 1992, to a motor vehicle dealer licensed under chapter 322 and which were rented to a user as defined in section 422C.2 if the following occurred:

- a. The dealer kept the vehicle on the inventory of vehicles for sale at all times.
- b. The vehicle was to be immediately taken from the user of the vehicle when a buyer was found.
- c. The user was aware of this situation.

17. Vehicles subject to registration under chapter 321, with a gross vehicle weight rating of less than sixteen thousand pounds, excluding motorcycles and motorized bicycles, when purchased for lease and titled by the lessor licensed pursuant to chapter 321F and actually leased for a period of twelve months or more if the lease of the vehicle is subject to taxation under section 423.7A.

A lessor may maintain the exemption from use tax under this subsection for a qualifying lease that terminates at the conclusion or prior to the contracted expiration date, if the lessor does not use the vehicle for any purpose other than for lease. Once the vehicle is used by the lessor for a purpose other than for lease, the exemption from use tax under this subsection no longer applies and, unless there is an exemption from the use tax, use tax is due on the fair market value of the vehicle determined at the time the lessor uses the vehicle for a purpose other than for lease, payable to the department. If the lessor holds the vehicle exclusively for sale, use tax is due and payable on the purchase price of the vehicle at the time of purchase pursuant to this chapter.

18. Aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

19. Aircraft; tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, "aircraft" means aircraft used in a scheduled interstate federal aviation administration certificated air carrier operation.

20. Tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, "aircraft" means aircraft used in a non-scheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

21. Aircraft sold to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

- a. The aircraft is kept in the inventory of the dealer for sale at all times.
- b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.
- c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs "a", "b", and "c" are not continuously met, the dealer claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection.

tion. The tax shall be computed upon the original purchase price.

2003 Acts, ch 179, §127  
Tax paid in another state, §423.25  
NEW subsection 10 and former subsections 10 – 20 renumbered as 11 – 21

#### 423.6 How collected.

The tax herein imposed shall be collected in the following manner:

1. The tax upon the use of all vehicles subject to registration or subject only to the issuance of a certificate of title or the tax upon the use of manufactured housing shall be collected by the county treasurer or the state department of transportation pursuant to sections 423.7 and 423.7A. The county treasurer shall retain one dollar from each tax payment collected, to be credited to the county general fund.

2. The tax upon the use of all tangible personal property other than that enumerated in subsection 1 hereof, which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the director shall authorize pursuant to section 423.10, shall be collected by such retailer and remitted to the department, pursuant to the provisions of sections 423.9 to 423.13.

3. The tax upon the use of all tangible personal property not paid pursuant to subsections 1 and 2 hereof shall be paid to the department directly by any person using such property within this state, pursuant to the provisions of section 423.14.

4. The tax on services imposed in section 423.2 shall be collected, remitted, and paid to the department of revenue of this state in the corresponding manner as use tax on tangible personal property is collected, remitted and paid under provisions of this chapter.

2003 Acts, ch 145, §286  
For future repeal, effective July 1, 2004, of this chapter and enactment of new provisions governing sales and use tax, see 2003 Acts, 1st Ex, ch 2, §94 – 151, 205  
Terminology change applied

#### 423.7A Motor vehicle lease tax.

1. The tax imposed upon the use of leased vehicles subject to registration under chapter 321, with gross vehicle weight ratings of less than sixteen thousand pounds, excluding motorcycles and motorized bicycles, which are leased by a lessor licensed pursuant to chapter 321F for a period of twelve months or more shall be paid by the owner of the vehicle to the county treasurer or state department of transportation from whom the registration receipt or certificate of title is obtained. A registration receipt for a vehicle subject to registration or issuance of a certificate of title shall not be issued until the tax is paid in the initial instance. Tax on the lease transaction that does not require titling or registration of the vehicle shall be remitted to the department. Tax and the reporting of tax due to the department shall be re-

mitted on or before fifteen days from the last day of the month that the vehicle lease tax becomes due. Failure to timely report or remit any of the tax when due shall result in a penalty and interest being imposed on the tax due pursuant to sections 423.18 and 423.23.

2. The amount subject to tax shall be computed on each separate lease transaction by taking the total of the lease payments, plus the down payment, and excluding all of the following:

- a. Title fee.
- b. Registration fees.
- c. Vehicle lease tax pursuant to this section.
- d. Federal excise taxes attributable to the sale of the vehicle to the owner or to the lease of the vehicle by the owner.
- e. Optional service or warranty contracts subject to tax pursuant to section 422.43, subsection 6.
- f. Insurance.
- g. Manufacturer's rebate.
- h. Refundable deposit.
- i. Finance charges, if any, on items listed in paragraphs "a" through "h".

If any or all of the items in paragraphs "a" through "i" are excluded from the taxable lease price, the owner shall maintain adequate records of the amounts of those items. If the parties to a lease enter into an agreement providing that the tax imposed under this statute is to be paid by the lessee or included in the monthly lease payments to be paid by the lessee, the total cost of the tax shall not be included in the computation of lease price for the purpose of taxation under this section. The county treasurer, the state department of transportation, or the department of revenue shall require every applicant for a registration receipt for a vehicle subject to tax under this section to supply information as the county treasurer or director deems necessary as to the date of the lease transaction, the lease price, and other information relative to the lease of the vehicle.

3. On or before the tenth day of each month the county treasurer or the state department of transportation shall remit to the department the amount of the taxes collected during the preceding month.

4. If the lease is terminated prior to the termination date contained in the lease agreement, no refund shall be allowed for tax previously paid under this section, except as provided in section 322G.4.

2003 Acts, ch 145, §286  
For future repeal, effective July 1, 2004, of this chapter and enactment of new provisions governing sales and use tax, see 2003 Acts, 1st Ex, ch 2, §94 – 151, 205  
Terminology change applied

#### 423.28 through 423.57 Reserved.

For future text of these sections effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §121 – 150, 205

## CHAPTER 423A

### DISCLOSURE OF INFORMATION IN PREPARATION OF TAX RETURNS

For future transfer of this chapter to ch 421A and  
transfer of ch 422A to this chapter,  
see 2003 Acts, 1st Ex, ch 2, §203, 205

## CHAPTER 424

### ENVIRONMENTAL PROTECTION CHARGE ON PETROLEUM DIMINUTION

#### 424.1 Title — director's authority.

1. This chapter is entitled "*Environmental Protection Charge on Petroleum Diminution*".

2. The director's and the department's authority and power under chapter 421 and other provisions of the tax code relevant to administration apply to this chapter, and the charge imposed under this chapter is imposed as if the charge were a tax within the meaning of that chapter or provision.

3. The director shall enter into a contract or agreement with the board to provide assistance requested by the board. Policy issues arising under this chapter or chapter 455G shall be determined by the board, and the board shall be joined as a real party in interest when a policy issue is raised.

4. The board shall retain rulemaking authority, but may contract with the department for assistance in drafting rules. The board shall retain contested case jurisdiction over any challenge to the diminution rate or cost factor. The department shall conduct all other contested cases and be responsible for other agency action in connection with the environmental protection charge imposed under this chapter.

5. The board shall reimburse the department of revenue by contract for the reasonable cost of administration of the environmental protection charge imposed under this chapter and for other duties delegated to the department or to the director by the board.

2003 Acts, ch 145, §286  
Terminology change applied

#### 424.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Board*" means the Iowa comprehensive petroleum underground storage tank board.

2. "*Book*", "*list*", "*record*", or "*schedule*" kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. "*Charge*" means the environmental protection charge imposed upon petroleum diminution pursuant to section 424.3.

4. "*Charge payer*" means a depositor, receiver, or tank owner or operator obligated to pay the environmental protection charge under this chapter.

5. "*Department*" means the department of revenue.

6. "*Depositor*" means the person who deposits petroleum into an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet if the aboveground storage tank is physically connected directly to pumps which dispense petroleum that is sold at the motor vehicle fuel outlet on a retail basis.

7. "*Diminution*" means the petroleum released into the environment prior to its intended beneficial use.

8. "*Director*" means the director of revenue.

9. "*Fund*" means the Iowa comprehensive petroleum underground storage tank fund.

10. "*Owner or operator*" means "*owner or operator*" of an underground storage tank as used in chapter 455G or the "*owner*" or "*operator*" of an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet if the aboveground storage tank is physically connected directly to pumps which dispense petroleum that is sold at the motor vehicle fuel outlet on a retail basis.

11. "*Petroleum*" means petroleum as defined in section 455G.2.

12. "*Receiver*" means, if the owner and operator are not the same person, the person who, under a contract between the owner and operator, is responsible for payment for petroleum deposited into a tank; and if the owner and operator of a tank are the same person, means the owner.

13. "*Tank*" means an underground storage tank subject to regulation under chapter 455G or an aboveground petroleum storage tank as defined in section 101.21, located at a retail motor vehicle fuel outlet if the aboveground storage tank is physically connected directly to pumps which dispense petroleum that is sold at the motor vehicle fuel outlet on a retail basis.

2003 Acts, ch 145, §286  
Terminology change applied

**424.6 Exemption certificates for receivers of petroleum underground storage tanks not subject to financial responsibility rules.**

1. The department of natural resources shall issue an exemption certificate in the form prescribed by the director of the department of natural resources to an applicant who is an owner or operator of a petroleum underground storage tank which is exempt, deferred, or excluded from regulation under chapter 455G, for that tank. The director of the department of natural resources shall revoke and require the return of an exemption certificate if the petroleum underground storage tank later becomes subject to chapter 455G pursuant to section 455G.1. A tank is subject to chapter 455G when the federal regulation subjecting that tank to financial responsibility becomes effective and not upon the effective compliance date unless the effective compliance date is the effective date of the regulation.

The department shall permit a credit against the charge due from a person operating an eligible underground bulk storage facility equal to the total volume of petroleum transferred or sold from a tank in bulk quantities and delivered to a person for deposit in a tank which is exempt, deferred, or excluded pursuant to this subsection, multiplied by the diminution rate multiplied by the cost factor, subject to rules adopted by the board. *“Bulk quantities”* as used in this paragraph means at least a portion of a standard tanker truck load. *“Eligible underground bulk storage facility”* means an underground bulk storage facility in operation on or before January 1, 1990.

2. Liability for the charge is upon the depositor and the receiver unless the depositor takes in good faith from the receiver a valid exemption certificate and records the exemption certificate number and related transaction information required by the director and submits such information as part of the environmental protection charge return. If petroleum is deposited into a tank, pursuant to a valid exemption certificate which is taken in good faith by the depositor, and the receiver is liable for the charge, the receiver is solely liable for the charge and shall remit the charge directly to the

department and this chapter applies to that receiver as if the receiver were a depositor.

3. A valid exemption certificate is an exemption certificate which is complete and correct according to the requirements of the director of the department of natural resources.

4. A valid exemption certificate is taken in good faith by the depositor when the depositor has exercised that caution and diligence which honest persons of ordinary prudence would exercise in handling their own business affairs, and includes an honesty of intention and freedom from knowledge of circumstances which ought to put one upon inquiry as to the facts. A depositor has constructive notice of the classes of exempt, deferred, or excluded tanks. In order for a depositor to take a valid exemption certificate in good faith, the depositor must exercise reasonable prudence to determine the facts supporting the valid exemption certificate, and if any facts upon such certificate would lead a reasonable person to further inquiry, then such inquiry must be made with an honest intent to discover the facts.

5. If the circumstances change and the tank becomes subject to financial responsibility regulations, the tank owner or operator is liable solely for the charges and shall remit the charges directly to the department of revenue pursuant to this chapter.

6. The board may waive the requirement for an exemption certificate for one or more classes of exempt, deferred, or excluded tanks, if in the board's judgment an exemption certificate is not required for effective and efficient collection of the charge. If an exemption certificate is not required for a class pursuant to this subsection, the depositor shall maintain and file such records and information as may be required by the director regarding deposits into a tank subject to the waiver.

2003 Acts, ch 145, §286  
Terminology change applied

**424.19 Future repeal.**

This chapter is repealed effective June 30, 2014.

2003 Acts, ch 110, §1  
NEW section

## CHAPTER 425

### HOMESTEAD TAX CREDITS AND REIMBURSEMENT

**425.1 Homestead credit fund — apportionment — payment.**

1. A homestead credit fund is created. There is appropriated annually from the general fund of the state to the department of revenue to be credited to the homestead credit fund, an amount sufficient to implement this chapter.

The director of the department of administra-

tive services shall issue warrants on the homestead credit fund payable to the county treasurers of the several counties of the state under this chapter.

2. The homestead credit fund shall be apportioned each year so as to give a credit against the tax on each eligible homestead in the state in an amount equal to the actual levy on the first four

thousand eight hundred fifty dollars of actual value for each homestead.

3. The amount due each county shall be paid in two payments on November 15 and March 15 of each fiscal year, drawn upon warrants payable to the respective county treasurers. The two payments shall be as nearly equal as possible.

4. Annually the department of revenue shall estimate the credit not to exceed the actual levy on the first four thousand eight hundred fifty dollars of actual value of each eligible homestead, and shall certify to the county auditor of each county the credit and its amount in dollars. Each county auditor shall then enter the credit against the tax levied on each eligible homestead in each county payable during the ensuing year, designating on the tax lists the credit as being from the homestead credit fund, and credit shall then be given to the several taxing districts in which eligible homesteads are located in an amount equal to the credits allowed on the taxes of the homesteads. The amount of credits shall be apportioned by each county treasurer to the several taxing districts as provided by law, in the same manner as though the amount of the credit had been paid by the owners of the homesteads. However, the several taxing districts shall not draw the funds so credited until after the semiannual allocations have been received by the county treasurer, as provided in this chapter. Each county treasurer shall show on each tax receipt the amount of credit received from the homestead credit fund.

5. If the homestead tax credit computed under this section is less than sixty-two dollars and fifty cents, the amount of homestead tax credit on that eligible homestead shall be sixty-two dollars and fifty cents subject to the limitation imposed in this section.

6. The homestead tax credit allowed in this chapter shall not exceed the actual amount of taxes payable on the eligible homestead, exclusive of any special assessments levied against the homestead.

2003 Acts, ch 145, §258, 286  
Terminology change applied  
Subsection 1 amended

#### **425.4 Certification to treasurer.**

All claims which have been allowed by the board of supervisors shall be certified on or before August 1, in each year, by the county auditor to the county treasurer, which certificates shall list the total amount of dollars, listed by taxing district in the county, due for homestead tax credits claimed and allowed. The county treasurer shall forthwith certify to the department of revenue the total amount of dollars, listed by taxing district in the county, due for homestead tax credits claimed and allowed.

2003 Acts, ch 145, §286  
Terminology change applied

#### **425.7 Appeals permitted — disallowed claims and penalty.**

1. Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors.

2. In the event any claim under this chapter is allowed, any owner of an eligible homestead may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated, by giving written notice of such appeal to the county auditor of said county and such notice to the owner of said claimed homestead as a judge of the district court shall direct.

3. If the director of revenue determines that a claim for homestead credit has been allowed by the board of supervisors which is not justifiable under the law and not substantiated by proper facts, the director may, at any time within thirty-six months from July 1 of the year in which the claim is allowed, set aside the allowance. Notice of the disallowance shall be given to the county auditor of the county in which the claim has been improperly granted and a written notice of the disallowance shall also be addressed to the claimant at the claimant's last known address. The claimant or board of supervisors may appeal to the state board of tax review pursuant to section 421.1, subsection 4. The claimant or the board of supervisors may seek judicial review of the action of the state board of tax review in accordance with chapter 17A.

If a claim is disallowed by the director of revenue and not appealed to the state board of tax review or appealed to the state board of tax review and thereafter upheld upon final resolution, including any judicial review, any amounts of credits allowed and paid from the homestead credit fund including the penalty, if any, become a lien upon the property on which credit was originally granted, if still in the hands of the claimant, and not in the hands of a bona fide purchaser, and any amount so erroneously paid including the penalty, if any, shall be collected by the county treasurer in the same manner as other taxes and the collections shall be returned to the department of revenue and credited to the homestead credit fund. The director of revenue may institute legal proceedings against a homestead credit claimant for the collection of payments made on disallowed credits and the penalty, if any. If a person makes a false claim or affidavit with fraudulent intent to obtain the homestead credit, the person is guilty of a fraudulent practice and the claim shall be disallowed in full. If the credit has been paid, the amount of the credit plus a penalty equal to twenty-five percent of the amount of credit plus in-

terest, at the rate in effect under section 421.7, from the time of payment shall be collected by the county treasurer in the same manner as other property taxes, penalty, and interest are collected and when collected shall be paid to the director of revenue. If a homestead credit is disallowed and the claimant failed to give written notice to the assessor as required by section 425.2 when the property ceased to be used as a homestead by the claimant, a civil penalty equal to five percent of the amount of the disallowed credit is assessed against the claimant.

2003 Acts, ch 145, §286  
Fraudulent practices; §714.8 – 714.14  
2001 amendment to subsection 3 applies to homestead tax credit claims filed on or after July 1, 2001; 2001 Acts, ch 154, §6  
Terminology change applied

#### 425.8 Forms — rules.

The director of revenue shall prescribe the form for the making of verified statement and designation of homestead, the form for the supporting affidavits required herein, and such other forms as may be necessary for the proper administration of this chapter. Whenever necessary, the department of revenue shall forward to the county auditors of the several counties in the state the prescribed sample forms, and the county auditors shall furnish blank forms prepared in accordance therewith with the assessment rolls, books, and supplies delivered to the assessors. The department of revenue shall prescribe and the county auditors shall provide on the forms for claiming the homestead credit a statement to the effect that the owner realizes that the owner must give written notice to the assessor when the owner changes the use of the property.

The director of revenue may prescribe rules, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes.

2003 Acts, ch 145, §286  
Terminology change applied

#### 425.9 Credits in excess of tax — appeals — refunds.

If the amount of credit apportioned to any homestead under the provisions of this chapter in any year shall exceed the total tax, exclusive of any special assessments levied against said homestead, then such excess shall be remitted by the county treasurer to the department of revenue to be redeposited in the homestead credit fund and be reallocated the following year by the department as provided hereunder.

If any claim for credit made hereunder has been denied by the board of supervisors, and such action is subsequently reversed on appeal, the credit shall be allowed on the homestead involved in said appeal, and the director of revenue, the county auditor, and the county treasurer shall make such credit and change their books and records accordingly.

In the event the appealing taxpayer has paid

one or both of the installments of the tax payable in the year or years in question on such homestead valuation, remittance shall be made to such taxpayer of the amount of such credit.

The amount of such credit shall be allocated and paid from the surplus redeposited in the homestead credit fund provided for in the first paragraph of this section.

2003 Acts, ch 145, §286  
Terminology change applied

#### 425.10 Reversal of allowed claim.

In the event any claim is allowed, and subsequently reversed on appeal, any credit made thereunder shall be void, and the amount of such credit shall be charged against the property in question, and the director of revenue, the county auditor, and the county treasurer are authorized and directed to correct their books and records accordingly. The amount of such erroneous credit, when collected, shall be returned by the county treasurer to the homestead credit fund to be reallocated the following year as provided herein.

2003 Acts, ch 145, §286  
Terminology change applied

#### 425.17 Definitions.

As used in this division, unless the context otherwise requires:

1. “*Base year*” means the calendar year last ending before the claim is filed.

2. “*Claimant*” means either of the following:

a. A person filing a claim for credit or reimbursement under this division who has attained the age of sixty-five years on or before December 31 of the base year or who is totally disabled and was totally disabled on or before December 31 of the base year and is domiciled in this state at the time the claim is filed or at the time of the person’s death in the case of a claim filed by the executor or administrator of the claimant’s estate.

b. A person filing a claim for credit or reimbursement under this division who has attained the age of twenty-three years on or before December 31 of the base year or was a head of household on December 31 of the base year, as defined in the Internal Revenue Code, but has not attained the age or disability status described in paragraph “a”, and is domiciled in this state at the time the claim is filed or at the time of the person’s death in the case of a claim filed by the executor or administrator of the claimant’s estate, and was not claimed as a dependent on any other person’s tax return for the base year.

“*Claimant*” under paragraph “a” or “b” includes a vendee in possession under a contract for deed and may include one or more joint tenants or tenants in common. In the case of a claim for rent constituting property taxes paid, the claimant shall have rented the property during any part of the base year. In the case of a claim for property taxes due, the claimant shall have occupied the property during any part of the fiscal year begin-

ning July 1 of the base year. If a homestead is occupied by two or more persons, and more than one person is able to qualify as a claimant, the persons may each file a claim based upon each person's income and rent constituting property taxes paid or property taxes due.

3. "*Gross rent*" means rental paid at arm's length for the right of occupancy of a homestead or manufactured or mobile home, including rent for space occupied by a manufactured or mobile home not to exceed one acre. If the director of revenue determines that the landlord and tenant have not dealt with each other at arm's length, and the director of revenue is satisfied that the gross rent charged was excessive, the director shall adjust the gross rent to a reasonable amount as determined by the director.

4. "*Homestead*" means the dwelling owned or rented and actually used as a home by the claimant during the period specified in subsection 2, and so much of the land surrounding it including one or more contiguous lots or tracts of land, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. It does not include personal property except that a manufactured or mobile home may be a homestead. Any dwelling or a part of a multidwelling or multipurpose building which is exempt from taxation does not qualify as a homestead under this division. However, solely for purposes of claimants living in a property and receiving reimbursement for rent constituting property taxes paid immediately before the property becomes tax exempt, and continuing to live in it after it becomes tax exempt, the property shall continue to be classified as a homestead. A homestead must be located in this state. When a person is confined in a nursing home, extended-care facility, or hospital, the person shall be considered as occupying or living in the person's homestead if the person is the owner of the homestead and the person maintains the homestead and does not lease, rent, or otherwise receive profits from other persons for the use of the homestead.

5. "*Household*" means a claimant and the claimant's spouse if living with the claimant at any time during the base year. "*Living with*" refers to domicile and does not include a temporary visit.

6. "*Household income*" means all income of the claimant and the claimant's spouse in a household and actual monetary contributions received from any other person living with the claimant during their respective twelve-month income tax accounting periods ending with or during the base year.

7. "*Income*" means the sum of Iowa net income as defined in section 422.7, plus all of the following to the extent not already included in Iowa net income: capital gains, alimony, child support money, cash public assistance and relief, except

property tax relief granted under this division, amount of in-kind assistance for housing expenses, the gross amount of any pension or annuity, including but not limited to railroad retirement benefits, payments received under the federal Social Security Act, except child insurance benefits received by a member of the claimant's household, and all military retirement and veterans' disability pensions, interest received from the state or federal government or any of its instrumentalities, workers' compensation and the gross amount of disability income or "loss of time" insurance. "*Income*" does not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a governmental agency. In determining income, net operating losses and net capital losses shall not be considered.

8. "*Property taxes due*" means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant's homestead in this state, but includes only property taxes for which the claimant is liable and which will actually be paid by the claimant. However, if the claimant is a person whose property taxes have been suspended under sections 427.8 and 427.9, "*property taxes due*" means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant's homestead in this state, but includes only property taxes for which the claimant is liable and which would have to be paid by the claimant if the payment of the taxes has not been suspended pursuant to sections 427.8 and 427.9. "*Property taxes due*" shall be computed with no deduction for any credit under this division or for any homestead credit allowed under section 425.1. Each claim shall be based upon the taxes due during the fiscal year next following the base year. If a homestead is owned by two or more persons as joint tenants or tenants in common, and one or more persons are not members of claimant's household, "*property taxes due*" is that part of property taxes due on the homestead which equals the ownership percentage of the claimant and the claimant's household. The county treasurer shall include with the tax receipt a statement that if the owner of the property is eighteen years of age or over, the person may be eligible for the credit allowed under this division. If a homestead is an integral part of a farm, the claimant may use the total property taxes due for the larger unit. If a homestead is an integral part of a multidwelling or multipurpose building the property taxes due for the purpose of this subsection shall be prorated to reflect the portion which the value of the property that the household occupies as its homestead is to the value of the entire structure. For purposes of this subsection, "*unit*" refers to that parcel of property covered by a single tax statement of which the homestead is a part.

9. "*Rent constituting property taxes paid*" means twenty-three percent of the gross rent actu-

ally paid in cash or its equivalent during the base year by the claimant or the claimant's household solely for the right of occupancy of their homestead in the base year, and which rent constitutes the basis, in the succeeding year, of a claim for reimbursement under this division by the claimant.

10. "Special assessment" means an unpaid special assessment certified pursuant to chapter 384, division IV. The claimant may include as a portion of the taxes due during the fiscal year next following the base year an amount equal to the unpaid special assessment installment due, plus interest, during the fiscal year next following the base year.

11. "Totally disabled" means the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or is reasonably expected to last for a continuous period of not less than twelve months.

2003 Acts, ch 145, §286  
Terminology change applied

**425.20 Filing dates — affidavit — extension.**

A claim for reimbursement for rent constituting property taxes paid shall not be paid or allowed, unless the claim is filed with and in the possession of the department of revenue on or before June 1 of the year following the base year.

A claim for credit for property taxes due shall not be paid or allowed unless the claim is filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the property taxes are due. However, in case of sickness, absence, or other disability of the claimant, or if in the judgment of the county treasurer good cause exists, the county treasurer may extend the time for filing a claim for credit through September 30 of the same calendar year. The county treasurer shall certify to the director of revenue on or before May 1 of each year the total amount of dollars due for claims allowed.

In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue, good cause exists and the claimant requests an extension, the director may extend the time for filing a claim for reimbursement or credit. However, any further time granted shall not extend beyond December 31 of the year following the year in which the claim was required to be filed. Claims filed as a result of this paragraph shall be filed with the director who shall provide for the reimbursement of the claim to the claimant.

2003 Acts, ch 145, §286  
Terminology change applied

**425.21 Satisfaction of outstanding tax liabilities.**

The amount of any claim for credit or reimburse-

ment payable under this division may be applied by the department of revenue against any tax liability, delinquent accounts, charges, loans, fees, or other indebtedness due the state or state agency that has a formal agreement with the department for central debt collection, outstanding on the books of the department against the claimant, or against a spouse who was a member of the claimant's household in the base year.

2003 Acts, ch 145, §286  
Terminology change applied

**425.23 Schedule for claims for credit or reimbursement.**

The amount of any claim for credit or reimbursement filed under this division shall be determined as provided in this section.

1. a. The tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph "a" and paragraph "b" if no appropriation is made to the fund created in section 425.40 shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
\$ 0 — 8,499.99	..... 100%
8,500 — 9,499.99	..... 85
9,500 — 10,499.99	..... 70
10,500 — 12,499.99	..... 50
12,500 — 14,499.99	..... 35
14,500 — 16,499.99	..... 25

b. If moneys have been appropriated to the fund created in section 425.40, the tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph "b", shall be determined as follows:

(1) If the amount appropriated under section 425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is at least twenty-seven million dollars, the tentative credit or reimbursement shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
\$ 0 — 8,499.99	..... 100%
8,500 — 9,499.99	..... 85
9,500 — 10,499.99	..... 70
10,500 — 12,499.99	..... 50
12,500 — 14,499.99	..... 35
14,500 — 16,499.99	..... 25

(2) If the amount appropriated under section

425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is less than twenty-seven million dollars the tentative credit or reimbursement shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
\$ 0 — 8,499.99	..... 50%
8,500 — 9,499.99	..... 42
9,500 — 10,499.99	..... 35
10,500 — 12,499.99	..... 25
12,500 — 14,499.99	..... 17
14,500 — 16,499.99	..... 12

2. The actual credit for property taxes due shall be determined by subtracting from the tentative credit the amount of the homestead credit under section 425.1 which is allowed as a credit against property taxes due in the fiscal year next following the base year by the claimant or any person of the claimant's household. If the subtraction produces a negative amount, there shall be no credit but no refund shall be required. The actual reimbursement for rent constituting property taxes paid shall be equal to the tentative reimbursement.

3. *a.* A person who is eligible to file a claim for credit for property taxes due and who has a household income of eight thousand five hundred dollars or less and who has an unpaid special assessment levied against the homestead may file a claim for a special assessment credit with the county treasurer. The department shall provide to the respective treasurers the forms necessary for the administration of this subsection. The claim shall be filed not later than September 30 of each year. Upon the filing of the claim, interest for late payment shall not accrue against the amount of the unpaid special assessment due and payable. The claim filed by the claimant constitutes a claim for credit of an amount equal to the actual amount due upon the unpaid special assessment, plus interest, payable during the fiscal year for which the claim is filed against the homestead of the claimant. However, where the claimant is an individual described in section 425.17, subsection 2, paragraph "b", and the tentative credit is determined according to the schedule in subsection 1, paragraph "b", subparagraph (2), of this section, the claim filed constitutes a claim for credit of an amount equal to one-half of the actual amount due and payable during the fiscal year. The treasurer shall certify to the director of revenue not later than October 15 of each year the total amount of dollars due for claims allowed. The amount of re-

imbursement due each county shall be paid by the director of revenue by November 15 of each year, drawn upon warrants payable to the respective treasurer. There is appropriated annually from the general fund of the state to the department of revenue an amount sufficient to carry out the provisions of this subsection. The treasurer shall credit any moneys received from the department against the amount of the unpaid special assessment due and payable on the homestead of the claimant.

*b.* For purposes of this subsection, in computing household income, a person with a total disability shall deduct all medical and necessary care expenses paid during the twelve-month income tax accounting periods used in computing household income which are attributable to the person's total disability. "Medical and necessary care expenses" are those used in computing the federal income tax deduction under section 213 of the Internal Revenue Code as defined in section 422.3.

4. *a.* For the base year beginning in the 1999 calendar year and for each subsequent base year, the dollar amounts set forth in subsections 1 and 3 shall be multiplied by the cumulative adjustment factor for that base year. "Cumulative adjustment factor" means the product of the annual adjustment factor for the 1998 base year and all annual adjustment factors for subsequent base years. The cumulative adjustment factor applies to the base year beginning in the calendar year for which the latest annual adjustment factor has been determined.

*b.* The annual adjustment factor for the 1998 base year is one hundred percent. For each subsequent base year, the annual adjustment factor equals the annual inflation factor for the calendar year, in which the base year begins, as computed in section 422.4 for purposes of the individual income tax.

2003 Acts, ch 145, §286  
Terminology change applied

**425.25 Administration.**

The director of revenue shall make available suitable forms with instructions for claimants. Each assessor and county treasurer shall make available the forms and instructions. The claim shall be in a form as the director may prescribe. The director may also devise a tax credit or reimbursement table, with amounts rounded to the nearest even whole dollar. Reimbursements or credits in the amount of less than one dollar shall not be paid.

2003 Acts, ch 145, §286  
Terminology change applied

**425.26 Proof of claim.**

Every claimant shall give the department of revenue, in support of the claim reasonable proof of:

1. Age and total disability, if any.

2. Property taxes due or rent constituting property taxes paid, including the name and address of the owner or manager of the property rented and a statement whether the claimant is related by blood, marriage, or adoption to the owner or manager of the property rented.

3. Homestead credit allowed against property taxes due.

4. Changes of homestead.
5. Household membership.
6. Household income.
7. Size and nature of property claimed as the homestead.

The director may require any additional proof necessary to support a claim.

2003 Acts, ch 145, §286  
Terminology change applied

**425.28 Waiver of confidentiality.**

A claimant shall expressly waive any right to confidentiality relating to all income tax information obtainable through the department of revenue, including all information covered by sections 422.20 and 422.72. This waiver shall apply to information available to the county treasurer who shall hold the information confidential except that it may be used as evidence to disallow the credit.

The department of revenue may release information pertaining to a person's eligibility or claim for or receipt of rent reimbursement to an employee of the department of inspections and appeals in the employee's official conduct of an audit or investigation.

2003 Acts, ch 145, §286  
Terminology change applied

**425.29 False claim — penalty.**

A person who makes a false affidavit for the purpose of obtaining credit or reimbursement provided for in this division or who knowingly receives the credit or reimbursement without being legally entitled to it or makes claim for the credit or reimbursement in more than one county in the state without being legally entitled to it is guilty of a fraudulent practice. The claim for credit or reimbursement shall be disallowed in full and if the claim has been paid the amount shall be recovered in the manner provided in section 425.27. The director of revenue shall send a notice of disallowance of the claim.

2003 Acts, ch 145, §286  
Terminology change applied

**425.30 Notices.**

Section 422.57, subsection 1, shall apply to all notices under this division.

For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §194, 205  
Section not amended; footnote added

**425.31 Appeals.**

Any person aggrieved by an act or decision of the director of revenue or the department of revenue

under this division shall have the same rights of appeal and review as provided in sections 421.1 and 422.55 and the rules of the department of revenue.

2003 Acts, ch 145, §286  
For future amendment to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §195, 205  
Terminology change applied

**425.33 Rent increase — request and order for reduction.**

If upon petition by a claimant the department of revenue determines that a landlord has increased the claimant's rent primarily because the claimant is eligible for reimbursement under this division, the department of revenue shall request the landlord by mail to reduce the rent appropriately.

In determining whether a landlord has increased a claimant's rent primarily because the claimant is eligible for reimbursement under this division, the department of revenue shall consider the following factors:

1. The amount of the increase in rent.
2. If the landlord operates other rental property, whether a similar increase was imposed on the other rental property.
3. Increased or decreased costs of materials, supplies, services, and taxes in the area.
4. The time the rent was increased.
5. Other relevant factors in each particular case.

If the landlord fails to comply with the request of the department of revenue within fifteen days after the request is mailed by the department, the department of revenue shall order the rent reduced by an appropriate amount.

2003 Acts, ch 145, §286  
Terminology change applied

**425.34 Hearings and appeals.**

If the department of revenue orders a landlord to reduce rent to a claimant, then upon the request of the landlord the department of revenue shall hold a prompt hearing of the matter, to be conducted in accordance with the rules of the department. The department of revenue shall give notice of the decision by mail to the claimant and to the landlord.

The claimant and the landlord shall have the rights of appeal and review as provided in section 425.31.

2003 Acts, ch 145, §286  
Terminology change applied

**425.37 Rules.**

The director of revenue shall adopt rules in accordance with chapter 17A for the interpretation and proper administration of this division, including rules to prevent and disallow duplication of benefits and to prevent any unreasonable hardship or advantage to any person.

2003 Acts, ch 145, §286  
Terminology change applied

**425.39 Fund created — appropriation — priority.**

The elderly and disabled property tax credit and reimbursement fund is created. There is appropriated annually from the general fund of the state to the department of revenue to be credited to the elderly and disabled property tax credit and reimbursement fund, from funds not otherwise appropriated, an amount sufficient to implement this division for claimants described in section 425.17, subsection 2, paragraph “a”.

2003 Acts, ch 145, §286  
Terminology change applied

**425.40 Low-income fund created.**

1. A low-income tax credit and reimbursement fund is created.

2. If the amount appropriated for purposes of this section for a fiscal year is insufficient to pay all claims in full, the director shall pay, in full, all claims to be paid during the fiscal year for re-

imbursement of rent constituting property taxes paid or if moneys are insufficient to pay all such claims on a pro rata basis. If the amount of claims for credit for property taxes due to be paid during the fiscal year exceed the amount remaining after payment to renters, the director of revenue shall prorate the payments to the counties for the property tax credit. In order for the director to carry out the requirements of this subsection, notwithstanding any provision to the contrary in this division, claims for reimbursement for rent constituting property taxes paid filed before May 1 of the fiscal year and those claims filed on or after May 1 of the fiscal year shall be eligible to be paid during the following fiscal year and the director is not required to make payments to counties for the property tax credit before June 15 of the fiscal year.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 425A

### FAMILY FARM TAX CREDIT

**425A.5 Computation by county auditor.**

The family farm tax credit allowed each year shall be computed as follows: On or before April 1, the county auditor shall list by school districts all tracts of agricultural land which are entitled to credit, the taxable value for the previous year, the budget from each school district for the previous year, and the tax rate determined for the general fund of the school district in the manner prescribed in section 444.3 for the previous year, and if the tax rate is in excess of five dollars and forty cents per thousand dollars of assessed value, the auditor shall multiply the tax levy which is in excess of five dollars and forty cents per thousand dollars of assessed value by the total taxable value of the agricultural land entitled to credit in the school district, and on or before April 1, certify the total amount of credit and the total number of acres entitled to the credit to the department of revenue.

2003 Acts, ch 145, §286  
Terminology change applied

**425A.6 Warrants drawn by director — proration.**

After receiving from the county auditors the certifications provided for in section 425A.5, and during the following fiscal year, the director of revenue shall draw warrants on the family farm tax credit fund created in section 425A.1, payable to the county treasurers in the amount certified by the county auditors of the respective counties and mail the warrants to the county auditors on June 1 of each year taking into consideration the rela-

tive budget and cash position of the state resources. However, if the family farm tax credit fund is insufficient to pay in full the total of the amounts certified to the director of revenue, the director shall prorate the fund to the county treasurers and shall notify the county auditors of the pro rata percentage on or before June 1.

2003 Acts, ch 145, §286  
Terminology change applied

**425A.7 Apportionment by auditor.**

Upon receiving the pro rata percentage from the director of revenue, the county auditor shall determine the amount to be credited to each tract of agricultural land, and shall enter upon tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit before delivering the tax lists to the county treasurer. Upon receipt of the director's warrant by the county auditor, the auditor shall deliver the warrant to the county treasurer for apportionment. The county treasurer shall show on each tax receipt the amount of tax credit for each tract of agricultural land. In case of change of ownership the credit shall follow the title.

2003 Acts, ch 145, §286  
Terminology change applied

**425A.8 False claim — penalty.**

A person making a false claim or affidavit with fraudulent intent to obtain the credit under section 425A.3, is guilty of a fraudulent practice and the claim shall be disallowed in full. If the credit has been paid, the amount of the credit plus a pen-

alty equal to twenty-five percent of the amount of credit plus interest, at the rate in effect under section 421.7, from the time of payment shall be collected by the county treasurer in the same manner as other property taxes, penalty, and interest are collected and when collected shall be paid to the director of revenue.

A person who fails to notify the assessor of a change in the person who is actively engaged in farming the tract for which the credit under section 425A.3 is allowed shall be liable for the

amount of the credit plus a penalty equal to five percent of the amount of the credit. The amounts shall be collected by the county treasurer in the same manner as other property taxes and any penalty are collected and when collected shall be paid to the director of revenue.

2003 Acts, ch 145, §286  
Fraudulent practices; §714.8 – 714.14  
2001 amendment applies to family farm tax credit claims filed on or after July 1, 2001; 2001 Acts, ch 154, §6  
Terminology change applied

## CHAPTER 426

### AGRICULTURAL LAND TAX CREDIT

#### 426.6 Computation by auditor — appeal.

The agricultural land tax credit allowed each year shall be computed as follows: On or before April 1, the county auditor shall list by school districts all tracts of agricultural lands which are entitled to credit, together with the taxable value for the previous year, together with the budget from each school district for the previous year, and the tax rate determined for the general fund of the district in the manner prescribed in section 444.3 for the previous year, and if such tax rate is in excess of five dollars and forty cents per thousand dollars of assessed value, the auditor shall multiply the tax levy which is in excess of five dollars and forty cents per thousand dollars of assessed value by the total taxable value of the agricultural lands entitled to credit in the district, and on or before April 1, certify the amount to the department of revenue.

In the event the county auditor denies a credit upon any such lands, the auditor shall immediately mail to the owner at the owner's last known address notice of the decision thereon. The owner may, within thirty days thereafter, appeal to the board of supervisors of the county wherein the land involved is situated by serving notice of said appeal upon the chairperson of said board. The board shall hear such appeal promptly and shall determine anew all questions involved in said appeal and shall within ten days after such hearing, mail to the owner at the owner's last known address, notice of its decision. In the event of disallowance the owner may, within ten days from the date such notice is mailed, appeal such disallowance by the board of supervisors to the district court of that county by serving written notice of appeal on the county auditor. The appeal shall be tried de novo and may be heard in term time or vacation. The decision of the district court thereon shall be final.

2003 Acts, ch 145, §286  
Terminology change applied

#### 426.7 Warrants drawn by director.

After receiving from the county auditors the cer-

tifications provided for in section 426.6, and during the following fiscal year, the director of revenue shall draw warrants on the agricultural land credit fund created in section 426.1, payable to the county treasurers in the amount certified by the county auditors of the respective counties and mail the warrants to the county auditors on July 15 of each year taking into consideration the relative budget and cash position of the state resources. However, if the agricultural land credit fund is insufficient to pay in full the total of the amounts certified to the director of revenue, the director shall prorate the fund to the county treasurers and notify the county auditors of the pro rata percentage on or before June 15.

2003 Acts, ch 145, §286  
Terminology change applied

#### 426.8 Apportionment by auditor.

Upon receiving the pro rata percentage from the director of revenue, the county auditor shall determine the amount to be credited to each tract of agricultural land, and shall enter upon tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit before delivering said tax lists to the county treasurer. Upon receipt of the director's warrant by the county auditor, the auditor shall deliver said warrant to the county treasurer for apportionment. The county treasurer shall show on each tax receipt the amount of tax credit for each tract of agricultural land. In case of change of ownership the credit shall follow the title.

2003 Acts, ch 145, §286  
Terminology change applied

#### 426.10 Rules.

The director of revenue shall prescribe forms and rules, not inconsistent with this chapter, necessary to carry out its purposes.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 426A

### MILITARY SERVICE TAX CREDIT AND EXEMPTIONS

#### 426A.3 Computation by auditor.

On or before August 1 of each year the county auditor shall certify to the county treasurer all claims for military service tax exemptions which have been allowed by the board of supervisors. Such certificate shall list the total amount of dollars, listed by taxing district in the county, due for military service tax credits claimed and allowed. The county treasurer shall forthwith certify to the department of revenue the amount of dollars, listed by taxing district in the county, due for military service tax credits claimed and allowed.

2003 Acts, ch 145, §286  
Terminology change applied

#### 426A.4 Certification by director of revenue.

Sums distributable from the general fund of the state shall be allocated annually to the counties of the state. On September 15 annually the director of revenue shall certify and draw warrants to the treasurer of each county payable from the general fund of the state in the amount claimed. Payments shall be made to the treasurer of each county not later than September 30 of each year.

2003 Acts, ch 145, §286  
Terminology change applied

#### 426A.6 Setting aside allowance.

If the director of revenue determines that a claim for military service tax exemption has been allowed by a board of supervisors which is not justifiable under the law and not substantiated by proper facts, the director may, at any time within thirty-six months from July 1 of the year in which the claim is allowed, set aside the allowance. Notice of the disallowance shall be given to the county auditor of the county in which the claim has been improperly granted and a written notice of the disallowance shall also be addressed to the claimant at the claimant's last known address. The claimant or the board of supervisors may appeal to the state board of tax review pursuant to section 421.1, subsection 4. The claimant or the board of supervisors may seek judicial review of the action of the state board of tax review in accordance with chapter 17A. If a claim is disallowed by the director of revenue and not appealed to the state board of tax review or appealed to the state board of tax review and thereafter upheld upon final resolution, including judicial review, the credits allowed and paid from the general fund of the state become a lien upon the property on which the credit was originally granted, if still in the hands of the claimant and not in the hands of a bona fide purchaser, the amount so erroneously paid shall be collected by the county treasurer in the same manner as

other taxes, and the collections shall be returned to the department of revenue and credited to the general fund of the state. The director of revenue may institute legal proceedings against a military service tax exemption claimant for the collection of payments made on disallowed exemptions.

2003 Acts, ch 145, §286  
Terminology change applied

#### 426A.7 Forms — rules.

The director of revenue shall prescribe the form for the making of a verified statement and designation of property eligible for military service tax exemption, and the form for the supporting affidavits required herein, and such other forms as may be necessary for the proper administration of this chapter. As soon as practicable after the effective date of this chapter, and from time to time thereafter as necessary, the department of revenue shall forward to the county auditors of the several counties of the state, such prescribed sample forms. The director of revenue shall have the power and authority to prescribe rules, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes.

2003 Acts, ch 145, §286  
Terminology change applied

#### 426A.8 Excess remitted — appeals.

If the amount of credit apportioned to any property eligible to military service tax exemption under this chapter in any year shall exceed the total tax, exclusive of any special assessments levied against such property eligible for military service tax exemption, then the excess shall be remitted by the county treasurer to the department of revenue to be redeposited in the general fund of the state and reallocated the following year by the department.

If any claim for exemption made has been denied by the board of supervisors, and the action is subsequently reversed on appeal, the same credit shall be allowed on the assessed valuation, not to exceed the amount of the military service tax exemption involved in the appeal, as was allowed on other military service tax exemption valuations for the year or years in question, and the director of revenue, the county auditor, and the county treasurer shall credit and change their books and records accordingly.

If the appealing taxpayer has paid one or both of the installments of the tax payable in the year or years in question on such military service tax exemption valuation, remittance shall be made to the county treasurer in the amount of such credit.

The amount of the credit shall be allocated and paid from the surplus redeposited in the general fund of the state provided for in the first para-

graph of this section.

2003 Acts, ch 145, §286  
Terminology change applied

#### 426A.9 Erroneous credits.

If any claim is allowed, and subsequently reversed on appeal, any credit shall be void, and the amount of the credit shall be charged against the

property in question, and the director of revenue, the county auditor and the county treasurer shall correct their books and records. The amount of the erroneous credit, when collected, shall be returned by the county treasurer to the general fund of the state.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 426B

### PROPERTY TAX RELIEF — MENTAL HEALTH, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES SERVICES

#### 426B.1 Appropriations — property tax relief fund.

1. A property tax relief fund is created in the state treasury under the authority of the department of human services. The fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state except in determining the cash position of the state for payment of state obligations. The moneys in the fund are not subject to the provisions of section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this chapter. Moneys in the fund may be used for cash flow purposes, provided that any moneys so allocated are returned to the fund by the end of each fiscal year. However, the fund shall be considered a special account for the purposes of section 8.53, relating to elimination of any GAAP deficit. For the purposes of this chapter, unless the context otherwise requires, “*property tax relief fund*” means the property tax relief fund created in this section.

2. There is appropriated on July 1 of each fiscal year to the property tax relief fund from the general fund of the state, ninety-five million dollars.

3. There is annually appropriated from the property tax relief fund to the department of human services to supplement the medical assistance appropriation for the fiscal year beginning July 1, 1997, and for succeeding fiscal years, six million six hundred thousand dollars to be used for the nonfederal share of the costs of services provided to minors with mental retardation under the medical assistance program to meet the requirements of section 249A.12, subsection 4. The appropriation in this subsection shall be charged to the property tax relief fund prior to the distribution of moneys from the fund under section 426B.2 and the amount of moneys available for distribution shall be reduced accordingly. However, the appropriation in this subsection shall be considered to be a property tax relief payment for purposes of the combined amount of payments required to achieve fifty percent of the counties’ base

year expenditures as provided in section 426B.2, subsection 2.

2003 Acts, ch 108, §72  
Subsection 2 amended

#### 426B.2 Property tax relief fund distributions.

1. The moneys in the property tax relief fund available to counties for a fiscal year shall be distributed as provided in this section. A county’s proportion of the moneys shall be equivalent to the sum of the following three factors:

a. One-third based upon the county’s proportion of the state’s general population.

b. One-third based upon the county’s proportion of the state’s total taxable property valuation assessed for taxes payable in the previous fiscal year.

c. One-third based upon the county’s proportion of all counties’ base year expenditures, as defined in section 331.438.

Moneys provided to a county for property tax relief in a fiscal year, excluding replacement taxes in the property tax relief fund, in accordance with this subsection shall not be less than the amount provided for property tax relief in the previous fiscal year.

2. The distributions under subsection 1 shall continue to be made until the combined amount of the distributions made under subsection 1 are equal to fifty percent of the total of all counties’ base year expenditures as defined in section 331.438.

3. The director of human services shall draw warrants on the property tax relief fund, payable to the county treasurer in the amount due to a county in accordance with subsection 1 and mail the warrants to the county auditors in July and January of each year. Any replacement generation tax in the property tax relief fund as of November 1 shall be paid to the county treasurers in July and January of the fiscal year beginning the following July 1.

4. As used in this chapter, and in sections 331.438 and 331.439, “*population*” means the lat-

est applicable population estimate issued by the federal government.

2003 Acts, ch 106, §1, 15  
2003 amendments to subsections 1 and 3 apply retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 106, §15  
Subsections 1 and 3 amended

#### 426B.5 Funding pools.

##### 1. *Per capita expenditure target pool.*

a. A per capita expenditure target pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

b. A statewide per capita expenditure target amount is established. The statewide per capita expenditure target amount shall be equal to the one-hundredth percentile of all county per capita expenditures in the fiscal year beginning July 1, 1997, and ending June 30, 1998.

c. Moneys available in the per capita expenditure pool for a fiscal year shall be distributed to those counties that meet all of the following eligibility requirements:

(1) The county is levying the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund under section 331.424A.

(2) The county's per capita expenditure in the latest fiscal year for which the actual expenditure information is available is equal to or less than the statewide per capita expenditure target amount.

(3) In the fiscal year that commenced two years prior to the fiscal year of distribution, the county's mental health, mental retardation, and developmental disabilities services fund ending balance under generally accepted accounting principles was equal to or less than twenty-five percent of the county's actual gross expenditures for the fiscal year that commenced two years prior to the fiscal year of distribution.

(4) The county is in compliance with the filing date requirements under section 331.403.

d. The distribution amount a county receives from the moneys available in the pool shall be determined based upon the county's proportion of the general population of the counties eligible to receive moneys from the pool for that fiscal year. However, a county shall not receive moneys in excess of the amount which would cause the county's per capita expenditure to exceed the statewide per capita expenditure target. Moneys credited to the per capita expenditure target pool which remain unobligated or unexpended at the close of a fiscal year shall remain in the pool for distribution in the succeeding fiscal year.

e. The department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with this subsection. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued in January.

##### 2. *Risk pool.*

a. For the purposes of this subsection, unless the context otherwise requires:

(1) "*Net expenditure amount*" means a county's gross expenditures from the services fund for a fiscal year as adjusted by subtracting all services fund revenues for that fiscal year that are received from a source other than property taxes, as calculated on a modified accrual basis.

(2) "*Services fund*" means a county's mental health, mental retardation, and developmental disabilities services fund created in section 331.424A.

b. A risk pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

c. A risk pool board is created. The board shall consist of two county supervisors, two county auditors, a member of the mental health and developmental disabilities commission who is not a member of a county board of supervisors, a member of the county finance committee created in chapter 333A who is not an elected official, a representative of a provider of mental health or developmental disabilities services selected from nominees submitted by the Iowa association of community providers, and two single entry point process administrators, all appointed by the governor, and one member appointed by the director of human services. All members appointed by the governor shall be subject to confirmation by the senate. Members shall serve for three-year terms. A vacancy shall be filled in the same manner as the original appointment. Expenses and other costs of the risk pool board members representing counties shall be paid by the county of origin. Expenses and other costs of risk pool board members who do not represent counties shall be paid from a source determined by the governor. Staff assistance to the board shall be provided by the department of human services and counties. Actuarial expenses and other direct administrative costs shall be charged to the pool.

d. (1) A county must apply to the board for assistance from the risk pool on or before January 25 to cover an unanticipated net expenditure amount in excess of the county's current fiscal year budgeted net expenditure amount for the county's services fund. The risk pool board shall make its final decisions on or before February 25 regarding acceptance or rejection of the applications for assistance and the total amount accepted shall be considered obligated. For purposes of applying for risk pool assistance and for repaying unused risk pool assistance, the current fiscal year budgeted net expenditure amount shall be deemed to be the higher of either the budgeted net expenditure amount in the management plan approved under section 331.439 for the fiscal year in which the application is made or the prior fiscal year's net expenditure amount.

(2) Basic eligibility for risk pool assistance

shall require a projected net expenditure amount in excess of the sum of one hundred five percent of the county's current fiscal year budgeted net expenditure amount and any amount of the county's prior fiscal year ending fund balance in excess of twenty-five percent of the county's gross expenditures from the services fund in the prior fiscal year. However, if a county's services fund ending balance in the previous fiscal year was less than ten percent of the amount of the county's gross expenditures from the services fund for that fiscal year and the county has a projected net expenditure amount for the current fiscal year that is in excess of one hundred one percent of the budgeted net expenditure amount for the current fiscal year, the county shall be considered to have met the basic eligibility requirement and is qualified for risk pool assistance.

(3) The board shall review the fiscal year-end financial records for all counties that are granted risk pool assistance. If the board determines a county's actual need for risk pool assistance was less than the amount of risk pool assistance granted to the county, the county shall refund the difference between the amount of assistance granted and the actual need. The county shall submit the refund within thirty days of receiving notice from the board. Refunds shall be credited to the risk pool.

(4) A county receiving risk pool assistance in a fiscal year in which the county did not levy the maximum amount allowed for the county's services fund under section 331.424A shall be required to repay the risk pool assistance during the two succeeding fiscal years. The repayment amount shall be limited to the amount by which the actual amount levied was less than the maximum amount allowed, with at least fifty percent due in the first succeeding fiscal year and the remainder due in the second succeeding fiscal year.

(5) The board shall determine application requirements to ensure prudent use of risk pool assistance. The board may accept or reject an application for assistance in whole or in part. The decision of the board is final.

(6) The total amount of risk pool assistance shall be limited to the amount available in the risk pool for a fiscal year. If the total amount of eligible assistance exceeds the amount available in the risk pool, the amount of assistance paid shall be prorated among the counties eligible for assistance. Moneys remaining unexpended or unobligated in the risk pool following the risk pool board's decisions made pursuant to subparagraph (1) shall be distributed to the counties eligible to receive funding from the allowed growth factor adjustment appropriation for the fiscal year using the distribution methodology applicable to that appropriation.

*e.* A county may apply for preapproval for risk pool assistance based upon an individual who has an unanticipated disability condition with an exceptional cost and the individual is either new to the county's service system or the individual's unanticipated disability condition is new to the individual.

*f.* The department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with the board's decisions. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued before the close of the fiscal year.

*g.* On or before March 1 and September 1 of each fiscal year, the department of human services shall provide the risk pool board with a report of the financial condition of each funding source administered by the board. The report shall include but is not limited to an itemization of the funding source's balances, types and amount of revenues credited, and payees and payment amounts for the expenditures made from the funding source during the reporting period.

2003 Acts, ch 179, §1

Confirmation, see §2.32

Purchase of service provider reimbursement; 2000 Acts, ch 1221, §3; 2001 Acts, ch 184, §2; 2002 Acts, ch 1174, §2; 2003 Acts, ch 183, §2

2001 amendments striking subsection 2 and amending former subsection 3, renumbered as 2, take effect May 21, 2001, and apply to fiscal years beginning on or after July 1, 2001; crediting of remaining moneys in the incentive and efficiency pool; 2001 Acts, ch 155, §11

Subsection 2, paragraph d, subparagraphs (1) and (6) amended

## CHAPTER 427

### PROPERTY EXEMPT AND TAXABLE

#### 427.1 Exemptions.

The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including state university, university of science and technology, and school lands, except as otherwise provided in this subsection. The exemption herein provided shall not include any real property subject to taxa-

tion under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the Congress of the United States shall expressly autho-

alize the taxation of such machinery and equipment.

Property of the state operated pursuant to section 904.302, 904.705, or 904.706 that is leased to an entity other than an entity which is exempt from property taxation under this section shall be subject to property taxation for the term of the lease. Property taxes levied against such leased property shall be paid from the revolving farm fund created in section 904.706. The lessor shall file a copy of the lease with the county assessor of the county where the property is located.

2. *Municipal and military property.* The property of a county, township, city, school corporation, levee district, drainage district, or the Iowa national guard, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 28F or 476A that shall be subject to taxation under chapter 437A and facilities of a municipal utility that are used for the provision of local exchange services pursuant to chapter 476, but only to the extent such facilities are used to provide such services, which shall be subject to taxation under chapter 433, except that section 433.11 shall not apply. The exemption for property owned by a city or county also applies to property which is operated by a city or county as a library, art gallery or museum, conservatory, botanical garden or display, observatory or science museum, or as a location for holding athletic contests, sports or entertainment events, expositions, meetings or conventions, or leased from the city or county for any such purposes, or leased from the city or county by the Iowa national guard or by a federal agency for the benefit of the Iowa national guard when devoted for public use and not for pecuniary profit. Food and beverages may be served at the events or locations without affecting the exemptions, provided the city has approved the serving of food and beverages on the property if the property is owned by the city or the county has approved the serving of food and beverages on the property if the property is owned by the county.

3. *Public grounds and cemeteries.* Public grounds, including all places for the burial of the dead; and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. *Fire company buildings and grounds.* The publicly owned buildings and grounds used exclusively for keeping fire engines and implements for extinguishing fires and for meetings of fire companies.

5. *Property of associations of war veterans.* The property of any organization composed wholly of veterans of any war, when such property is devoted entirely to its own use and not held for pecuniary profit. The operation of bingo games on property of such organization shall not adversely

affect the exemption of that property under this subsection if all proceeds, in excess of expenses, are used for the legitimate purposes of the organization.

6. *Property of cemetery associations.* Burial grounds, mausoleums, buildings and equipment owned and operated by cemetery associations and used exclusively for the maintenance and care of the cemeteries devoted to interment of human bodies and human remains. The exemption granted by this subsection shall not apply to any property used for the practice of mortuary science.

7. *Libraries and art galleries.* All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries owned and kept by private individuals, associations, or corporations, for public use and not for private profit.

8. *Property of religious, literary, and charitable societies.* All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit. However, an organization mentioned in this subsection whose primary objective is to preserve land in its natural state may own or lease land not exceeding three hundred twenty acres in each county for its appropriate objects. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment. All such property shall be listed upon the tax rolls of the district or districts in which it is located and shall have ascribed to it an actual fair market value and an assessed or taxable value, as contemplated by section 441.21, whether such property be subject to a levy or be exempted as herein provided and such information shall be open to public inspection.

9. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township except any real property acquired after January 1, 1965, by any educational institution as a part of its endowment fund or upon which any income is derived or used, directly or indirectly, for full or partial payment for services rendered, shall be taxed beginning with the levies applied for taxes payable in the year 1967, at the same rate as all other property of the same class in the taxing district in which the real property is located. The property acquired prior to January 1, 1965, and held or owned as part of the endowment fund of an educational institution shall be subject to assessment and levy in the assessment year 1974 for taxes payable in 1975. All the property shall be listed on the assessment rolls in the district in which the property is located and an actual fair market value

and an assessed or taxable value be ascribed to it, as contemplated by section 441.21, irrespective of whether an exemption under this subsection may be or is affirmed, and the information shall be open to public inspection; it being the intent of this section that the property be valued whether or not it be subject to a levy. Every educational institution claiming an exemption under this subsection shall file with the assessor not later than February 1 of the year for which the exemption is requested, a statement upon forms to be prescribed by the director of revenue, describing and locating the property upon which exemption is claimed. Property which is located on the campus grounds and used for student union purposes may serve food and beverages without affecting its exemption received pursuant to subsection 8 or this subsection.

10. *Homes for soldiers.* The buildings and grounds of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

11. *Agricultural produce.* Growing agricultural and horticultural crops except commercial orchards and vineyards.

12. *Government lands.* Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

13. *Public airports.* Any lands, the use of which (without charge by or compensation to the holder of the legal title thereto) has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

14. *Statement of objects and uses filed.* A society or organization claiming an exemption under subsection 5, 8, or 33 shall file with the assessor not later than February 1 a statement upon forms to be prescribed by the director of revenue, describing the nature of the property upon which the exemption is claimed and setting out in detail any uses and income from the property derived from the rentals, leases, or other uses of the property not solely for the appropriate objects of the society or organization. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property is used for the purposes specified in the original claim for exemption. When the property is sold or transferred, the county recorder shall provide notice of the transfer to the assessor. The notice shall describe the property transferred and the name of the person to whom title to the property is transferred.

The assessor, in arriving at the valuation of any property of the society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall assess in the same manner as other property, all or any portion of the property involved which is

leased or rented and is used regularly for commercial purposes for a profit to a party or individual. If a portion of the property is used regularly for commercial purposes, an exemption shall not be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. However, the board of trustees or the board of directors of a hospital, as defined in section 135B.1, may permit use of a portion of the hospital for commercial purposes, and the hospital is entitled to full exemption for that portion used for nonprofit health-related purposes, upon compliance with the filing requirements of this subsection.

An exemption shall not be granted upon property upon or in which persistent violations of the laws of the state are permitted. A claimant of an exemption shall, under oath, declare that no violations of law will be knowingly permitted or have been permitted on or after January 1 of the year in which a tax exemption is requested. Claims for exemption shall be verified under oath by the president or other responsible head of the organization. A society or organization which ceases to use the property for the purposes stated in the claim shall provide written notice to the assessor of the change in use.

15. *Mandatory denial.* No exemption shall be granted upon any property which is the location of federally licensed devices not lawfully permitted to operate under the laws of the state.

16. *Revoking or modifying exemption.* Any taxpayer or any taxing district may make application to the director of revenue for revocation or modification of any exemption, based upon alleged violations of this chapter. The director of revenue may also on the director's own motion set aside or modify any exemption which has been granted upon property for which exemption is claimed under this chapter. The director of revenue shall give notice by mail to the taxpayer or taxing district applicant and to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue, and shall hold a hearing prior to issuing any order for revocation or modification. An order made by the director of revenue revoking or modifying an exemption shall be applicable to the tax year commencing with the tax year in which the application is made to the director or the tax year commencing with the tax year in which the director's own motion is filed. An order made by the director of revenue revoking or modifying an exemption is subject to judicial review in accordance with chapter 17A, the Iowa administrative procedure Act. Notwithstanding the terms of chapter 17A, petitions for judicial review may be filed in the district court having jurisdiction in the county in which the property is located, and must be filed within thirty days after any order revoking or

modifying an exemption is made by the director of revenue.

17. *Rural water sales.* The real property of a nonprofit corporation engaged in the distribution and sale of water to rural areas when devoted to public use and not held for pecuniary profit.

18. *Assessed value of exempt property.* Each county and city assessor shall determine the assessment value that would be assigned to the property if it were taxable and value all tax exempt property within the assessor's jurisdiction. A summary report of tax exempt property shall be filed with the director of revenue and the local board of review on or before April 16 of each year on forms prescribed by the director of revenue.

19. *Pollution control and recycling.* Pollution-control or recycling property as defined in this subsection shall be exempt from taxation to the extent provided in this subsection, upon compliance with the provisions of this subsection.

This exemption shall apply to new installations of pollution-control or recycling property beginning on January 1 after the construction or installation of the property is completed. This exemption shall apply beginning on January 1, 1975, to existing pollution-control property if its construction or installation was completed after September 23, 1970, and this exemption shall apply beginning January 1, 1994, to recycling property.

This exemption shall be limited to the market value, as defined in section 441.21, of the pollution-control or recycling property. If the pollution-control or recycling property is assessed with other property as a unit, this exemption shall be limited to the net market value added by the pollution-control or recycling property, determined as of the assessment date.

Application for this exemption shall be filed with the assessing authority not later than the first of February of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific pollution-control or recycling property to be exempted.

The application for a specific pollution-control or recycling property shall be accompanied by a certificate of the department of natural resources certifying that the primary use of the pollution-control property is to control or abate pollution of any air or water of this state or to enhance the quality of any air or water of this state or, if the property is recycling property, that the primary use of the property is for recycling.

A taxpayer may seek judicial review of a determination of the department or, on appeal, of the environmental protection commission in accordance with the provisions of chapter 17A.

The environmental protection commission of the department of natural resources shall adopt rules relating to certification under this subsection and information to be submitted for evaluating pollution-control or recycling property for

which a certificate is requested. The department of revenue shall adopt any rules necessary to implement this subsection, including rules on identification and valuation of pollution-control or recycling property. All rules adopted shall be subject to the provisions of chapter 17A.

For the purposes of this subsection, "*pollution-control property*" means personal property or improvements to real property, or any portion thereof, used primarily to control or abate pollution of any air or water of this state or used primarily to enhance the quality of any air or water of this state and "*recycling property*" means personal property or improvements to real property or any portion of the property, used primarily in the manufacturing process and resulting directly in the conversion of waste plastic, wastepaper products, waste paperboard, or waste wood products into new raw materials or products composed primarily of recycled material. In the event such property shall also serve other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution, to the enhancement of the quality of the air or water of this state, or for recycling shall be exempt from taxation under this subsection.

For the purposes of this subsection, "*pollution*" means air pollution as defined in section 455B.131 or water pollution as defined in section 455B.171. "*Water of the state*" means the water of the state as defined in section 455B.171. "*Enhance the quality*" means to diminish the level of pollutants below the air or water quality standards established by the environmental protection commission of the department of natural resources.

20. *Impoundment structures.* The impoundment structure and any land underlying an impoundment located outside an incorporated city, which are not developed or used directly or indirectly for nonagricultural income-producing purposes and which are maintained in a condition satisfactory to the soil and water conservation district commissioners of the county in which the impoundment structure and the impoundment are located. A person owning land which qualifies for a property tax exemption under this subsection shall apply to the county assessor each year not later than February 1 for the exemption. The application shall be made on forms prescribed by the department of revenue. The first application shall be accompanied by a copy of the water storage permit approved by the director of the department of natural resources or the director's designee, and a copy of the plan for the construction of the impoundment structure and the impoundment. The construction plan shall be used to determine the total acre-feet of the impoundment and the amount of land which is eligible for the property tax exemption. The county assessor shall annually review each application for the property tax ex-

emption under this subsection and submit it, with the recommendation of the soil and water conservation district commissioners, to the board of supervisors for approval or denial. An applicant for a property tax exemption under this subsection may appeal the decision of the board of supervisors to the district court.

As used in this subsection, “*impoundment*” means a reservoir or pond which has a storage capacity of at least eighteen acre-feet of water or sediment at the time of construction; “*storage capacity*” means the total area below the crest elevation of the principal spillway including the volume of any excavation in the area; and “*impoundment structure*” means a dam, earthfill, or other structure used to create an impoundment.

21. *Low-rent housing.* The property owned and operated by a nonprofit organization providing low-rent housing for persons who are elderly and persons with physical and mental disabilities. The exemption granted under the provisions of this subsection shall apply only until the terms of the original low-rent housing development mortgage is paid in full or expires, subject to the provisions of subsection 14.

22. *Natural conservation or wildlife areas.* Recreational lakes, forest covers, rivers and streams, river and stream banks, and open prairies as designated by the board of supervisors of the county in which located. The board of supervisors shall annually designate the real property, not to exceed in the aggregate for the fiscal year beginning July 1, 1983, the greater of one percent of the acres assessed as agricultural land or three thousand acres in each county, for which this exemption shall apply. For subsequent fiscal years, the limitation on the maximum acreage of real property that may be granted exemptions shall be the limitation for the previous fiscal year, unless the amount of acreage granted exemptions for the previous fiscal year equaled the limitation for that year, then the limitation for the subsequent fiscal year is the limitation for the previous fiscal year plus an increase, not to exceed three hundred acres, of ten percent of that limitation. The procedures of this subsection shall be followed for each assessment year to procure an exemption for the fiscal year beginning in the assessment year. The exemption shall be only for the fiscal year for which it is granted. A parcel of property may be granted subsequent exemptions. The exemption shall only be granted for parcels of property of two acres or more.

Application for this exemption shall be filed with the commissioners of the soil and water conservation district in which the property is located, not later than February 1 of the assessment year, on forms provided by the department of revenue. The application shall describe and locate the property to be exempted and have attached to it an aerial photo of that property on which is outlined the boundaries of the property to be exempted. In the

case of an open prairie that has been restored or reestablished, the property shall be inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water. In the case of an open prairie which is or includes a gully area susceptible to severe erosion, an approved erosion control plan must accompany the application. Upon receipt of the application, the commissioners shall certify whether the property is eligible to receive the exemption. The commissioners shall not withhold certification of the eligibility of property because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the commissioners certify that the property is eligible, the application shall be forwarded to the board of supervisors by May 1 of that assessment year with the certification of the eligible acreage. An application must be accompanied by an affidavit signed by the applicant that if an exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted.

In the case of an open prairie that has been restored or reestablished and that does not receive the certification as provided by the county board of supervisors as it relates to the ground cover, the applicant shall be notified of the availability of resource enhancement and protection fund cost-share moneys and soil and conservation technological assistance for reestablishing native vegetation.

Before the board of supervisors may designate real property for the exemption, it shall establish priorities for the types of real property for which an exemption may be granted and the amount of acreage. These priorities may be the same as or different than those for previous years. The board of supervisors shall get the approval of the governing body of the city before an exemption may be granted to real property located within the corporate limits of that city. A public hearing shall be held with notice given as provided in section 73A.2 at which the proposed priority list shall be presented. However, no public hearing is required if the proposed priorities are the same as those for the previous year. After the public hearing, the board of supervisors shall adopt by resolution the proposed priority list or another priority list. Property upon which are located abandoned buildings or structures shall have the lowest priority on the list adopted, except where the board of supervisors determines that a structure has historic significance. The board of supervisors shall also provide for a procedure where the amount of acres for which exemptions are sought exceeds the amount the priority list provides for that type or in the aggregate for all types.

After receipt of an application with its accompa-

nying certification and affidavit and the establishment of the priority list, the board of supervisors may grant a tax exemption under this subsection using the established priority list as a mandate. Real property designated for the tax exemption shall be designated by May 15 of the assessment year in which begins the fiscal year for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

The board of supervisors does not have to grant tax exemptions under this subsection, grant tax exemptions in the aggregate of the maximum acreage which may be granted exemptions, or grant a tax exemption for the total acreage for which the applicant requested the exemption. Only real property in parcels of two acres or more which is recreational lakes, forest cover, river and stream, river and stream banks, or open prairie and which is utilized for the purposes of providing soil erosion control or wildlife habitat or both, and which is subject to property tax for the fiscal year for which the tax exemption is requested, is eligible for the exemption under this subsection. However, in addition to the above, in order for a gully area which is susceptible to severe erosion to be eligible, there must be an erosion control plan for it approved by the commissioners of the soil and water conservation district in which it is located. In the case of an open prairie that has been restored or reestablished, the property shall be inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water. In the case of an exemption for river and stream or river and stream banks, the exemption shall not be granted unless there is included in the exemption land located at least thirty-three feet from the ordinary high water mark of the river and stream or river and stream banks. Property shall not be denied an exemption because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the real property is located within a city, the approval of the governing body must be obtained before the real property is eligible for an exemption. For purposes of this subsection:

- a. "Open prairies" includes hillsides and gully areas which have a permanent grass cover but does not include native prairies meeting the criteria of the natural resource commission.
- b. "Forest cover" means land which is predominantly wooded.
- c. "Recreational lake" means a body of water, which is not a river or stream, owned solely by a nonprofit organization and primarily used for boating, fishing, swimming and other recreational purposes.
- d. "Used for economic gain" includes, but is not limited to, using property for the storage of equip-

ment, machinery, or crops.

Notwithstanding other requirements under this subsection, the owner of any property lying between a river or stream and a dike which is required to be set back three hundred feet or less from the river or stream shall automatically be granted an exemption for that property upon submission of an application accompanied by an affidavit signed by the applicant that if the exemption is granted the property will not be used for economic gain during the period of exemption. The exemption shall continue from year to year for as long as the property qualifies and is not used for economic gain, without need for filing additional applications or affidavits. Property exempted pursuant to this paragraph is in addition to the maximum acreage applicable to other exemptions under this subsection.

23. *Native prairie and wetland.* Land designated as native prairie or land designated as a protected wetland by the department of natural resources pursuant to section 456B.12. Application for the exemption shall be made on forms provided by the department of revenue. Land designated as a protected wetland shall be assessed at a value equal to the average value of the land where the wetland is located and which is owned by the person granted the exemption. The application forms shall be filed with the assessing authority not later than the first of February of the year for which the exemption is requested. The application must be accompanied by an affidavit signed by the applicant that if the exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted. If the property is used for economic gain during the assessment year in which the exemption is granted, the property shall lose its tax exemption and shall be taxed at the rate levied by the county for the fiscal year beginning in that assessment year. The first annual application shall be accompanied by a certificate from the department of natural resources stating that the land is native prairie or protected wetland. The department of natural resources shall issue a certificate for the native prairie exemption if the department finds that the land has never been cultivated, is unimproved, is primarily a mixture of warm season grasses interspersed with flowering plants, and meets the other criteria established by the natural resource commission for native prairie. The department of natural resources shall issue a certificate for the wetland exemption if the department finds the land is a protected wetland, as defined under section 456B.1, or if the wetland was previously drained and cropped but has been restored under a nonpermanent restoration agreement with the department or other county, state, or federal agency or private conservation group. A taxpayer may seek judicial review of a decision of the department according to chapter 17A. The natural resource commission shall adopt rules to imple-

ment this subsection.

The assessing authority each year may submit to the department a claim for reimbursement of tax revenue lost from the exemption. Upon receipt of the claim, the department shall reimburse the assessing authority an amount equal to the lost tax revenue based on the value of the protected wetland as assessed by the authority, unless the department reimburses the authority based upon a departmental assessment of the protected wetland. The authority may contest the department's assessment as provided in chapter 17A. The department is not required to honor a claim submitted more than sixty days after the authority has assessed land where the protected wetland is located and which is owned by the person granted the exemption.

24. *Land certified as a wildlife habitat.* The owner of agricultural land may designate not more than two acres of the land for use as a wildlife habitat. After inspection, if the land meets the standards established by the natural resource commission for a wildlife habitat under section 483A.3, and, in the case of a wildlife habitat that has been restored or reestablished, is inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water, the department of natural resources shall certify the designated land as a wildlife habitat and shall send a copy of the certification to the appropriate assessor not later than February 1 of the assessment year for which the exemption is requested. The department of natural resources may subsequently withdraw certification of the designated land if it fails to meet the established standards for a wildlife habitat and the ground cover requirement and the assessor shall be given written notice of the decertification.

In the case where the property is a restored or reestablished wildlife habitat and does not receive the certification as provided by the county board of supervisors as it relates to the ground cover, the owner shall be notified of the availability of resource enhancement and protection fund cost-share moneys and soil and conservation technological assistance for reestablishing native vegetation.

25. *Right-of-way.* Railroad right-of-way and improvements on the right-of-way only during that period of time that the Iowa railway finance authority holds an option to purchase the right-of-way under section 327I.24.

26. *Public television station.* All grounds and buildings used or under construction for a public television station and not leased or otherwise used or under construction for pecuniary profit.

27. *Speculative shell buildings of certain organizations.* New construction of shell buildings by community development organizations, not-for-

profit cooperative associations under chapter 499, or for-profit entities for speculative purposes or the portion of the value added to buildings being reconstructed or renovated by community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities in order to become speculative shell buildings. The exemption or partial exemption shall be allowed only pursuant to ordinance of a city council or board of supervisors, which ordinance shall specify if the exemption will be available for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities and shall be effective for the assessment year in which the building is first assessed for property taxation or the assessment year in which the reconstruction or renovation first adds value and all subsequent years until the property is leased or sold or for a specific time period stated in the ordinance or until the exemption is terminated by ordinance of the city council or board of supervisors which approved the exemption. Eligibility for an exemption as a speculative shell building shall be determined as of January 1 of the assessment year. However, an exemption shall not be granted a speculative shell building of a not-for-profit cooperative association under chapter 499 or a for-profit entity if the building is used by the cooperative association or for-profit entity, or a subsidiary or majority owners thereof for other than as a speculative shell building. If the shell building or any portion of the shell building is leased or sold, the portion of the shell building which is leased or sold shall not be entitled to an exemption under this subsection for subsequent years. An application shall be filed pursuant to section 427B.4 for each project for which an exemption is claimed. Upon the sale of the shell building, the shell building shall be considered new construction for purposes of section 427B.1 if used for purposes set forth in section 427B.1.

For purposes of this subsection the following definitions apply:

a. (1) "*Community development organization*" means an organization, which meets the membership requirements of subparagraph (2), formed within a city or county or multicommunity group for one or more of the following purposes:

(a) To promote, stimulate, develop, and advance the business prosperity and economic welfare of the community, area, or region and its citizens.

(b) To encourage and assist the location of new business and industry.

(c) To rehabilitate and assist existing business and industry.

(d) To stimulate and assist in the expansion of business activity.

(2) For purposes of this definition, a community development organization must have at least fifteen members with representation from the following:

(a) A representative from government at the level or levels corresponding to the community development organization's area of operation.

(b) A representative from a private sector lending institution.

(c) A representative of a community organization in the area.

(d) A representative of business in the area.

(e) A representative of private citizens in the community, area, or region.

b. "*New construction*" means new buildings or structures and includes new buildings or structures which are constructed as additions to existing buildings or structures. "*New construction*" also includes reconstruction or renovation of an existing building or structure which constitutes complete replacement of an existing building or structure or refitting of an existing building or structure, if the reconstruction or renovation of the existing building or structure is required due to economic obsolescence, if the reconstruction or renovation is necessary to implement recognized industry standards for the manufacturing or processing of products, and the reconstruction or renovation is required in order to competitively manufacture or process products or for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities to market a building or structure as a speculative shell building, which determination must receive prior approval from the city council of the city or county board of supervisors of the county.

c. "*Speculative shell building*" means a building or structure owned and constructed or reconstructed by a community development organization, a not-for-profit cooperative association under chapter 499, or a for-profit entity without a tenant or buyer for the purpose of attracting an employer or user which will complete the building to the employer's or user's specification for manufacturing, processing, or warehousing the employer's or user's product line.

28. *Joint water utilities.* The property of a joint water utility established under chapter 389, when devoted to public use and not held for pecuniary profit.

29. *Methane gas conversion.* Methane gas conversion property shall be exempt from taxation.

For purposes of this subsection, "*methane gas conversion property*" means personal property, real property, and improvements to real property, and machinery, equipment, and computers assessed as real property pursuant to section 427A.1, subsection 1, paragraphs "e" and "j", used in an operation connected with, or in conjunction with, a publicly owned sanitary landfill to collect methane gas or other gases produced as a by-product of waste decomposition and to convert the gas to energy, or to collect waste that would otherwise be collected by, or deposited with, a publicly owned

sanitary landfill in order to decompose the waste to produce methane gas or other gases and to convert the gas to energy. However, property used to decompose the waste and convert the waste to gas is not eligible for this exemption.

If the property used to convert the gas to energy also burns another fuel, the exemption shall apply to that portion of the value of such property which equals the ratio that its use of methane gas bears to total fuel consumed.

Application for this exemption shall be filed with the assessing authority not later than February 1 of each year for which the exemption is requested on forms provided by the department of revenue. The application shall describe and locate the specific methane gas conversion property to be exempted. If the property consuming methane gas also consumes another fuel, the first year application shall contain a statement to that effect and shall identify the other fuel and estimate the ratio that the methane gas consumed bears to the total fuel consumed. Subsequent year applications shall identify the actual ratio for the previous year which ratio shall be used to calculate the exemption for that assessment year.

30. *Manufactured home community or mobile home park storm shelter.* A structure constructed as a storm shelter at a manufactured home community or mobile home park as defined in section 435.1. An application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the storm shelter to be exempted. If the storm shelter structure is used exclusively as a storm shelter, all of the structure's assessed value shall be exempt from taxation. If the storm shelter structure is not used exclusively as a storm shelter, the storm shelter structure shall be assessed for taxation at seventy-five percent of its value as commercial property.

31. *Barn preservation.* The increase in assessed value added to a farm structure constructed prior to 1937 as a result of improvements made to the farm structure for purposes of preserving the integrity of the internal and external features of the structure as a barn is exempt from taxation. To be eligible for the exemption, the structure must have been first placed in service as a barn prior to 1937. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a barn.

For purposes of this subsection, "*barn*" means an agricultural structure, in whatever shape or design, which is used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

Application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is

requested, on forms provided by the department of revenue. The application shall describe and locate the specific structure for which the added value is requested to be exempt.

Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure continues to be used as a barn. The taxpayer shall notify the assessing authority when the structure ceases to be used as a barn.

32. *One-room schoolhouse preservation.* The increase in assessed value added to a one-room schoolhouse as a result of improvements made to the structure for purposes of preserving the integrity of the internal and external features of the structure as a one-room schoolhouse is exempt from taxation. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a one-room schoolhouse.

Application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific one-room schoolhouse for which the added value is requested to be exempt.

Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure is not used for dwelling purposes and the structure is preserved as a one-room schoolhouse. The taxpayer shall notify the assessing authority when the structure ceases to be eligible. The exemption in this subsection applies even though the one-room schoolhouse is no longer used for instructional purposes.

33. *Indian housing authority property.* Property owned and operated by an Indian housing authority, as defined in 24 C.F.R. § 950.102, created under Indian law, if a cooperative agreement has been made with the local governing body agreeing to the exemption. The exemption in this subsection is subject to the provisions of subsection 14.

For purposes of this subsection:

a. *“Indian law”* means the code of an Indian tribe recognized as eligible for services provided to Indians by the United States secretary of the interior.

b. *“Local governing body”* means the county board of supervisors if the property is located outside an incorporated city or the governing body of the city in which the property is located.

2003 Acts, ch 121, §1 – 3; 2003 Acts, ch 130, §1, 2, 5; 2003 Acts, ch 136, §1, 3; 2003 Acts, ch 145, §286

1999 amendment to subsection 2 applies retroactively to July 1, 1993; 99 Acts, ch 63, §8

Subsection 30 applies to property tax assessment years beginning on or after January 1, 2000; 99 Acts, ch 186, §4

2001 amendments to subsections 14, 20, and 22, and amendment to the filing deadline in subsection 30 are effective January 1, 2002, and apply to claims filed on or after that date; 2001 Acts, ch 150, §26

2001 amendment to subsection 29 is effective May 16, 2001, and applies retroactively to January 1, 1998, for purposes of taxes levied pursuant to

section 437A.6; filing of claims for credit for tax years 1998 – 2001; 2001 Acts, ch 139, §2, 4

2001 amendment to subsection 2 takes effect July 3, 2001; 2001 Acts, 1st Ex, ch 4, §4, 36

Deadline for filing a claim for exemption under subsection 14 for assessment year beginning January 1, 2002, for taxes due and payable in the fiscal year beginning July 1, 2003, is October 1, 2002; 2002 Acts, ch 1151, §30, 36

Abatement of property taxes for religious institutions failing to file for exemption under subsection 14, Code Supplement 1999, in counties with 180,000 – 200,000 population, for taxes levied for the fiscal year beginning July 1, 2000, and due and payable in the fiscal year beginning July 1, 2001; filing deadline; 2002 Acts, ch 1151, §32, 36

2003 amendments to subsection 1 are effective July 1, 2003, and apply to leases entered into on or after that date; 2003 Acts, ch 130, §5

2003 amendments to subsections 19, 22, and 24 apply to assessment years beginning on or after January 1, 2004; 2003 Acts, ch 121, §4; 2003 Acts, ch 136, §3

Terminology change applied

Subsection 1 amended

Subsection 1, NEW unnumbered paragraph 2

Subsection 19, unnumbered paragraph 8 amended

Subsection 22, unnumbered paragraph 2 amended

Subsection 22, NEW unnumbered paragraph 3

Subsection 22, unnumbered paragraph 6 amended

Subsection 24 amended

#### 427.16 Historic property — rehabilitation tax exemption — application.

1. The board of supervisors shall annually designate real property in the county for a historic property tax exemption.

2. Application for the exemption shall be filed with the assessor, not later than February 1 of the assessment year, on forms provided by the department of revenue. The exemption application shall include an approved application for certified substantial rehabilitation from the state historic preservation officer and documentation of additional property tax relief or financial assistance currently allowed for the real property. Upon receipt of the application, the assessor shall certify whether or not the property is eligible to receive the exemption and shall forward the application to the board.

3. Before the board may designate real property for the exemption, the board shall establish priorities for which an exemption may be granted. The priorities shall be based upon financial assistance or property tax relief the owner is receiving for the property or for which the property is eligible. A public hearing shall be held with notice given as provided in section 73A.2 at which the proposed priority list shall be presented. However, a public hearing is not required if the proposed priorities are the same as those established for the previous year. After the public hearing, the board shall adopt by resolution the proposed priority list or another priority list.

4. After receipt from the assessor of an exemption application with an accompanying approved application from the state historic preservation officer, and the establishment of a priority list, the board shall grant a tax exemption under this section using the adopted priority list. The board shall notify an owner in writing of a denial of the exemption under this section and an explanation of the denial.

5. Real property designated for the tax exemption shall be designated by April 15 of the assess-

ment year in which the fiscal year begins for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

6. The owner shall apply for an exemption and the exemption may be approved for a period of not more than four years.

7. For purposes of this section “*historic property*” means any of the following:

a. Property in Iowa listed on the national register of historic places.

b. An historical site as defined in section 303.2.

c. Property located in an area of historical significance as defined in section 303.20.

d. Property located in an area designated as an area of historic significance under section 303.34.

e. Property designated an historic building or site as approved by a county or municipal landmark ordinance.

8. For purposes of this section, “*substantial rehabilitation*” means qualified expenditures which exceed the greater of the adjusted basis of the building or five thousand dollars.

9. For purposes of this section, “*adjusted basis*” means the acquisition cost of the property to the taxpayer; less the value of the land; less depreciation taken or one-half the current assessed valuation of the property, whichever is greater; plus the cost of additions or improvements to the property since its acquisition.

10. For purposes of this section, “*qualified expenditures*” means costs incurred to preserve or to maintain a building as a historic property according to the secretary of the interior’s standards for rehabilitation and guidelines for rehabilitating historic buildings.

11. The assessor shall determine the base year valuation of the historic property upon receipt of the approved application and shall make a notation on each statement of assessment that the exemption of the historic property shall be based upon the certification from the state historic preservation officer. An assessor shall make an annual

report to the county auditor of all substantial rehabilitations of historic property made in the county which receive a tax exemption under this section and shall submit a copy or summary of the record to the state historic preservation officer.

12. A tax exemption granted under this section is valid if the property continues to be certified by the state historic preservation officer. If the property is sold or transferred, the buyer or transferee is not required to refile for the tax exemption for the year in which the property is purchased or transferred.

13. The valuation for purposes of computing the assessed valuation of property under this section following the four-year exemption period is as follows:

a. For the first year after the expiration of the four-year exemption period, the valuation is the base year valuation plus twenty-five percent of the adjustment in value.

b. For the second year after the expiration of the four-year exemption period, the valuation is the base year valuation plus fifty percent of the adjustment in value.

c. For the third year after the expiration of the four-year exemption period, the valuation is the base year valuation plus seventy-five percent of the adjustment in value.

d. For the fourth year after the expiration of the four-year exemption period, the valuation is based upon the current fair cash value.

14. An additional application for a tax exemption under this section for substantial rehabilitation shall not affect subsection 11 and under subsection 13 the increase in assessed value of the historic property following a four-year tax exemption period.

15. The department of cultural affairs shall adopt rules pursuant to chapter 17A to administer this section.

2003 Acts, ch 145, §286  
2001 amendment to subsection 2 is effective January 1, 2002, and applies to claims filed on or after that date; 2001 Acts, ch 150, §26  
Terminology change applied

## CHAPTER 427A

### PERSONAL PROPERTY TAX REPLACEMENT

#### 427A.1 Property taxed as real property.

1. For the purposes of property taxation only, the following shall be assessed and taxed, unless otherwise qualified for exemption, as real property:

a. Land and water rights.

b. Substances contained in or growing upon the land, before severance from the land, and rights to such substances. However, growing crops shall not be assessed and taxed as real property, and this paragraph is also subject to the pro-

visions of section 441.22.

c. Buildings, structures or improvements, any of which are constructed on or in the land, attached to the land, or placed upon a foundation whether or not attached to the foundation. However, property taxed under chapter 435 shall not be assessed and taxed as real property.

d. Buildings, structures, equipment, machinery or improvements, any of which are attached to the buildings, structures, or improvements defined in paragraph “c” of this subsection.

e. Machinery used in manufacturing establishments. The scope of property taxable under this paragraph is intended to be the same as, and neither broader nor narrower than, the scope of property taxable under section 428.22, Code 1973, prior to July 1, 1974.

f. Property taxed under chapter 499B.

g. Rights to space above the land.

h. Property assessed by the department of revenue pursuant to sections 428.24 to 428.29, or chapters 433, 434, 437, 437A, and 438.

i. Property used but not owned by the persons whose property is defined in paragraph "h" of this subsection, which would be assessed by the department of revenue if the persons owned the property. However, this paragraph does not change the manner of assessment or the authority entitled to make the assessment.

j. (1) Computers. As used in this paragraph, "computer" means stored program processing equipment and all devices fastened to the computer by means of signal cables or communication media that serve the function of signal cables, but does not include point of sales equipment.

(2) Computer output microfilming equipment.

(3) Key entry devices that prepare information for input to a computer.

(4) All equipment that produces a final output from one of the facilities listed in subparagraphs (1), (2) and (3) of this paragraph.

k. Transmission towers and antennae not a part of a household.

2. As used in subsection 1, "attached" means any of the following:

a. Connected by an adhesive preparation.

b. Connected in a manner so that disconnecting requires the removal of one or more fastening devices, other than electric plugs.

c. Connected in a manner so that removal requires substantial modification or alteration of the property removed or the property from which it is removed.

3. Notwithstanding the definition of "attached" in subsection 2, property is not "attached" if it is a kind of property which would ordinarily be removed when the owner of the property moves to

another location. In making this determination the assessing authority shall not take into account the intent of the particular owner.

4. Notwithstanding the definition of "attached" in subsection 2, property is not "attached" if it is a fixture used for cooking, refrigeration, or freezing of value-added agricultural products, used in value-added agricultural processing or used in direct support of value-added agricultural processing. For purposes of this subsection, "direct support" includes storage by public refrigerated warehouses for processors of value-added agricultural products. Such fixtures shall not be considered "attached" whether owned directly by the processor or warehouse operator or by another who leases the fixture to the processor or warehouse operator. This subsection shall not apply to fixtures used primarily for retail sale or display.

5. Notwithstanding the other provisions of this section, property described in this section, if held solely for sale, lease or rent as part of a business regularly engaged in selling, leasing or renting such property, and if the property is not yet sold, leased, rented or used by any person, shall not be assessed and taxed as real property. This subsection does not apply to any land or building.

6. Nothing in this section shall be construed to permit an item of property to be assessed and taxed in this state more than once in any one year.

7. The assessing authority shall annually reassess property which is assessed and taxed as real property, but which would be regarded as personal property except for this section. This section shall not be construed to limit the assessing authority's powers to assess or reassess under other provisions of law.

8. The director of revenue shall promulgate rules subject to chapter 17A to carry out the intent of this section.

2003 Acts, ch 145, §286

Subsection 4 is effective May 3, 2001, and applies retroactively to assessment years beginning on or after January 1, 2000; 2001 Acts, ch 116, §28 Terminology change applied

**427A.12 Replacement fund.** Repealed by 2003 Acts, ch 178, § 11.

## CHAPTER 427B

### SPECIAL TAX PROVISIONS

#### **427B.4 Application for exemption by property owner.**

An application shall be filed for each project resulting in actual value added for which an exemption is claimed. The application for exemption shall be filed by the owner of the property with the local assessor by February 1 of the assessment year in which the value added is first assessed for

taxation. Applications for exemption shall be made on forms prescribed by the director of revenue and shall contain information pertaining to the nature of the improvement, its cost, and other information deemed necessary by the director of revenue.

A person may submit a proposal to the city council of the city or the board of supervisors of a county

to receive prior approval for eligibility for a tax exemption on new construction. The city council or the board of supervisors, by ordinance, may give its prior approval of a tax exemption for new construction if the new construction is in conformance with the zoning plans for the city or county. The prior approval shall also be subject to the hearing requirements of section 427B.1. Prior approval does not entitle the owner to exemption from taxation until the new construction has been completed and found to be qualified real estate. However, if the tax exemption for new construction is not approved, the person may submit an amended proposal to the city council or board of supervisors to approve or reject.

2003 Acts, ch 145, §286  
Terminology change applied

#### **427B.17 Property subject to special valuation.**

1. For property defined in section 427A.1, subsection 1, paragraphs “e” and “j”, the taxpayer’s valuation shall be limited to thirty percent of the net acquisition cost of the property, except as otherwise provided in subsections 2 and 3. For purposes of this section, “*net acquisition cost*” means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.

2. Property defined in section 427A.1, subsection 1, paragraphs “e” and “j”, which is first assessed for taxation in this state on or after January 1, 1995, shall be exempt from taxation.

3. Property defined in section 427A.1, subsection 1, paragraphs “e” and “j”, and assessed under subsection 1 of this section, shall be valued by the local assessor as follows for the following assessment years:

a. For the assessment year beginning January 1, 1999, at twenty-two percent of the net acquisition cost.

b. For the assessment year beginning January 1, 2000, at fourteen percent of the net acquisition cost.

c. For the assessment year beginning January 1, 2001, at six percent of the net acquisition cost.

d. For the assessment year beginning January 1, 2002, and succeeding assessment years, at zero percent of the net acquisition cost.

4. Property assessed pursuant to this section shall not be eligible to receive a partial exemption under sections 427B.1 to 427B.6.

5. This section shall not apply to property assessed by the department of revenue pursuant to sections 428.24 to 428.29, or chapters 433, 434, 437, 437A, and 438, and such property shall not receive the benefits of this section.

Any electric power generating plant which operated during the preceding assessment year at a net capacity factor of more than twenty percent, shall not receive the benefits of this section or of sections 15.332 and 15.334. For purposes of this

section, “*electric power generating plant*” means any nameplate rated electric power generating plant, in which electric energy is produced from other forms of energy, including all taxable land, buildings, and equipment used in the production of such energy. “*Net capacity factor*” means net actual generation divided by the product of net maximum capacity times the number of hours the unit was in the active state during the assessment year. Upon commissioning, a unit is in the active state until it is decommissioned. “*Net actual generation*” means net electrical megawatt hours produced by the unit during the preceding assessment year. “*Net maximum capacity*” means the capacity the unit can sustain over a specified period when not restricted by ambient conditions or equipment deratings, minus the losses associated with station service or auxiliary loads.

6. For the purpose of dividing taxes under section 260E.4, the employer’s or business’s valuation of property defined in section 427A.1, subsection 1, paragraphs “e” and “j”, and used to fund a new jobs training project which project’s first written agreement providing for a division of taxes as provided in section 403.19 is approved on or before June 30, 1995, shall be limited to thirty percent of the net acquisition cost of the property. The community college shall notify the assessor by February 15 of each assessment year if taxes levied against such property of an employer or business will be used to finance a project in the following fiscal year. In any fiscal year in which the community college does rely on taxes levied against an employer’s or business’s property defined in section 427A.1, subsection 1, paragraph “e” or “j”, to finance a project, such property shall not be valued pursuant to subsection 2 or 3, whichever is applicable, for that fiscal year. An employer’s or business’s taxable property used to fund a new jobs training project shall not be valued pursuant to subsection 2 or 3, whichever is applicable, until the assessment year following the calendar year in which the certificates or other funding obligations have been retired or escrowed. If the certificates issued, or other funding obligations incurred, between January 1, 1982, and June 30, 1995, are refinanced or refunded after June 30, 1995, the valuation of such property shall then be the valuation specified in subsection 2 or 3, whichever is applicable, for the applicable assessment year beginning with the assessment year following the calendar year in which those certificates or other funding obligations are refinanced or refunded after June 30, 1995.

2003 Acts, ch 145, §286  
Terminology change applied

#### **427B.19 Assessor and county auditor duties.**

1. On or before July 1 of each fiscal year, the assessor shall determine the total assessed value of the property assessed under section 427B.17 for

taxes payable in that fiscal year and the total assessed value of such property assessed as of January 1, 1994, and shall report the valuations to the county auditor.

2. On or before July 1 of each fiscal year, the assessor shall determine the valuation of all commercial and industrial property assessed for taxes payable in that fiscal year and the valuation of such property assessed as of January 1, 1994, and shall report the valuations to the county auditor.

3. On or before September 1 of each fiscal year through June 30, 2004, the county auditor shall prepare a statement, based upon the report received pursuant to subsections 1 and 2, listing for each taxing district in the county:

*a.* Beginning with the assessment year beginning January 1, 1995, the difference between the assessed valuation of property assessed pursuant to section 427B.17 for that year and the total assessed value of such property assessed as of January 1, 1994. If the total assessed value of the property assessed as of January 1, 1994, is less, there is no tax replacement for the fiscal year.

*b.* The tax levy rate for each taxing district for that fiscal year.

*c.* The industrial machinery, equipment and computers tax replacement claim for each taxing district. For fiscal years beginning July 1, 1996, and ending June 30, 2001, the replacement claim is equal to the amount determined pursuant to paragraph "a", multiplied by the tax rate specified in paragraph "b". For fiscal years beginning July 1, 2001, and ending June 30, 2004, the replacement claim is equal to the product of the amount determined pursuant to paragraph "a", less any increase in valuations determined in paragraph "d", and the tax rate specified in paragraph "b". If the amount subtracted under paragraph "d" is more than the amount determined in paragraph "a", there is no tax replacement for the fiscal year.

*d.* Beginning with the assessment year beginning January 1, 2000, the auditor shall reduce the amount listed in paragraph "a", by the increase, if any, in assessed valuations of commercial and industrial property in the assessment year beginning January 1, 1994, and the assessment year for which taxes are due and payable in that fiscal year. If the calculation under this paragraph indicates a net decrease in aggregate valuation of such property, the industrial machinery, equipment and computers tax replacement claim for each taxing district is equal to the amount determined pursuant to paragraph "a", multiplied by the tax rate specified in paragraph "b".

4. The county auditor shall certify and forward one copy of the statement to the department of revenue not later than September 1 of each year.

5. For purposes of this section, "assessed value of the property assessed under section 427B.17" does not include the value of property defined in section 427A.1, subsection 1, paragraphs "e" and

"j", which is obligated to secure payment of certificates or other indebtedness incurred pursuant to chapter 260E or 260F.

6. For purposes of computing replacement amounts under this section, that portion of an urban renewal area defined as the sum of the assessed valuations defined in section 403.19, subsections 1 and 2, shall be considered a taxing district.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §5, 6

Terminology change applied

Subsection 3, unnumbered paragraph 1 and paragraph c amended

#### **427B.19A Fund created.**

1. The industrial machinery, equipment and computers property tax replacement fund is created. For the fiscal year beginning July 1, 1996, through the fiscal year ending June 30, 2004, there is appropriated annually from the general fund of the state to the department of revenue to be credited to the industrial machinery, equipment and computers property tax replacement fund, an amount sufficient to implement this division. However, for the fiscal year beginning July 1, 2003, the amount appropriated to the department of revenue to be credited to the industrial machinery, equipment and computers tax replacement fund is eleven million two hundred eighty-one thousand six hundred eighty-five dollars.

2. If an amount appropriated for a fiscal year is insufficient to pay all claims as a result of action by the general assembly limiting the amount appropriated to the fund, the director shall prorate the disbursements from the fund to the county treasurers and shall notify the county auditors of the pro rata percentage on or before September 30.

3. The replacement claims shall be paid to each county treasurer in equal installments in September and March of each year. The county treasurer shall apportion the replacement claim payments among the eligible taxing districts in the county. If the taxing district is an urban renewal area, the amount of the replacement claim shall be apportioned as provided in subsection 4 unless the municipality elects to proceed under subsection 5.

4. *a.* If the total assessed value of property located in an urban renewal area taxing district is equal to or more than that portion of such valuation defined in section 403.19, subsection 1, the total tax replacement amount computed pursuant to section 427B.19 shall be credited to that portion of the assessed value defined in section 403.19, subsection 2.

*b.* If the total assessed value of the property is less than that portion of such valuation defined in section 403.19, subsection 1, the replacement amount shall be credited to those portions of the assessed value defined in section 403.19, subsections 1 and 2, as follows:

(1) To that portion defined in section 403.19, subsection 1, an amount equal to the amount that

would be produced by multiplying the applicable consolidated levy times the difference between the assessed value of the taxable property defined in section 403.19, subsection 1, and the total assessed value in the budget year for which the replacement claim is computed.

(2) To that portion defined in section 403.19, subsection 2, the remaining amount, if any.

c. Notwithstanding the allocation provisions of paragraphs “a” and “b”, the amount of the tax replacement amount that shall be allocated to that portion of the assessed value defined in section 403.19, subsection 2, shall not exceed the amount equal to the amount certified to the county auditor under section 403.19 for the budget year in which the claim is paid, after deduction of the amount of other revenues committed for payment on that amount for the budget year. The amount not allocated to that portion of the assessed value defined in section 403.19, subsection 2, as a result of the operation of this paragraph, shall be allocated to that portion of assessed value defined in section 403.19, subsection 1.

5. A municipality may elect to reduce the amount of assessed value of property defined in section 403.19, subsection 1, by an amount equal to that portion of the amount of such assessed value which was phased out for the fiscal year by operation of section 427B.17, subsection 3. The applicable assessment roll and ordinance providing for the division of taxes under section 403.19 in the urban renewal taxing district shall be deemed to be modified for that fiscal year only to the extent of such adjustment without further action on the part of the city or county implementing the urban renewal taxing district.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §7; 2003 Acts, ch 179, §37  
Terminology change applied  
Subsection 1 amended

**427B.19B Guarantee of state replacement funds.** Repealed by 2003 Acts, ch 178, § 11.

Revaluations of industrial machinery, equipment, and computers previously authorized due to insufficient funding of industrial machinery, equipment, and computers property tax replacement fund for fiscal year beginning July 1, 2002, are void and taxes payable in fiscal year beginning July 1, 2003, shall not be levied on the revaluation; 2003 Acts, ch 178, §10, 13

**427B.19C Adjustment of certain assessments required.**

In the assessment year beginning January 1, 2003, the amount of assessed value of property de-

finied in section 403.19, subsection 1, for an urban renewal taxing district which received replacement moneys under section 427B.19A, subsection 4, shall be reduced by an amount equal to that portion of the amount of assessed value of such property which was assessed pursuant to section 427B.17, subsection 3.

2003 Acts, ch 178, §8  
Section amended

**427B.21 Application for credit by underground storage tank owner or operator — approval by county board of supervisors or city council.**

An application shall be filed by an owner of a small business that owns or operates an underground storage tank for each property for which a credit is sought. Applications shall be filed with the respective county board of supervisors or the city council by September 30 of the year following the calendar year in which a cost of remedial action was paid by the owner or operator. Small business owners receiving credits shall file applications for renewal of the credit by September 30 of each year. A credit may be renewed only if title to the credited property remains in the name of the person or entity originally receiving the credit.

In reviewing the applications, the board of supervisors or city council shall consider whether granting the credit would serve a public purpose. Upon approval of the application by the board of supervisors, and after the applicant has paid any property taxes due, the board shall direct the county treasurer to issue a warrant to the small business owner in the amount of the credit granted. Upon approval of the application by the city council, and after the applicant has paid any property taxes due, the council shall direct the city clerk to issue a warrant to the small business owner in the amount of the credit granted.

Applications for credit shall be made on forms prescribed by the director of revenue and shall contain information pertaining to the nature of the release, the total cost of corrective action, the actual portion of the costs paid by the small business owner and for which the owner was not reimbursed from any other source, the small business owner’s income tax form from the most recent tax year, and other information deemed necessary by the director.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 428

### LISTING PROPERTY FOR TAXATION

#### 428.4 Real estate — buildings.

Property shall be assessed for taxation each

year. Real estate shall be listed and assessed in 1981 and every two years thereafter. The assess-

ment of real estate shall be the value of the real estate as of January 1 of the year of the assessment. The year 1981 and each odd-numbered year thereafter shall be a reassessment year. In any year, after the year in which an assessment has been made of all the real estate in an assessing jurisdiction, the assessor shall value and assess or revalue and reassess, as the case may require, any real estate that the assessor finds was incorrectly valued or assessed, or was not listed, valued, and assessed, in the assessment year immediately preceding, also any real estate the assessor finds has changed in value subsequent to January 1 of the preceding real estate assessment year. However, a percentage increase on a class of property shall not be made in a year not subject to an equalization order unless ordered by the department of revenue. The assessor shall determine the actual value and compute the taxable value thereof as of January 1 of the year of the revaluation and reassessment. The assessment shall be completed as specified in section 441.28, but no reduction or increase in actual value shall be made for prior years. If an assessor makes a change in the valuation of the real estate as provided for, sections 441.23, 441.37, 441.38 and 441.39 apply.

The assessor shall notify the director of revenue, in the manner and form to be prescribed by the director, as to the class or classes of real estate reviewed, revalued, and reassessed and shall report such details as to the effects or results of the revaluation and reassessment as may be deemed necessary by the director. This notification shall be contained in a report to be attached to the abstract of assessment for the year in which the new valuations become effective.

Any buildings erected, improvements made, or buildings or improvements removed in a year after the assessment of the class of real estate to which they belong, shall be valued, listed, and assessed and reported by the assessor to the county auditor after approval of the valuations by the local board of review, and the auditor shall thereupon enter the taxable value of such building or taxable improvement on the tax list as a part of real estate to be taxed. If such buildings or improvements are erected or made by any person other than the owner of the land, they shall be listed and assessed to the owner of the buildings or improvements as real estate.

2003 Acts, ch 145, §286  
Terminology change applied

#### **428.24 Public utility plants.**

The lands, buildings, machinery, and mains belonging to individuals or corporations operating waterworks or gasworks or pipelines, except those natural gas pipelines permitted pursuant to chapter 479, shall be listed and assessed by the department of revenue. In the making of assessments of waterworks plants, the value of any interest in the property assessed, of the municipal corporation

where it is situated, shall be deducted, whether the interest is evidenced by stock, bonds, contracts, or otherwise.

2003 Acts, ch 145, §286  
Terminology change applied

#### **428.25 Property in different districts.**

Where any such property except the capital stock is situated partly within and partly without the limits of a city, such portions of the said plant shall be assessed separately, and the portion within the said city shall be assessed as above provided, and the portion without the said city shall be apportioned by the department of revenue to the district or districts in which it is located.

2003 Acts, ch 145, §286  
Terminology change applied

#### **428.26 Personal property.**

All the personal property of such individuals and corporations used or purchased by them for the purposes of such gas or waterworks, other than natural gas pipelines permitted pursuant to chapter 479, shall be listed and assessed by the department of revenue.

In the making of any such assessment of waterworks plants, the value of any interest in the property so assessed, of the municipal corporation in which the waterworks is situated, shall be deducted, whether such interest be evidenced by stock, bonds, contracts, or otherwise.

2003 Acts, ch 145, §286  
Terminology change applied

#### **428.28 Annual report by utility.**

Every individual, copartnership, corporation, or association operating for profit, waterworks or gasworks or pipelines other than natural gas pipelines permitted pursuant to chapter 479, annually on or before May 1 of each calendar year, shall make a report on blanks to be provided by the department of revenue of all of the property owned by such individual, copartnership, corporation, or association within the incorporated limits of any city in the state, and give such other information as the director of revenue shall require.

Every individual, copartnership, corporation, or association which operates a public utility on a nonprofit basis other than a utility subject to tax under chapter 437A, as defined in section 428.24 shall annually, on or before May 1 of each calendar year, make a report on blanks to be provided by the department of revenue of all of the property owned by the individual, copartnership, corporation, or association within the incorporated limits of any city in the state, and give other information the director of revenue requires.

2003 Acts, ch 145, §286  
Terminology change applied

#### **428.29 Assessment and certification.**

The director of revenue shall on the second Monday of July of each year proceed to determine,

upon the basis of the data required in such report and any other information the director may obtain, the actual value of all property, subject to the director's jurisdiction, of said individual, copartnership, corporation, or association, and shall make assessments upon the taxable value thereof, as provided by section 441.21. The director of revenue shall, on or before the third Monday in August, certify to the county auditor of every county in the state the valuations fixed for assessment upon all such property in each and every taxing district in each county by the department of revenue. This valuation shall then be spread upon the books in the same manner as other valuations fixed by the department of revenue upon property assessed under the department's jurisdiction.

2003 Acts, ch 145, §286  
Terminology change applied

#### 428.35 Grain handled.

1. *Definitions.* "Person" as used herein means individuals, corporations, firms and associations of whatever form. "Handling or handled" as used herein means the receiving of grain at or in each elevator, warehouse, mill, processing plant or other facility in this state in which it is received for storage, accumulation, sale, processing or for any purpose whatsoever. "Grain" as used herein means wheat, corn, barley, oats, rye, flaxseed, field peas, soybeans, grain sorghums, spelts, and such other products as are usually stored in grain elevators. Such term excludes such seeds after being processed, and the products of such processing when packaged or sacked. The term "processing" shall not include hulling, cleaning, drying, grading or polishing.

2. *Tax imposed.* An annual excise tax is hereby levied on such handling of grain in the amount hereinafter provided. All grain so handled shall be exempt from all taxation as property under the laws of this state. The amount of such excise tax shall be a sum equal to one-fourth mill per bushel upon all grain as herein defined so handled.

3. *Statement filing form.* Every person engaged in handling grain shall, on the first day of January of each year and not later than sixty days thereafter, make and file with the assessor a statement of the number of bushels of grain handled by the person in that district during the year immediately preceding, or the part thereof, during which the person was engaged in handling grain; and on demand the assessor shall have the right to inspect all such person's records thereof. A form for making such statement shall be included in the blanks prescribed by the director of revenue. If such statement is not furnished as herein required, section 441.24 shall be applicable.

4. *Assessment.* The assessor of each such district, from the statement required or from such other information as the assessor may acquire, shall ascertain the number of bushels of grain handled by each person handling grain in the assessor's district during the preceding year, or part thereof, and shall assess the amount herein provided to such person under the provisions of this section.

5. *Computation of tax.* The rate imposed by subsection 2 shall be applied to the number of bushels of grain so handled, and the computed amount thereof shall constitute the tax to be assessed.

6. *Payment of tax.* The tax, when determined, shall be entered in the same manner as general property taxes on the tax list of the taxing district, and the proceeds of the collection of the tax shall be distributed to the same taxing units and in the same proportion as the general property tax on the tax list of each taxing district. All provisions of the law relating to the assessment and collection of property taxes and the powers and duties of the county treasurer, county auditor and all other officers with respect to the assessment, collection, and enforcement of property taxes apply to the assessment, collection, and enforcement of the tax imposed by this section.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 428A

### REAL ESTATE TRANSFER TAX

#### 428A.1 Amount of tax on transfers — declaration of value.

There is imposed on each deed, instrument, or writing by which any lands, tenements, or other realty in this state are granted, assigned, transferred, or otherwise conveyed, a tax determined in the following manner: When there is no consideration or when the deed, instrument, or writing is executed and tendered for recording as an instrument corrective of title, and so states, there is

no tax. When there is consideration and the actual market value of the real property transferred is in excess of five hundred dollars, the tax is eighty cents for each five hundred dollars or fractional part of five hundred dollars in excess of five hundred dollars. The term "consideration", as used in this chapter, means the full amount of the actual sale price of the real property involved, paid or to be paid, including the amount of an encumbrance or lien on the property, if assumed by the grantee.

It is presumed that the sale price so stated includes the value of all personal property transferred as part of the sale unless the dollar value of personal property is stated on the instrument of conveyance. When the dollar value of the personal property included in the sale is so stated, it shall be deducted from the consideration shown on the instrument for the purpose of determining the tax.

When each deed, instrument, or writing by which any real property in this state is granted, assigned, transferred, or otherwise conveyed is presented for recording to the county recorder, a declaration of value signed by at least one of the sellers or one of the buyers or their agents shall be submitted to the county recorder. However, if the deed, instrument, or writing contains multiple parcels some of which are located in more than one county, separate declarations of value shall be submitted on the parcels located in each county and submitted to the county recorder of that county when paying the tax as provided in section 428A.5. A declaration of value is not required for those instruments described in section 428A.2, subsections 2 to 5, 7 to 13, and 16 to 21, or described in section 428A.2, subsection 6, except in the case of a federal agency or instrumentality, or if a transfer is the result of acquisition of lands, whether by contract or condemnation, for public purposes through an exercise of the power of eminent domain.

The declaration of value shall state the full consideration paid for the real property transferred. If agricultural land, as defined in section 9H.1, is purchased by a corporation, limited partnership, trust, alien or nonresident alien, the declaration of value shall include the name and address of the buyer, the name and address of the seller, a legal description of the agricultural land, and identify the buyer as a corporation, limited partnership, trust, alien, or nonresident alien. The county recorder shall not record the declaration of value, but shall enter on the declaration of value information the director of revenue requires for the production of the sales/assessment ratio study and transmit all declarations of value to the city or county assessor in whose jurisdiction the property is located. The city or county assessor shall enter on the declaration of value the information the director of revenue requires for the production of the sales/assessment ratio study and transmit one copy of each declaration of value to the director of revenue, at times as directed by the director of revenue. The assessor shall retain one copy of each declaration of value for three years from December 31 of the year in which the transfer of realty for which the declaration was filed took place. The director of revenue shall, upon receipt of the information required to be filed under this chapter by the city or county assessor, send to the office of the secretary of state that part of the declaration of value which identifies a corporation, limited part-

nership, trust, alien, or nonresident alien as a purchaser of agricultural land as defined in section 9H.1.

2003 Acts, ch 145, §286  
Terminology change applied

#### **428A.5 Documentation of payment.**

The amount of tax imposed by this chapter shall be paid to the county recorder in the county where the real property is located and the amount received and the initials of the county recorder shall appear on the face of the document or instrument. The method of documentation of a transfer tax shall be approved by the department of revenue.

2003 Acts, ch 145, §286  
Terminology change applied

#### **428A.7 Forms provided by director of revenue.**

The director of revenue shall prescribe the form of the declaration of value and shall include an appropriate place for the inclusion of special facts and circumstances relating to the actual sales price in real estate transfers. The director shall provide an adequate number of the declaration of value forms to each county recorder in the state.

2003 Acts, ch 145, §286  
Terminology change applied

#### **428A.8 Remittance to state treasurer — portion retained in county.**

On or before the tenth day of each month the county recorder shall determine and pay to the treasurer of state eighty-two and three-fourths percent of the receipts from the real estate transfer tax collected during the preceding month and the treasurer of state shall deposit ninety-five percent of the receipts in the general fund of the state and transfer five percent of the receipts to the shelter assistance fund created in section 15.349.

The county recorder shall deposit the remaining seventeen and one-fourth percent of the receipts in the county general fund.

Any tax or additional tax found to be due shall be collected by the county recorder. If the county recorder is unable to collect the tax, the director of revenue shall collect the tax in the same manner as taxes are collected in chapter 422, division III. If collected by the director of revenue, the director shall pay the county its proportionate share of the tax. Section 422.25, subsections 1, 2, 3, and 4, and sections 422.26, 422.28 through 422.30, and 422.73, consistent with this chapter, apply with respect to the collection of any tax or additional tax found to be due, in the same manner and with the same effect as if the deed, instrument, or writing were an income tax return within the meaning of those statutes.

The county recorder shall keep records and make reports with respect to the real estate transfer tax as the director of revenue prescribes.

2003 Acts, ch 145, §286  
Terminology change applied

**428A.11 Enforcement.**

The director of revenue shall enforce the provisions of this chapter and may prescribe rules for

their detailed and efficient administration.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 429

### NOTIFICATION OF TAXPAYERS

**429.1 Notice of assessment.**

The director of revenue shall, at the time of making the assessment of property as provided in chapters 428, 433, 434, 437, and 438, inform the person assessed, by mail, of the valuation put upon the taxpayer's property. The notice shall contain a notice of the taxpayer's right of appeal to the state board of tax review as provided in section 429.2.

2003 Acts, ch 145, §286  
Terminology change applied

**429.3 Judicial review.**

Judicial review of the action of the state board of tax review may be sought by the taxpayer or the director of revenue in accordance with the terms of chapter 17A.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 430A

### LOAN AGENCIES TAX

**430A.5 Forms — several places of business.**

The director of revenue shall prescribe forms for the making of returns as provided by this chapter. Any individual, partnership or agency subject to the provisions of this chapter and which maintains more than one place of business within the state of Iowa, may elect to make the return provided for by this chapter to the director of revenue, who shall determine the proper assessment to be made in each taxing district in which such taxpayer maintains a place of business, and the results thereof shall be by the director of revenue promptly certified to the county auditors of the respective counties in which offices are maintained, who shall add such assessments to the tax lists. In making such assessments the director of revenue shall determine the proportion of business done by such taxpayer in each taxing district in which a place of business is maintained, and shall assess in each taxing district an amount in proportion to

the business done in such taxing district to the amount of business done in the entire state. The director of revenue shall have the power to require the making of a return by any corporation, individual, partnership, or agency which the director deems to be subject to taxation under the provisions of this chapter and in case of failure or refusal to make such a return, the director of revenue shall make an assessment based upon the best information the director is able to obtain against any such corporation, individual, partnership, or agency, and shall certify such assessment as provided by this chapter. Judicial review may be sought of the action of the director of revenue in regard to assessments or orders made by the director in connection with this chapter under the same procedure generally, as is provided by section 422.29.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 432

### INSURANCE COMPANIES TAX

**432.1 Tax on gross premiums — exclusions.**

Every insurance company or association of whatever kind or character, not including fraternal beneficiary associations, and nonprofit hospi-

tal and medical service corporations, shall, as required by law, pay to the director of the department of revenue, or to a depository designated by the director, as taxes, an amount equal to the following, except that the premium tax applicable to

county mutual insurance associations shall be governed by section 518.18:

1. *a.* The applicable percent, as provided in subsection 2, of the gross amount of premiums received during the preceding calendar year by every life insurance company or association, not including fraternal beneficiary associations, or the gross payments or deposits collected from holders of fraternal beneficiary association certificates, on contracts of insurance covering risks resident in this state during the preceding year, including contracts for group insurance and annuities and without including or deducting any amounts received or paid for reinsurance.

*b.* In determining the gross amount of premiums to be taxed hereunder, there shall be excluded all premiums received from policies or contracts issued in connection with a pension, annuity, profit-sharing plan or individual retirement annuity qualified or exempt under sections 401, 403, 404, 408 or 501(a) of the federal Internal Revenue Code as now or hereafter amended and all premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values, all dividends that, during said year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

*c.* In determining the gross amount of premiums to be taxed, there shall be excluded all consideration received in connection with an annuity contract, whether or not such contract is qualified or exempt under the federal Internal Revenue Code as now or hereafter amended, and all premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values, and all dividends that, during said year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

2. The “*applicable percent*” for purposes of subsection 1 of this section and section 432.2 is the following:

*a.* For calendar years beginning before the 2003 calendar year, two percent.

*b.* For the 2003 calendar year, one and three-fourths percent.

*c.* For the 2004 calendar year, one and one-half percent.

*d.* For the 2005 calendar year, one and one-fourth percent.

*e.* For the 2006 and subsequent calendar years, one percent.

3. The applicable percent, as provided in subsection 4, of the gross amount of premiums, assessments, and fees received during the preceding calendar year by every company or association other than life on contracts of insurance other than life for business done in this state, including all insurance upon property situated in this state, after deducting the amounts returned upon canceled policies, certificates and rejected applica-

tions but not including the gross premiums, assessments, and fees in connection with ocean marine insurance authorized in section 515.48.

4. The “*applicable percent*” for purposes of subsection 3 is the following:

*a.* For calendar years beginning before the 2004 calendar year, two percent.

*b.* For the 2004 calendar year, one and three-fourths percent.

*c.* For the 2005 calendar year, one and one-half percent.

*d.* For the 2006 calendar year, one and one-fourth percent.

*e.* For the 2007 and subsequent calendar years, one percent.

5. Except as provided in subsection 6, the premium tax shall be paid on or before March 1 of the year following the calendar year for which the tax is due. The commissioner may suspend or revoke the license of a company or association that fails to pay its premium tax on or before the due date.

6. *a.* Each insurance company and association transacting business in this state whose Iowa premium tax liability for the preceding calendar year was one thousand dollars or more shall remit on or before June 1, on a prepayment basis, an amount equal to one-half of the premium tax liability for the preceding calendar year.

*b.* In addition to the prepayment amount in paragraph “*a*”, each life insurance company or association which is subject to tax under subsection 1 of this section and each mutual health service corporation which is subject to tax under section 432.2 shall remit on or before June 30, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

(1) For prepayment in the 2003 calendar year, four percent.

(2) For prepayment in the 2004 calendar year, twenty-one percent.

(3) For prepayment in the 2005 and subsequent calendar years, fifty percent.

*c.* In addition to the prepayment amount in paragraph “*a*”, each insurance company or association, other than a life insurance company or association, which is subject to tax under subsection 3 shall remit on or before June 30, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

(1) For prepayment in the 2003 and 2004 calendar years, eleven percent.

(2) For prepayment in the 2005 calendar year, twenty-six percent.

(3) For prepayment in the 2006 and subsequent calendar years, fifty percent.

*d.* The sums prepaid by a company or association under this subsection shall be allowed as credits against its premium tax liability for the calendar year during which the payments are made. If a prepayment made under this subsection exceeds

the annual premium tax liability, the excess shall be allowed as a credit against subsequent prepayment or tax liabilities. The commissioner may suspend or revoke the license of a company or association that fails to make a prepayment on or before the due date.

2003 Acts, ch 108, §73; 2003 Acts, ch 145, §286  
Taxation of organized delivery systems; see §135.120  
Terminology change applied  
Subsection 5 amended

#### **432.2 Mutual service corporations.**

Notwithstanding section 432.1, a hospital service corporation, medical service corporation, pharmaceutical service corporation, optometric service corporation, and any other service corporation operating under chapter 514 shall pay as taxes to the director of revenue an amount equal to the applicable percent, as provided in section 432.1, subsection 2, of the gross amount of payments received during the preceding calendar year for subscriber contracts covering residents in this state after deducting the amounts returned to subscribers upon canceled subscriber contracts and rejected applications. Section 432.1, subsections 5 and 6, apply to the tax imposed by this section.

2003 Acts, ch 145, §286  
Terminology change applied

#### **432.5 Risk retention groups.**

A risk retention group organized and operating pursuant to Pub. L. No. 99-563, also known as the risk retention amendments of 1986, shall pay as taxes to the director of revenue an amount equal to two percent of the gross amount of the premiums received during the previous calendar year for risks placed in this state. A resident or nonresident agent shall report and pay the taxes on the premiums for risks that the agent has placed in

this state with or on behalf of a risk retention group. The failure of a risk retention group to pay the tax imposed in this section shall result in the risk retention group being considered an unauthorized insurer under chapter 507A.

2003 Acts, ch 145, §286  
Terminology change applied

#### **432.10 Sufficiency of remitted tax — notice.**

The commissioner of insurance shall determine whether or not the tax remitted is correct. If the tax remitted is not sufficient, the commissioner shall notify the delinquent company of the amount of such delinquency and certify the amount thereof to the department of revenue which shall proceed to collect such delinquency.

2003 Acts, ch 145, §286  
Terminology change applied

#### **432.12D Endow Iowa tax credit.**

The tax imposed under this chapter shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

2003 Acts, 1st Ex, ch 2, §87, 89  
Section effective June 19, 2003, and applies retroactively to January 1, 2003, for tax years beginning on or after that date; 2003 Acts, 1st Ex, ch 2, §89

For future repeal of this section effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93  
NEW section

#### **432.13 Premium tax exemption — hawk-i program — state employee benefits.**

Premiums collected by participating insurers under chapter 514I are exempt from premium tax.

Premiums received for benefits acquired by the department of administrative services on behalf of state employees pursuant to section 8A.402, subsection 1, are exempt from premium tax.

2003 Acts, ch 145, §259  
Unnumbered paragraph 2 amended

## CHAPTER 432A

### MARINE INSURANCE TAX

#### **432A.8 Filing tax return.**

Every insurer liable to pay the tax shall, on or before June 1 of each year, file with the commissioner of insurance a tax return in accordance with or upon forms prescribed by the commissioner of insurance. The tax shown to be due, if any, shall be paid to the director of revenue who shall issue

to the insurer a receipt in duplicate, one of which shall be filed with the commissioner of insurance before issuance of the annual certificate as provided by law.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 433

### TELEGRAPH AND TELEPHONE COMPANIES TAX

#### **433.1 Statement required.**

Every telegraph and telephone company operat-

ing a line in this state shall, on or before the first day of May in each year, furnish to the director of

revenue a statement verified by its president or secretary showing:

1. The total number of miles owned, operated, or leased within the state, with a separate showing of the number leased.
2. The average number of poles per mile, and the whole number of poles on its lines in this state.
3. The total number of miles in each separate line or division thereof, also the average number of separate wires thereon.
4. The whole number of stations on each line, and the value of the same, including furniture.
5. The whole number of instruments on each separate line, and the gross rental charges per instrument, where the same are rented to patrons of the company making the return, together with the number of stations maintained, other than railroad stations.
6. The gross receipts and operating expenses of said company for the year ending December 31 next preceding, on business originating and terminating in this state.
7. The gross receipts and operating expenses of said company for the year ending December 31 next preceding, and not included in the statement made under subsection 6 hereof.
8. The total capital stock of said company.
9. The number of shares of capital stock issued and outstanding, and the par or face value of each share.
10. The market value of such shares of stock on the first day of January next preceding, and if such shares have no market value, the actual value thereof.
11. All real estate and other property owned by such company and subject to local taxation within this state.
12. The specific real estate, together with the permanent improvements thereon, owned by such company and situated outside this state and taxed as other real estate in the state where located, with a specific description of each piece, where located, and the purpose for which the same is used, and the actual value thereof in the locality where situated.
13. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.
14. The total length of the lines of said company.
15. The total length of the lines of said company outside this state.

2003 Acts, ch 145, §286  
Terminology change applied

#### **433.2 Additional statement.**

Upon the receipt of said statements from the several companies, the director of revenue shall examine said statements and if the director shall deem the same insufficient and that further information is requisite, the director shall require the

officer making same to make such other or further statement as the director may desire.

2003 Acts, ch 145, §286  
Terminology change applied

#### **433.3 Failure to make statement.**

In case of failure or refusal of any company to make out or deliver to the director of revenue the statements required in section 433.1, such company shall forfeit and pay to the state one hundred dollars for each day such report is delayed beyond the first day of May, to be sued and recovered in any proper form of action in the name of the state, and on the relation of the director of revenue, and such penalty, when collected, shall be paid into the general fund of the state.

2003 Acts, ch 145, §286  
Terminology change applied

#### **433.4 Assessment.**

The director of revenue shall on the second Monday in July of each year, proceed to find the actual value of the property of these companies in this state, taking into consideration the information obtained from the statements required, and any further information the director can obtain, using the same as a means for determining the actual cash value of the property of these companies within this state. The director shall also take into consideration the valuation of all property of these companies, including franchises and the use of the property in connection with lines outside the state, and making these deductions as may be necessary on account of extra value of property outside the state as compared with the value of property in the state, in order that the actual cash value of the property of the company within this state may be ascertained. The assessment shall include all property of every kind and character whatsoever, real, personal, or mixed, used by the companies in the transaction of telegraph and telephone business; and the property so included in the assessment shall not be taxed in any other manner than as provided in this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

#### **433.5 Actual value per mile.**

The director of revenue shall ascertain the value per mile of the property of each of said companies within this state by dividing the total value, as above ascertained, by the number of miles of line of such company within the state, and the result shall be deemed and held to be the actual value per mile of line of the property of such company within this state.

2003 Acts, ch 145, §286  
Terminology change applied

#### **433.7 Hearing.**

At such meeting in July any company interested shall have the right to appear, by its officers or

agents, before the director of revenue and be heard on the question of the valuation of its property for taxation.

2003 Acts, ch 145, §286  
Terminology change applied

**433.8 Assessment in each county — how certified.**

The director of revenue shall, for the purpose of determining what amount shall be assessed to any one of said companies in each county of the state into which the line of the said company extends, multiply the assessed or taxable value per mile of line of said company, as above ascertained, by the number of miles in each of said counties, and the result thereof shall be by the director certified to the several county auditors of the respective counties into, over, or through which said line extends.

2003 Acts, ch 145, §286  
Terminology change applied

**433.9 Entry of certificate.**

At the first meeting of the board of supervisors held after such statement is received by the county auditor, it shall cause such statement to be entered in its minute book, and make and enter therein an order stating the length of the lines and the assessed value of the property of each of said companies situated in each city, township, or lesser taxing district in its county, as fixed by the director of revenue, which shall constitute the taxable value of said property for taxing purposes, and the taxes on said property when collected by the county treasurer shall be disposed of as other taxes on real estate. The county auditor shall transmit a copy of said order to the council or trustees of each city or township in which the lines of said company extend.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 434

### RAILWAY COMPANIES TAX

**434.2 When assessed — statement required.**

On the second Monday in July of each year, the director of revenue shall assess all the property of each railway corporation in the state, excepting the lands, lots, and other real estate belonging thereto not used in the operation of any railway, and excepting railway bridges across the Mississippi and Missouri rivers, and excepting grain elevators; and for the purpose of making such assessment its president, vice president, general manager, general superintendent, receiver, or such other officer as the director of revenue may designate, shall, on or before the first day of April in each year, furnish the department of revenue a verified statement showing in detail for the year ended December 31 next preceding:

1. The whole number of miles of railway owned, operated, or leased by such corporation or company within and without the state.

2. The whole number of miles of railway owned, operated, or leased within the state, including double tracks and sidetracks, the mileage of the main line and branch lines to be stated separately, and showing the number of miles of track in each county.

3. A full and complete statement of the cost and actual present value of all buildings of every description owned by said railway company within the state not otherwise assessed.

4. The total number of ties per mile used on all its tracks within the state.

5. The weight of rails per yard in main line, double tracks, and sidetracks.

6. The number of miles of telegraph lines

owned and used within the state.

7. The total number of engines, and passenger, chair, dining, official, express, mail, baggage, freight, and other cars, including handcars and boarding cars used in constructing and repairing such railway, in use on its whole line, and the sleeping cars owned by it, and the number of each class on its line within the state, each class to be valued separately.

8. Any and all other movable property owned by said railway within the state, classified and scheduled in such manner as may be required by the director of revenue.

9. The gross earnings of the entire road, and the gross earnings in this state.

10. The operating expenses of the entire road, and the operating expenses within this state.

11. The net earnings of the entire road, and the net earnings within this state.

2003 Acts, ch 145, §286  
Terminology change applied

**434.7 Gross earnings.**

For the purpose of making reports to the department of revenue, the gross earnings of railway companies, owning or operating a line or lines of railway partly within this state and partly within another state, or other states, or territory, or territories, upon their line or lines within this state, shall be ascertained and reported by said railway companies as follows, to wit: The aggregate of the earnings upon business originating and terminating within this state, upon business originating in this state and terminating elsewhere, upon business originating elsewhere and terminating in

this state, and upon business neither originating nor terminating in this state but carried on or done over the line or lines in this state or over some part thereof, shall be reported; and with respect to all such interstate business the earnings in this state for the purpose of report shall be actually computed upon the basis of the length of haul or carriage in this state as compared with the length of haul or carriage elsewhere. It is hereby declared that for the purpose of making reports looking to the assessment of railway property for taxation, the gross earnings or business done or carried partly within this state and partly in another state, or other states, or territories, shall be that proportion of the entire earnings of such business that the haul or carriage in this state bears to the entire haul or carriage.

2003 Acts, ch 145, §286  
Terminology change applied

#### **434.8 Method of accounting.**

The director of revenue shall have the power to prescribe such rules and regulations with respect to the keeping of accounts by the railway companies doing business in this state as will insure the accurate division of earnings as aforesaid, and uniformity in reporting the same to the department of revenue.

2003 Acts, ch 145, §286  
Terminology change applied

#### **434.9 Net earnings.**

The director of revenue shall have the power to prescribe a method for all railway companies doing business in this state, together with the rules and regulations, for the ascertainment of the net earnings of the railway lines in this state, to the end that all such railway companies, in ascertaining and making report of net earnings, shall proceed upon the same basis and in a uniform manner.

2003 Acts, ch 145, §286  
Terminology change applied

#### **434.11 Additional rules and regulations.**

The rules, regulations, method, and requirements herein provided to be made by the director of revenue shall be made and communicated in writing or print to the said several railway companies and shall be and become binding upon said railway companies as provided in chapter 17A, provided, however, that the director shall have the power to prescribe supplemental or additional rules, regulations, and requirements in the manner prescribed by chapter 17A.

2003 Acts, ch 145, §286  
Terminology change applied

#### **434.12 Refusal to obey.**

If any railway company shall fail or refuse to obey or conform to the rules, regulations, method, and requirements so made or prescribed by the director of revenue under the provisions of sections

434.7 to 434.11 or to make the reports therein provided, the director of revenue shall proceed to assess the property of such railway company so failing or refusing, according to the best information obtainable, and shall then add to the taxable valuation of such railway company twenty-five percent thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year.

2003 Acts, ch 145, §286  
Terminology change applied

#### **434.14 Amended statement.**

The director of revenue may demand, in writing, detailed, explanatory, and amended statements of any of the items mentioned in section 434.2, or any other items deemed by the director important, to be furnished the director by such railway corporation within thirty days from such demand, in such form as the director may designate, which shall be verified as required for the original statement. The returns, both original and amended, shall show such other facts as the director, in writing, shall require.

2003 Acts, ch 145, §286  
Terminology change applied

#### **434.15 Assessment of railways.**

The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire railway within the state, except as otherwise provided, and the actual value so ascertained shall be assessed as provided by section 441.21, and shall include the right of way, roadbed, bridges, culverts, rolling stock, depots, station grounds, shops, buildings, gravel beds, and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, the director of revenue shall take into consideration the gross earnings per mile for the year ending January 1, preceding, and any and all other matters necessary to enable the director to make a just and equitable assessment of said railway property. If a part of any railway is without this state, then, in estimating the value of its rolling stock and movable property, the director shall take into consideration the proportion which the business of that part of the railway lying within the state bears to the business of the railway without this state.

Trackless trolleys, buses, cars and vehicles used for the transportation of passengers owned and operated by any urban transit company as a part of an urban transit system shall not be included in the determination of the value of an urban transit system for taxation purposes.

2003 Acts, ch 145, §286  
Terminology change applied

#### **434.16 Assessment of sleeping and dining cars.**

The director of revenue shall, at the time of the assessment of other railway property for taxation,

assess for taxation the average number of sleeping and dining cars as provided in section 434.6 so used by such corporation each month and the assessed value of said cars shall bear the same proportion to the entire value thereof that the monthly average number of miles such cars have been run or operated within the state shall bear to the monthly average number of miles such cars have been used or operated within and without the state. Such valuation shall be in the same ratio as that of the property of individuals, and shall be added to the assessed valuation of the corporation, fixed under the preceding sections.

2003 Acts, ch 145, §286  
See §441.21  
Terminology change applied

**434.17 Certification to county auditors.**

On or before the third Monday in August of each year, the director of revenue shall transmit to the county auditor of each county, through and into which any railway may extend, a statement showing the length of the main track within the county,

and the assessed value per mile of the same, as fixed by a ratable distribution per mile of the assessed valuation of the whole property.

2003 Acts, ch 145, §286  
Terminology change applied

**434.22 Levy and collection of tax.**

At the first meeting of the board of supervisors held after said statement is received by the county auditor, it shall cause the same to be entered on its minute book, and make and enter therein an order stating the length of the main track and the assessed value of each railway lying in each city, township or lesser taxing district in its county, through or into which said railway extends, as fixed by the director of revenue, which shall constitute the taxable value of said property for taxing purposes; and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of said order to the council or trustees of the city or township.

2003 Acts, ch 145, §286  
Terminology change applied

**CHAPTER 435**

**TAX ON HOMES IN MANUFACTURED HOME COMMUNITIES AND MOBILE HOME PARKS**

**435.22 Annual tax — credit.**

The owner of each mobile home or manufactured home located within a manufactured home community or mobile home park shall pay to the county treasurer an annual tax. However, when the owner is any educational institution and the home is used solely for student housing or when the owner is the state of Iowa or a subdivision of the state, the owner shall be exempt from the tax. The annual tax shall be computed as follows:

1. Multiply the number of square feet of floor space each home contains when parked and in use by twenty cents. In computing floor space, the exterior measurements of the home shall be used as shown on the certificate of title, but not including any area occupied by a hitching device.

2. If the owner of the home is an Iowa resident, has attained the age of twenty-three years on or before December 31 of the base year, and has an income when included with that of a spouse which is less than eight thousand five hundred dollars per year, the annual tax shall not be imposed on the home. If the income is eight thousand five hundred dollars or more but less than sixteen thousand five hundred dollars, the annual tax shall be computed as follows:

If the Household Income is:	Annual Tax Per Square Foot:
\$ 8,500 — 9,499.99	3.0 cents
9,500 — 10,499.99	6.0
10,500 — 12,499.99	10.0
12,500 — 14,499.99	13.0
14,500 — 16,499.99	15.0

For purposes of this subsection “*income*” means income as defined in section 425.17, subsection 7, and “*base year*” means the calendar year preceding the year in which the claim for a reduced rate of tax is filed. The home reduced rate of tax shall only be allowed on the home in which the claimant is residing at the time the claim for a reduced rate of tax is filed or was residing at the time of the claimant’s death in the case of a claim filed on behalf of a deceased claimant by the claimant’s legal guardian, spouse, or attorney, or by the executor or administrator of the claimant’s estate.

Beginning with the 1998 base year, the income dollar amounts set forth in this subsection shall be multiplied by the cumulative adjustment factor for that base year as determined in section 425.23, subsection 4.

3. The amount thus computed shall be the

annual tax for all homes, except as follows:

a. For the sixth through ninth years after the year of manufacture the annual tax is ninety percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

b. For all homes ten or more years after the year of manufacture the annual tax is eighty percent of the tax computed according to subsection 1 or 2 of this section, whichever is applicable.

4. The tax shall be figured to the nearest even whole dollar.

5. A claim for credit for manufactured or mobile home tax due shall not be paid or allowed unless the claim is actually filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the home taxes are due. However, in case of sickness, absence, or other disability of the claimant, or if in the judgment of the county treasurer good cause exists, the county treasurer may extend the time for filing a claim for credit through September 30 of the same calendar year. The county treasurer shall certify to the director of revenue on or before November 15 each year the total dollar amount due for claims allowed.

The forms for filing the claim shall be provided by the department of revenue. The forms shall require information as determined by the department.

In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue, good cause exists and the claimant requests an extension, the director may extend the time for filing a claim for credit or reimbursement. However, any further time granted shall not extend beyond December 31 of the year in which the claim was required to be filed. Claims filed as a result of this paragraph shall be filed with the director who shall provide for the reimbursement of the claim to the claimant.

The director of revenue shall certify the amount due to each county, which amount shall be the dollar amount which will not be collected due to the granting of the reduced tax rate under subsection 2.

The amounts due each county shall be paid by the department of revenue on December 15 of each year, drawn upon warrants payable to the respective county treasurers. The county treasurer in each county shall apportion the payment in accordance with section 435.25.

There is appropriated annually from the general fund of the state to the department of revenue an amount sufficient to carry out this subsection.

2003 Acts, ch 145, §286  
Terminology change applied

**435.26 Conversion to real property.**

1. a. A mobile home or manufactured home which is located outside a manufactured home community or mobile home park shall be converted to real estate by being placed on a perma-

nent foundation and shall be assessed for real estate taxes. A home, after conversion to real estate, is eligible for the homestead tax credit and the military service tax exemption as provided in sections 425.2 and 426A.11.

b. If a security interest is noted on the certificate of title, the home owner shall tender to the secured party a mortgage on the real estate upon which the home is to be located in the unpaid amount of the secured debt, and with the same priority as or a higher priority than the secured party's security interest, or shall obtain the written consent of the secured party to the conversion, in which latter case the lien notation on the certificate of title shall suffice to preserve the lienholder's security in the home separate from any interest in the land.

2. After complying with subsection 1, the owner shall notify the assessor who shall inspect the new premises for compliance. If a security interest is noted on the certificate of title, the assessor shall require an affidavit, as defined in section 622.85, from the home owner, declaring that the owner has complied with subsection 1, paragraph "b", and setting forth the method of compliance.

a. If compliance with subsection 1, paragraph "b", has been accomplished by the secured party accepting the tender of a mortgage, the assessor shall collect the home vehicle title and enter the property upon the tax rolls.

b. If compliance with subsection 1, paragraph "b", has been accomplished by the secured party consenting to the conversion without accepting a mortgage, the secured party shall retain the home vehicle title and the assessor shall note the conversion on the assessor's records and enter the property upon the tax rolls. So long as a security interest is noted on the certificate of title, the title to the home will not be merged with title to the land, and the sale or foreclosure of an interest in the land shall not affect title to the home or any security interest in the home.

3. When the property is entered on the tax rolls, the assessor shall also enter on the tax rolls the title number last assigned to the mobile home or manufactured home and the manufacturer's identification number.

2003 Acts, ch 108, §74  
Subsection 1, paragraph a amended

**435.26A Surrender of title.**

1. A person who owns a manufactured home that is located in a manufactured home community and is installed on a permanent foundation may surrender the manufactured home's certificate of title to the county treasurer for the purpose of assuring eligibility for funds available from mortgage lending programs sponsored by the federal national mortgage association, the federal home loan mortgage corporation, the United States department of agriculture, or any other federal governmental agency or instrumentality that has

similar requirements for mortgage lending programs.

2. Upon receipt of a certificate of title from a manufactured home owner, a county treasurer shall notify the state department of transportation that the certificate of title has been surrendered, remove the registration of title from the county treasurer's records, and destroy the certificate of title.

The manufactured home owner or the owner's representative shall provide to the county recorder the identifying data of the manufactured home, including the owner's name, the name of the manufacturer, the model name, the year of manufacture, and the serial number of the home, along with the legal description of the real estate on which the manufactured home is located. In addition, evidence shall be provided of the surrender of the certificate of title. After the surrender of the certificate of title of a manufactured home under this section, conveyance of an interest in the manufactured home shall not require transfer of title so long as the manufactured home remains on the same real estate site.

3. After the surrender of a manufactured home's certificate of title under this section, the

manufactured home shall continue to be taxed under section 435.22 and is not eligible for the homestead tax credit or the military service tax exemption. A foreclosure action on a manufactured home whose title has been surrendered under this section shall be conducted as a real estate foreclosure. A tax lien and its priority shall remain the same on a manufactured home after its certificate of title has been surrendered.

4. The certificate of title of a manufactured home shall not be surrendered under this section if an unreleased security interest is noted on the certificate of title.

5. An owner of a manufactured home who has surrendered a certificate of title under this section and requires another certificate of title for the manufactured home is required to apply for a certificate of title under chapter 321. If supporting documents for the reissuance of a title are not available or sufficient, the procedure for the reissuance of a title specified in the rules of the state department of transportation shall be used.

2003 Acts, ch 24, §7, 10; 2003 Acts, ch 179, §128, 159; 2003 Acts, 1st Ex, ch 2, §26, 209  
NEW section

## CHAPTER 437

### ELECTRIC TRANSMISSION LINES TAX

#### 437.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Book*", "*list*", "*record*", or "*schedule*" kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. "*Company*" means an electric cooperative referred to in section 437A.7, subsection 3, paragraph "c".

3. "*Electric cooperative*" means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere.

4. "*Transmission lines*" means electric lines and associated facilities operating at thirty-four thousand five hundred volts or higher voltage, and substations, transformers, and associated facilities operated at thirty-four thousand five hundred or more volts on the low voltage side.

Section not amended; internal reference change applied

#### 437.2 Statement required.

Every company owning or operating a transmission line or lines for the conduct of electric energy and which line or lines are located within the state, and which said line or lines are also located wholly or partly outside cities, shall, on or before

the first day of May in each year, furnish to the director of revenue a verified statement as to its entire line or lines within this state, when all of said line or lines are located outside cities, and as to such portion of its line or lines within this state as are located outside cities, when such line or lines are located partly outside and partly inside cities, showing:

1. The total number of miles of line owned, operated, or leased, located outside cities within this state, with a separate showing of the number of miles leased.

2. The location and length of each division within the state and the character of poles, towers, wires, substation equipment, and other construction of each such division, designating the length and portion thereof in each separate county into which each such division extends.

2003 Acts, ch 145, §286  
Terminology change applied

#### 437.4 Additional statement.

Upon receipt of the statements from the companies, the director of revenue shall examine the statements, and if the director deems them insufficient, and that further information is required, the director shall require the company making the statements to make other or further statement as

the director deems necessary, notifying the company by mail.

2003 Acts, ch 145, §286  
Terminology change applied

#### **437.5 Failure to furnish.**

In case of the total failure or refusal to make any statement required by sections 437.2 and 437.4 to be made by May 1 in any year, or of failure or refusal to make other or further statement within thirty days from the time the notice is received by the company that the additional statement is required by the director of revenue, the company shall forfeit and pay to the state, one hundred dollars for each day the total failure or refusal to make any report is continued beyond the first day of May of the year in which it is required, or in case of any other or further report required by the director for each day it is delayed beyond thirty days from the receipt of the notice by the company that the additional report is required. The forfeiture shall be sued for and recovered in any proper form of action in the name of the state and on relation of the director of revenue of the state, and the penalty, when collected, shall be paid into the general fund of the state.

2003 Acts, ch 145, §286  
Terminology change applied

#### **437.6 Actual value.**

On the second Monday in July of each year, the director of revenue shall proceed to find the actual value of that part of such transmission line or lines referred to in section 437.2, owned or operated by any company, that is located within this state but outside cities, including the whole of such line or lines when all of such line or lines owned or operated by said company is located wholly outside of cities, taking into consideration the information obtained from the statements required by this chapter, and any further information obtainable, using the same as a means of determining the actual cash value of such transmission line or lines or part thereof, within this state, located outside of cities. The director shall then ascertain the value per mile of such transmission line or lines owned or operated by each company specified in section 437.2, by dividing the total value as above ascertained by the number of miles of line of such company within the state located outside of cities, and the result shall be deemed and held to be the actual value per mile of said transmission line or lines of each of said companies within the state located outside of cities.

2003 Acts, ch 145, §286  
Terminology change applied

#### **437.7 Taxable value.**

The taxable value of such line or lines of which the director of revenue by this chapter is required to find the value, shall be determined by taking the percentage of the actual value so ascertained, as provided by section 441.21, and the ratio between

the actual value and the assessed or taxable value of the transmission line or lines of each of said companies located outside of cities shall be the same as in the case of the property of private individuals.

2003 Acts, ch 145, §286  
Terminology change applied

#### **437.8 Hearing.**

At the time of determination of value by the director of revenue, any company interested shall have the right to appear by its officers, agents, and attorneys before the director, and be heard on the question of the value of its property for taxation.

2003 Acts, ch 145, §286  
Terminology change applied

#### **437.9 County assessment — certification.**

The director of revenue shall, for the purpose of determining what amount shall be assessed to any one of said companies in each county of the state into which the line or lines of the company extend, multiply the assessed or taxable value per mile of line of said company, as ascertained according to the provisions of this chapter, by the number of miles of line in each of said counties, and the result thereof shall be by the director certified to the several county auditors of the respective counties into, over, or through which said line or lines extend.

2003 Acts, ch 145, §286  
Terminology change applied

#### **437.10 Entry of certificate.**

At the first meeting of the board of supervisors held after said statements are received by the county auditor, it shall cause such statement to be entered in its minute book and make and enter therein an order stating the length of the lines and the assessed value of the property of each of said companies situated in each township or lesser taxing district in each county outside cities, as fixed by the director of revenue, which shall constitute the taxable value of said property for taxing purposes. The county auditor shall transmit a copy of said order to the trustees of each township and to the proper taxing boards in lesser taxing districts into which the line or lines of said company extend in the county. The taxes on said property when collected by the county treasurer shall be disposed of as other taxes on real estate.

2003 Acts, ch 145, §286  
Terminology change applied

#### **437.12 Assessment exclusive.**

Every transmission line or part of a transmission line, of which the director of revenue is required by this chapter to find the value, shall be exempt from other assessment or taxation either under sections 428.24 to 428.26, or under any other law of this state except as provided in this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 437A

## TAXES ON ELECTRICITY AND NATURAL GAS PROVIDERS

**437A.3 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. *“Assessed value”* means the base year assessed value, as adjusted by section 437A.19, subsection 2. *“Base year assessed value”*, for a taxpayer other than an electric company, natural gas company, or electric cooperative, means the value attributable to property identified in section 427A.1, subsection 1, paragraph *“h”*, certified by the department of revenue to the county auditors for the assessment date of January 1, 1997, and the value attributable to property identified in section 427A.1 and section 427B.17, subsection 5, as certified by the local assessors to the county auditors for the assessment date of January 1, 1997, provided, that for a taxpayer subject to section 437A.17A, such value shall be the value certified by the department of revenue and local assessors to the county auditors for the assessment date of January 1, 1998. However, *“base year assessed value”*, for purposes of property of a taxpayer that is a municipal utility, if the property is not a major addition, and the property was initially assessed to the taxpayer as of January 1, 1998, and is not located in a county where the taxpayer had property that was assessed for purposes of this chapter as of January 1, 1997, means the value attributable to such property for the assessment date of January 1, 1998.

For taxpayers that are electric companies, natural gas companies, and electric cooperatives, *“base year assessed value”* means the average of the total of these values for each taxpayer for the assessment dates of January 1, 1993, through January 1, 1997, allocated among taxing districts in proportion to the allocation of the taxpayer’s January 1, 1998, assessed value among taxing districts. *“Base year assessed value”* does not include value attributable to steam-operating property.

2. *“Book”*, *“list”*, *“record”*, or *“schedule”* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *“Centrally assessed property tax”* means property tax imposed with respect to the value of property determined by the director pursuant to section 427.1, subsection 2, section 428.29, chapter 437, and chapter 438, Code 1997, and allocated to electric service and natural gas service. For purposes of this subsection, *“natural gas service”* means such service provided by natural gas pipelines permitted pursuant to chapter 479.

4. *“Cogeneration facility”* means a facility with a capacity of two hundred megawatts or less that uses the same energy source for the sequential generation of electrical or mechanical power in

combination with steam, heat, or other forms of useful energy and, except for ownership, meets the criteria to be a qualifying cogeneration facility as defined in the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 et seq., and related federal regulations.

5. *“Consumer”* means an end user of electricity or natural gas used or consumed within this state. *“Consumer”* includes any master-metered facility even though the electricity or natural gas delivered to such facility may ultimately be used by another person. A person to whom electricity or natural gas is delivered by a master-metered facility is not a consumer. A *“master-metered facility”* means any multi-occupancy premises where units are separately rented or owned and where electricity or natural gas is used in centralized heating, cooling, water-heating, or ventilation systems, where individual metering is impractical, where the facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual units, or where submetering or resale of service was permitted prior to 1966.

6. *“Delivery”* means the physical transfer of electricity or natural gas to a consumer. Physical transfer to a consumer occurs when transportation of electricity or natural gas ends and such electricity or natural gas becomes available for use or consumption by a consumer.

7. *“Director”* means the director of revenue.

8. *“Electric company”* means a person engaged primarily in the production, delivery, service, or sales of electric energy whether formed or organized under the laws of this state or elsewhere. *“Electric company”* includes a combination natural gas company and electric company. *“Electric company”* does not include an electric cooperative or a municipal utility.

9. *“Electric competitive service area”* means an electric service area assigned by the utilities board under chapter 476 as of January 1, 1999, including utility property and facilities described in section 476.23, subsection 3, which were owned and served by the electric company, electric cooperative, or municipal utility serving such area on January 1, 1999.

10. *“Electric cooperative”* means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere. An electric cooperative shall also include an incorporated city utility provider. *“Generation and transmission electric cooperative”* means an electric cooperative which owns both transmission lines and property which is used to generate electricity. *“Distribution electric cooperative”* means an electric cooperative other than a generation

and transmission electric cooperative or a municipal electric cooperative association.

11. “*Electric power generating plant*” means a nameplate rated electric power generating plant, which produces electric energy from other forms of energy, including all taxable land, buildings, and equipment used in the production of such electric energy.

“*New electric power generating plant*” means an electric power generating plant that is owned by or leased to an electric company, electric cooperative, or municipal utility, and that initially generates electricity subject to replacement generation tax under section 437A.6 on or after January 1, 2003.

12. “*Incorporated city utility provider*” means a corporation with assets worth one million dollars or more which has one or more platted villages located within the territorial limits of the tract of land which it owns, and which provides electricity to ten thousand or fewer customers.

13. “*Lease*” means a contract between a lessor and lessee pursuant to which the lessee obtains a present possessory interest in tangible property without obtaining legal title in such property. A contract to transmit or deliver electricity or natural gas using operating property within this state is not a lease. “*Capital lease*” means a lease classified as a capital lease under generally accepted accounting principles.

14. “*Local amount*” means the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the acquisition cost of any major addition which is an electric power generating plant and the total acquisition cost of any other major addition.

“*Local amount*” for the purposes of determining the local taxable value for a new electric power generating plant shall annually be determined to be equal up to the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the taxable value of the new electric power generating plant. “*Local amount*” for the purposes of determining the local assessed value for a new electric power generating plant shall be annually determined to be the percentage share of the taxable value of the new electric power generating plant allocated as the local amount multiplied by the total assessed value of the new electric power generating plant.

15. “*Local taxing authority*” means a city, county, community college, school district, or other taxing authority located in this state and authorized to certify a levy on property located within such authority for the payment of bonds and interest or other obligations of such authority.

16. “*Local taxing district*” means a geographic area with a common consolidated property tax rate.

17. “*Low capacity factor electric power generating plant*” means, for any tax year, an electric power generating plant, with the exception of an electric power generating plant owned or leased by

an electric company, an electric cooperative, or a municipal utility, which operated during the preceding calendar year at a net capacity factor of twenty percent or less. “*Net capacity factor*” means net actual generation during the preceding calendar year divided by the product of nameplate capacity times the number of hours the plant was in the active state during the preceding calendar year. Upon commissioning, a plant is in the active state until it is decommissioned. “*Net actual generation*” means net electrical megawatt hours produced by a plant during the preceding calendar year.

18. “*Major addition*” means any acquisition on or after January 1, 1998, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in any of the following:

a. A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.

b. An electric power generating plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this paragraph, “*electric power generating plant*” means each nameplate rated electric power generating plant owned solely or jointly by any person or electric power facility financed under the provisions of chapter 28F or 476A in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.

c. Natural gas operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

d. Any property described in section 437A.16 in this state acquired by a person not previously subject to taxation under this chapter.

For purposes of this chapter, the acquisition cost of an asset acquired by capital lease is its capitalized value determined under generally accepted accounting principles.

19. “*Municipal electric cooperative association*” means an electric cooperative, the membership of which is composed entirely of municipal utilities.

20. “*Municipal utility*” means all or part of an electric light and power plant system or a natural gas system, either of which is owned by a city, including all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the municipal utility.

21. “*Natural gas company*” means a person that owns, operates, or is engaged primarily in operating or utilizing pipelines for the purpose of distributing natural gas to consumers located within this state, excluding a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. “*Natural gas company*” includes a combination natural gas company and electric company. “*Natural gas company*” does not include a municipal utility.

22. a. "Natural gas competitive service area" means any of the fifty-two natural gas competitive service areas described as follows:

(1) Each of the following municipal natural gas competitive service areas:

(a) Taylor county, except for those areas of Taylor county which are contained within another municipal natural gas competitive service area as described in this subsection.

(b) The city of Brighton in Washington county and the area within two miles of the city limits plus sections 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30 in Brighton township; sections 19, 30, and 33 in Franklin township; sections 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36 in Dutch Creek township; and sections 25, 26, 35, and 36 in Seventy-Six township.

(c) Davis county.

(d) The city of Brooklyn in Poweshiek county and the area within two miles of the city limits.

(e) The city of Cascade in Dubuque county and the area within two miles of the city limits.

(f) The city of Cedar Falls in Black Hawk county and the area within one mile of the city limits, not including any part of the city of Waterloo.

(g) The city of Clearfield in Taylor county and the area within two miles of the city limits and sections 20, 21, 26, and 27 of Platte township, Grant township in Taylor county, and Grant township in Ringgold county.

(h) The south half of Carroll county and sections 3 and 4 of Orange township in Guthrie county.

(i) Adams county, except those areas of Adams county which are contained within another municipal natural gas competitive service area as defined in this subsection.

(j) The city of Emmetsburg in Palo Alto county and the area within two miles of the city limits.

(k) The city of Everly in Clay county and the area within two miles of the city limits.

(l) The city of Fairbank and the area within two miles of the city limits plus the area one-quarter mile on either side of the county line road, Highway 281, from Fairbank to the intersection of Outer road and Tenth street, proceeding twenty-eight hundredths of a mile north in Buchanan and Fayette counties.

(m) The city of Gilmore City in Pocahontas and Humboldt counties and the area within two miles of the city limits.

(n) The city of Graettinger in Palo Alto county and the area within two miles of the city limits.

(o) The city of Guthrie Center in Guthrie county and the area within one mile of the city limits.

(p) The city of Harlan in Shelby county and the area within two miles of the city limits.

(q) The city of Hartley in O'Brien county and the area within one mile of the city limits, except the eastern one-half of section four in Omega township.

(r) The city of Hawarden in Sioux county and

the area within two miles of the city limits.

(s) The city of Lake Park plus Silver Lake township in Dickinson county.

(t) Fayette and New Buda townships in Decatur county.

(u) The city of Lenox in Taylor county including section 1 of Platte township in Taylor county and the townships of Carl, Grant, Mercer, Colony, Union, and Prescott in Adams county.

(v) Grand River township in Wayne county.

(w) New Hope township in Union county and Monroe township in Madison county.

(x) Ewoldt and Eden townships in Carroll county and Iowa township in Crawford county.

(y) The city of Montezuma in Poweshiek county and the area within two miles of the city limits plus Jackson township in Poweshiek county except the city of Barnes City, Pleasant Grove and Monroe townships in Mahaska county except the city of Barnes City.

(z) Morning Sun township in Louisa county.

(aa) Wells and Washington townships in Appanoose county.

(ab) The city of Osage in Mitchell county and the area within two miles of the city limits.

(ac) The city of Prescott in Adams county and the area within two miles of the city limits.

(ad) The city of Preston in Jackson county and the area within two miles of the city limits.

(ae) The city of Remsen in Plymouth county and the area within two miles of the city limits.

(af) The city of Rock Rapids in Lyon county and the area within two miles of the city limits.

(ag) The city of Rolfe in Pocahontas county and the area within two miles of the city limits.

(ah) The city of Sabula in Jackson county and the area within two miles of the city limits.

(ai) The city of Sac City in Sac county and the area within two miles of the city limits.

(aj) The city of Sanborn in O'Brien county and the area within two miles of the city limits.

(ak) The city of Sioux Center in Sioux county and the area within two miles of the city limits.

(al) The city of Tipton in Cedar county and the area within two miles of the city limits.

(am) The city of Waukee in Dallas county and the area within two miles of the city limits of Waukee as of January 1, 1999, not including any part of the cities of Clive, Urbandale, or West Des Moines.

(an) The city of Wayland plus Jefferson and Trenton townships in Henry county.

(ao) Seventy-Six and Lime Creek townships in Washington county except for those areas of Seventy-Six township which are contained within another municipal natural gas competitive service area as defined in this subsection.

(ap) The city of West Bend in Kossuth and Palo Alto counties and the area within two miles of the city limits.

(aq) The city of Whittemore in Kossuth county and the area within two miles of the city limits.

(ar) Scott, Canaan, and Wayne townships in Henry county.

(as) The city of Woodbine in Harrison county and the area within two miles of the city limits.

(at) Nishnabotna township in Crawford county.

(2) The natural gas competitive service area, excluding any municipal natural gas competitive service area described in subparagraph (1) and consisting of Sioux county; Plymouth county; Woodbury county; Ida county; Harrison county; Shelby county; Audubon county; Palo Alto county; Humboldt county; Mahaska county; Scott county; Lyon county except Wheeler, Dale, Liberal, Grant, Midland, and Elgin townships; O'Brien county except Union, Dale, Summit, Highland, Franklin, and Center townships; Cherokee county except Cherokee and Pilot townships; Monona county except Franklin township and the south half of Ashton township; Pottawattamie county except Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships; Mills county except Glenwood and Center townships; Montgomery county except Douglas, Washington, and East townships; Page county except Valley, Douglas, Nodaway, Nebraska, Harlan, East River, Amity, and Buchanan townships; Fremont county except Green, Scott, Sidney, Benton, Washington, and Madison townships; Brighton and Pleasant townships in Cass county; Sac county except Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships; Newell township in Buena Vista county; Calhoun county except Reading township; Denmark township in Emmet county; Kossuth county except Eagle, Grant, Springfield, Hebron, Swea, Harrison, Ledyard, Lincoln, Seneca, Greenwood, Ramsey, and German townships; Webster county except Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Hardin townships; Guthrie county except Grant, Thompson, and Beaver townships; Union township in Union county; Madison county except Ohio and New Hope townships; Warren county except Virginia, Squaw, Liberty, and White Breast townships; Cedar, Union, Bluff Creek, and Pleasant townships in Monroe county; Marion county except Lake Prairie, Knoxville, Summit, and Union townships; Dallas county except Des Moines and Grant townships; Polk county except sections 4, 5, 6, 7, 8, 9, 16, 17, and 18 in Lincoln township and the city of Grimes, and sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 in Union township; Poweshiek, Washington, Mound Prairie, Des Moines, Elk Creek, and Fairview townships in Jasper county; Wright county except Belmond and Pleasant townships; Geneseo township in Cerro Gordo county; Franklin county except Wisner and Scott townships and the city of Coulter; Butler county except Bennezette, Coldwater, Dayton, and Fremont townships; Floyd county except Rock Grove, Rudd, Rockford, Ulster, Scott, and Union townships; Branford township in Chickasaw county; Bremer county except Frederi-

ka, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships; Perry, Washington, Westburg, and Sumner townships in Buchanan county; Black Hawk county except Big Creek township; Fremont township in Benton county; Wapello county except Washington township; Benton and Steady Run townships in Keokuk county; the city of Barnes City in Poweshiek county; Iowa township in Washington county; Johnson county except Fremont township; Linn county except Franklin, Grant, Spring Grove, Jackson, Boulder, Washington, Otter Creek, Maine, Buffalo, and Fayette townships; Monroe township west and north of Otter Creek to its intersection with County Home road, and north of County Home road in Linn county; the city of Walford in Linn county; Farmington township in Cedar county; Wapsinonoc, Goshen, Moscow, Wilton, and Fulton townships in Muscatine county; and Lee county except Des Moines, Montrose, Keokuk, and Jackson townships.

(3) The natural gas competitive service area, excluding any municipal natural gas competitive service areas described in subparagraph (1) and consisting of that part of Kossuth county not described in subparagraph (2); Lincoln and Buffalo townships in Winnebago county; Worth county except Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships; Cerro Gordo county except Grimes, Pleasant Valley, and Dougherty townships; Rock Grove and Rudd townships in Floyd county; Eden, Camanche, and Hampshire townships and the city of Clinton in Clinton county; and Stacyville and Union townships in Mitchell county.

(4) The natural gas competitive service area, excluding any municipal natural gas service areas described in subparagraph (1) and consisting of Franklin township and the south half of Ashton township in Monona county; Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships in Pottawattamie county; Glenwood and Center townships in Mills county; Green, Scott, Sidney, Benton, Washington, and Madison townships in Fremont county; Cass, Bear Grove, Union, Noble, Edna, Victoria, Massena, Lincoln, and Grant townships in Cass county; Glidden township in Carroll county; Summit township in Adair county; Grant township in Guthrie county; Crawford county except Nishnabotna township; Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships in Sac county; Reading township in Calhoun county; Marshall, Sherman, Roosevelt, Dover, Grant, Lincoln, and Cedar townships in Pocahontas county; Union, Dale, Summit, Highland, Franklin, and Center townships in O'Brien county; the north half of Clay county plus Clay township; Dickinson county; Emmet county except Denmark, Armstrong Grove, and Iowa Lake townships; Greene county except Bristol, Hardin, Jackson, and Grant townships; Boone county except Worth, Colfax, Des Moines, Jackson, Dodge,

and Harrison townships; Des Moines and Grant townships in Dallas county; Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Newark townships in Webster county; Clear Lake, Hamilton, Webster, Freedom, Independence, Cass, and Fremont townships in Hamilton county; Ell, Madison, and Ellington townships in Hancock county; Winnebago county except Lincoln and Buffalo townships; Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships in Worth county; Etna township in Hardin county; Lafayette township and the west one-half of Howard township in Story county; the city of Grimes in Polk county; Independence, Malaka, Mariposa, Hickory Grove, Rock Creek, Kellogg, Newton, Sherman, Palo Alto, Buena Vista, and Richland townships in Jasper county; Palermo, Grant, and Fairfield townships in Grundy county; Bennezzette, Coldwater, Dayton, and Fremont townships in Butler county; Rockford, Ulster, Scott, and Union townships in Floyd county; St. Ansgar and Mitchell townships in Mitchell county; Howard county; Chickasaw county except Branford township; Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships in Bremer county; Big Creek township in Black Hawk county; Brown township in Linn county; Madison township and the east half of Buffalo township in Buchanan county; Fayette county except Harlan, Fremont, Oran, and Jefferson townships; Winneshiek county; Alamakee county; Clayton county; Delaware county except Adams and Hazel Green townships; Dubuque county; Jones county except Rome, Hale, Oxford, and the east half of Greenfield townships; and Jackson county.

(5) The natural gas competitive service area consisting of Des Moines, Montrose, Keokuk, and Jackson townships in Lee county.

(6) The natural gas competitive service area consisting of the city of Allerton and the area within two miles of the city limits.

(7) The natural gas competitive service area consisting of all of Iowa not contained in any of the other natural gas competitive service areas described in this paragraph.

b. *"Township"* includes any city or part of a city located within the exterior boundaries of that township.

c. References to city limits contained in this subsection mean those city limits as they existed on January 1, 1999.

23. *"Operating property"* means all property owned by or leased to an electric company, electric cooperative, municipal utility, or natural gas company, not otherwise taxed separately, which is necessary to and without which the company could not perform the activities of an electric company, electric cooperative, municipal utility, or natural gas company.

24. *"Pole miles"* means miles measured along the line of poles, structures, or towers carrying

electric conductors regardless of the number of conductors or circuits carried, and miles of conduit bank, regardless of number of conduits or ducts, of all sizes and types, including manholes and handholes. *"Conduit bank"* means a length of one or more underground conduits or ducts, whether or not enclosed in concrete, designed to contain underground cables, including a gallery or cable tunnel for power cables.

25. *"Purchasing member"* means a municipal utility which purchases electricity from a municipal electric cooperative association of which it is a member.

26. *"Replacement tax"* means the excise tax imposed on the generation, transmission, delivery, consumption, or use of electricity or natural gas under section 437A.4, 437A.5, 437A.6, or 437A.7.

27. *"Self-generator"* means a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, who generates, by means of an on-site facility wholly owned by or leased in its entirety to such person, electricity solely for its own consumption, except for inadvertent unscheduled deliveries to the electric utility furnishing electric service to that self-generator. A person who generates electricity which is consumed by any other person, including any owner, shareholder, member, beneficiary, partner, or associate of the person who generates electricity, is not a self-generator. For purposes of this subsection, *"on-site facility"* means an electric power generating plant that is wholly owned by or leased in its entirety to a person and used to generate electricity solely for consumption by such person on the same parcel of land on which such plant is located or on a contiguous parcel of land. For purposes of this subsection, *"parcel of land"* includes each separate parcel of land shown on the tax list.

28. *"Statewide amount"* means the acquisition cost of any major addition which is not a local amount.

29. *"Taxable value"* means as defined in section 437A.19, subsection 2, paragraph "f".

30. *"Taxpayer"* means an electric company, natural gas company, electric cooperative, municipal utility, or other person subject to the replacement tax imposed under section 437A.4, 437A.5, 437A.6, or 437A.7.

31. *"Tax year"* means a calendar year beginning January 1 and ending December 31.

32. *"Transfer replacement tax"* means the excise tax imposed in a competitive service area of a municipal utility which replaces transfers made by the municipal utility in accordance with section 384.89.

33. *"Transmission line"* means a line, wire, or cable which is capable of operating at an electric voltage of at least thirty-four and one-half kilovolts.

34. *"Utilities board"* means the utilities board

created in section 474.1.

2003 Acts, ch 106, §2 – 6, 15; 2003 Acts, ch 145, §286  
 2003 amendments apply retroactively to tax years beginning on or after  
 January 1, 2003; 2003 Acts, ch 106, §15  
 Terminology change applied  
 NEW subsection 4 and former subsections 4 – 27 renumbered as 5 – 28  
 Subsection 11, NEW unnumbered paragraph 2  
 Subsection 14, NEW unnumbered paragraph 2  
 Subsection 22, paragraph a, subparagraph (1), subparagraph subdivision  
 (am) amended  
 NEW subsection 29 and former subsections 28 – 32 renumbered as 30  
 – 34

#### **437A.4 Replacement tax imposed on delivery of electricity.**

1. A replacement delivery tax is imposed on every person who makes a delivery of electricity to a consumer within this state. The replacement delivery tax imposed by this section is equal to the sum of the following:

*a.* The number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric replacement delivery tax rate in effect for each such electric competitive service area.

*b.* Where applicable, and in addition to the tax imposed by paragraph “a”, the number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric transfer replacement tax rate for each such electric competitive service area.

2. If electricity is consumed in this state, whether such electricity is purchased, transferred, or self-generated, and the delivery, purchase, transference, or self-generation of such electricity is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Electric replacement delivery tax rates shall be calculated by the director for each electric competitive service area as follows:

*a.* The director shall determine the average centrally assessed property tax liability allocated to electric service of each taxpayer, other than a municipal utility, principally serving an electric competitive service area and of each generation and transmission electric cooperative for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the average centrally assessed property tax liability allocated to electric service is the centrally assessed property tax liability of such municipal utility allocated to electric service for the 1997 assessment year based on property tax payments made.

*b.* The director shall determine, for each taxpayer, the number of kilowatt-hours of electricity generated which would have been subject to taxation under section 437A.6, the number of pole miles which would have been subject to taxation under section 437A.7, and the number of kilowatt-hours of electricity delivered to consumers which

would have been subject to taxation under this section in calendar year 1998, had such sections been in effect for calendar year 1998.

*c.* The director shall determine the electric generation, transmission, and delivery tax components of the average centrally assessed property tax liability determined in paragraph “a” for each electric competitive service area as follows:

(1) The electric generation tax component for an electric competitive service area shall be computed by multiplying the tax rate set forth in section 437A.6 by the number of kilowatt-hours of electricity generated by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.6 in calendar year 1998, had that section been in effect for calendar year 1998.

(2) The electric transmission tax component for an electric competitive service area shall be computed by multiplying the tax rates set forth in section 437A.7 by the number of pole miles for each line voltage owned or leased by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.7 on December 31, 1998, had that section been in effect for calendar year 1998.

(3) The electric delivery tax component for an electric competitive service area shall be the average centrally assessed property tax liability allocated to electric service of the taxpayer principally serving such electric competitive service area less the electric generation and transmission tax components computed for such electric competitive service area.

(4) The electric delivery tax component for each electric competitive service area shall be adjusted, as necessary, to assign the excess property tax liability of each generation and transmission electric cooperative to the electric competitive service areas principally served on January 1, 1999, by its distribution electric cooperative members and by those municipal utilities which were purchasing members of a municipal electric cooperative association that is a member of the generation and transmission electric cooperative. Such assignment of excess property tax liability of each such generation and transmission electric cooperative shall be made in proportion to the appropriate wholesale rate charges in calendar year 1998 to its distribution electric cooperative members and municipal electric cooperative association members which purchased electricity from the generation and transmission electric cooperative. Any amount assignable to a municipal electric cooperative association shall be reassigned to the electric competitive service areas served by such association’s purchasing municipal utility members and shall be allocated among them in proportion to the appropriate wholesale rate charges in calendar year 1998 by such municipal electric co-

operative association to its purchasing municipal utility members. For purposes of this subsection, “*excess property tax liability*” means the amount by which the average centrally assessed property tax liability for the assessment years 1993 through 1997 of a generation and transmission electric cooperative exceeds the tentative generation and transmission taxes which would have been imposed on such generation and transmission electric cooperative under sections 437A.6 and 437A.7 for calendar year 1998, had such taxes been in effect for calendar year 1998. An electric cooperative described in section 437A.7, subsection 3, paragraph “c”, is deemed not to have any excess property tax liability.

d. The director shall determine an electric delivery tax rate for each electric competitive service area by dividing the electric delivery tax component for the electric competitive service area, as adjusted by paragraph “c”, subparagraph (4), by the number of kilowatt-hours delivered by the taxpayer principally serving the electric competitive service area to consumers in calendar year 1998, which would have been subject to taxation under this section if this section had been in effect for calendar year 1998.

4. Municipal electric transfer replacement tax rates shall be calculated annually by the city council of each city located within an electric competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of electric-related transfers made pursuant to section 384.89 by the municipal utility serving the electric competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years by the number of kilowatt-hours of electricity delivered to consumers in the electric competitive service area during the immediately preceding calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal electric transfer replacement tax equal to the average amount of electric-related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer replacement tax by the city council, during the preceding five calendar years.

6. The following are not subject to the replacement delivery tax imposed by subsections 1 and 2:

a. Delivery of electricity generated by a low capacity factor electric power generating plant.

b. Delivery of electricity to a city from such city’s municipal utility, provided such electricity is used by the city for the public purposes of the city.

c. Electricity consumed by a state university or university of science and technology, provided such electricity was generated by property described in section 427.1, subsection 1.

d. Electricity generated and consumed by a self-generator.

7. Notwithstanding subsection 1, the electric delivery tax rate applied to kilowatt-hours of electricity delivered by a taxpayer to utility property and facilities which are placed in service on or after January 1, 1999, and are owned by or leased to and initially served by such taxpayer shall be the electric delivery tax rate in effect for the electric competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another electric competitive service area.

8. If for any tax year after calendar year 1998, the total taxable kilowatt-hours of electricity required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs “a” and “b”, with respect to any electric competitive service area, increases or decreases by more than the threshold percentage from the average of the base year amounts for that electric competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph “a”, and subsection 2, for that tax year shall be recalculated by the director for that electric competitive service area so that the total of the replacement electric delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph “e”, for that electric competitive service area with respect to the tax imposed under subsection 1, paragraph “a”, and subsection 2, shall be as follows:

a. If the number of kilowatt-hours of electricity required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.

b. If the number of kilowatt-hours of electricity required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.

For purposes of paragraphs “a” and “b”, in computing the tax rate under subsection 1, paragraph “a”, and subsection 2, for tax year 1999, the director shall use the electric delivery tax component computed for the electric competitive service area pursuant to subsection 3, paragraph “c”, in lieu of

the taxes required to be reported for that electric competitive service area for the immediately preceding tax year.

The threshold percentage shall be determined annually and shall be eight percent for any electric competitive service area in which the average of the base year amounts for the preceding five calendar years does not exceed three billion kilowatt-hours, and ten percent for all other electric competitive service areas.

Any such recalculation of an electric delivery tax rate, if required, shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph "a", and subsection 2 required to be shown on any affected taxpayer's return pursuant to section 437A.8, subsection 1, paragraph "e", to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new electric delivery tax rate shall apply prospectively, until such time as further adjustment is required.

For purposes of this section, "base year amount" means for calendar years prior to tax year 1999, the sum of the kilowatt-hours of electricity delivered to consumers within an electric competitive service area by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable kilowatt-hours of electricity required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "a" and "b", with respect to any electric competitive service area.

9. *a.* After calendar year 1998, if a municipal electric cooperative association ceases to purchase electricity from the generation and transmission electric cooperative from which it purchased electricity in 1998, and for a period of one hundred eighty days after such purchases cease, no municipal utility member of such association purchases electricity from such generation and transmission electric cooperative, the excess property tax liability assigned pursuant to subsection 3, paragraph "c", subparagraph (4), to the electric competitive service areas principally served by the municipal utility members on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

*b.* After calendar year 1998, if a municipal utility ceases to be a purchasing member of a municipal electric cooperative association which purchased electricity in calendar year 1998 from a generation and transmission electric cooperative,

and for a period of one hundred eighty days after the municipal utility ceases to be a purchasing member of such association such municipal utility does not purchase electricity from such generation and transmission electric cooperative, the excess property tax liability assigned pursuant to subsection 3, paragraph "c", subparagraph (4), to the electric competitive service area principally served by the municipal utility on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

*c.* If a recalculation has previously been made by the director pursuant to subsection 8 for an electric competitive service area described in this subsection, the recalculation required by this subsection shall be made by the director by modifying the most recent recalculation under subsection 8 to eliminate the excess property tax liability originally allocated to such electric competitive service area under subsection 3, paragraph "c", subparagraph (4).

*d.* Any recalculation required by this subsection shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by May 31 of the calendar year during which the events described in paragraphs "a" and "b" are reported as provided in section 437A.8, subsection 1, paragraph "f". The new electric delivery tax rate shall be effective January 1 of the tax year in which it is published and shall apply prospectively, until such time as further adjustment is required.

10. The electric delivery tax rate in effect for each electric competitive service area shall be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

Section not amended; internal reference change applied

#### **437A.5 Replacement tax imposed on delivery of natural gas.**

1. A replacement delivery tax is imposed on every person who makes a delivery of natural gas to a consumer within this state. The replacement delivery tax imposed by this section shall be equal to the sum of the following:

*a.* The number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the natural gas delivery tax rate in effect for each such natural gas competitive service area.

*b.* Where applicable, and in addition to the tax imposed by paragraph "a", the number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the municipi-

pal natural gas transfer replacement tax rate for each such natural gas competitive service area.

c. Notwithstanding paragraphs "a" and "b", a natural gas delivery rate of one and eleven-hundredths of a cent (.0111) per therm of natural gas is imposed on all natural gas delivered to or consumed by a new electric power generating plant for purposes of generating electricity within the state during the tax year. However, if a new electric power generating plant is exempt from a replacement generation tax pursuant to section 437A.6, subsection 1, paragraph "b", the natural gas delivery rate for the municipal service area that the new plant serves shall instead apply for deliveries of natural gas by the municipal gas utility.

The provisions of subsection 8 shall not apply to the therms of natural gas subject to the delivery tax set forth in this paragraph.

If the new electric power generating plant is part of a cogeneration facility, the natural gas delivery rate for that plant shall be the lesser of the natural gas delivery rate established in this paragraph or the rate per therm of natural gas as in effect at the time of the initial natural gas deliveries to the plant for the natural gas competitive service area where the new electric power generating plant is located.

2. If natural gas is consumed in this state, whether such natural gas is purchased or transferred, and the delivery, purchase, or transference of such natural gas is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Natural gas delivery tax rates shall be calculated by the director for each natural gas competitive service area as follows:

a. The director shall determine the average centrally assessed property tax liability allocated to natural gas service of each taxpayer, other than a municipal utility, principally serving a natural gas competitive service area for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the average centrally assessed property tax liability allocated to natural gas service is the centrally assessed property tax liability of such municipal utility allocated to natural gas service for the 1997 assessment year based on property tax payments made. For purposes of this subsection, taxpayer does not include a pipeline company defined in section 479A.2.

b. The director shall determine for each taxpayer the number of therms of natural gas delivered to consumers which would have been subject to taxation under this section in calendar year 1998 had this section been in effect for calendar year 1998.

c. The director shall determine a natural gas delivery tax rate for each natural gas competitive service area by dividing the average centrally as-

essed property tax liability allocated to natural gas service of the taxpayer principally serving the natural gas competitive service area by the number of therms of natural gas delivered by such taxpayer to consumers in calendar year 1998 which would have been subject to taxation under this section had such section been in effect for calendar year 1998.

4. Municipal natural gas transfer replacement tax rates shall be calculated annually by the city council of each city located within a natural gas competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of natural gas-related transfers made pursuant to section 384.89 by the municipal utility serving the natural gas competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years, by the number of therms of natural gas delivered to consumers in the natural gas competitive service area during the immediately preceding calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal natural gas transfer replacement tax equal to the average amount of natural gas-related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer replacement tax by the city council, during the preceding five calendar years.

6. Notwithstanding subsection 1, the natural gas delivery tax rate applied to therms of natural gas delivered by a taxpayer to utility property and facilities that are placed in service on or after January 1, 1999, and that are owned by or leased to and initially served by such taxpayer shall be the natural gas delivery tax rate in effect for the natural gas competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another natural gas competitive service area.

This subsection shall not apply to natural gas delivered to or consumed by new electric power generating plants.

7. Delivery of natural gas to a city from such city's municipal utility is not subject to the replacement delivery tax imposed under subsection

1, paragraph “a”, and subsection 2, provided such natural gas is used by the city for the public purposes of the city.

Subsection 2 does not apply to natural gas consumed by a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, acquired by means of facilities owned by or leased to such person on January 1, 1999, which were physically attached to pipelines that are not permitted pursuant to chapter 479 and used by such person for the purpose of bypassing the local natural gas company or municipal utility.

Subsection 1 does not apply to natural gas which is delivered, by a pipeline that is not permitted pursuant to chapter 479, into a facility owned by or leased to a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, if the person who consumes the gas uses the gas for the purpose of bypassing the local natural gas company or municipal utility, regardless of whether such facility existed on January 1, 1999.

8. If, for any tax year after calendar year 1998, the total taxable therms of natural gas required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs “a” and “b”, with respect to any natural gas competitive service area increases or decreases by more than the threshold percentage from the average of the base year amounts for that natural gas competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph “a”, and subsection 2 for that tax year shall be recalculated by the director for that natural gas competitive service area so that the total of the replacement natural gas delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph “e”, for that natural gas competitive service area with respect to the tax imposed under subsection 1, paragraph “a”, and subsection 2 shall be as follows:

a. If the number of therms of natural gas required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

b. If the number of therms of natural gas required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

c. For purposes of paragraphs “a” and “b”, in computing the tax rate under subsection 1, paragraph “a”, and subsection 2 for calendar year 1999, the director shall use the average centrally assessed property tax liability allocated to natural gas service computed for the natural gas competitive service area pursuant to subsection 3, para-

graph “a”, in lieu of the taxes required to be reported for that natural gas competitive service area for the immediately preceding tax year.

The threshold percentage shall be determined annually and shall be eight percent for any natural gas competitive service area in which the average of the base year amounts for the preceding five calendar years does not exceed two hundred fifty million therms, and ten percent for all other natural gas competitive service areas.

Recalculation of a natural gas delivery tax rate, if required, shall be made and the new rate published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph “a”, and subsection 2 required to be shown on any affected taxpayer’s return pursuant to section 437A.8, subsection 1, paragraph “e”, to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new natural gas delivery tax rate shall apply prospectively, until such time as further adjustment is required.

For purposes of this subsection, “base year amount” means for calendar years prior to tax year 1999, the sum of the therms of natural gas delivered to consumers within a natural gas competitive service area by the taxpayer principally serving such natural gas competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable therms of natural gas required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs “a” and “b”, with respect to any natural gas competitive service area.

9. The natural gas delivery tax rate in effect for each natural gas competitive service area shall be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

2003 Acts, ch 106, §7, 8, 15  
Subsection 1, paragraph c, and 2003 amendment to subsection 6 apply retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 106, §15  
Subsection 1, NEW paragraph c  
Subsection 6 amended

#### **437A.7 Replacement tax imposed on electric transmission.**

1. A replacement transmission tax is imposed on every person owning or leasing transmission lines within this state and shall be equal to the sum of all of the following:

a. Five hundred fifty dollars per pole mile of transmission line owned or leased by the taxpayer not exceeding one hundred kilovolts.

b. Three thousand dollars per pole mile of transmission line owned or leased by the taxpayer

greater than one hundred kilovolts but not exceeding one hundred fifty kilovolts.

c. Seven hundred dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred fifty kilovolts but not exceeding three hundred kilovolts.

d. Seven thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than three hundred kilovolts.

The replacement transmission tax shall be calculated on the basis of pole miles of transmission line owned or leased by the taxpayer on the last day of the tax year.

2. In lieu of the replacement transmission tax imposed in subsection 1, a municipal utility whose replacement transmission tax liability for the tax year 1999 was limited to the tax imposed by this section and whose anticipated tax revenues from a taxpayer, as defined in section 437A.15, subsection 4, for the tax year 1999, exceeded its replacement transmission tax by more than one hundred thousand dollars shall be subject to replacement transmission tax on all transmission lines owned by or leased to the municipal utility as of the last day of the tax year 2000 as follows:

a. Three thousand twenty-five dollars per pole mile of transmission line owned or leased by the taxpayer not exceeding one hundred kilovolts.

b. Seven thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred fifty kilovolts but not exceeding three hundred kilovolts.

3. The following shall not be subject to the replacement transmission tax:

a. Transmission lines owned by or leased to a municipal utility when devoted to public use and not for pecuniary profit, except transmission lines of a municipally owned electric utility held under joint ownership and transmission lines of an electric power facility financed under chapter 28F or 476A.

b. Transmission lines owned by or leased to a lessor when the transmission lines are subject to the replacement transmission tax payable by the lessee or sublessee.

c. Any electric cooperative which owns, leases, or owns and leases in total less than seven hundred fifty pole miles of transmission lines in this state. Chapter 437 shall apply to such electric cooperatives.

d. Transmission lines owned by or leased to a state university or university of science and technology, provided such transmission lines are used exclusively for the transmission of electricity consumed by such state university or university of science and technology.

e. Transmission lines owned by or leased to a person, other than a public utility, for which a franchise is not required under chapter 478.

4. For purposes of this section, if a transmission line is jointly owned or leased, the taxpayer shall compute the number of pole miles subject to

the replacement transmission tax by multiplying the taxpayer's percentage interest in the jointly held transmission lines by the number of pole miles of such lines.

2003 Acts, ch 106, §9, 15

Subsection 2 applies retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 106, §15

NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and

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#### **437A.8 Return and payment requirements — rate adjustments.**

1. Each taxpayer, on or before March 31 following a tax year, shall file with the director a return including, but not limited to, the following information:

a. The total taxable kilowatt-hours of electricity delivered by the taxpayer to consumers within each electric competitive service area during the tax year, and the total taxable therms of natural gas delivered by the taxpayer to consumers within each natural gas competitive service area during the tax year.

b. The total kilowatt-hours of electricity consumed by the taxpayer within each electric competitive service area during the tax year subject to tax under section 437A.4, subsection 2, and the total therms of natural gas consumed by the taxpayer within each natural gas competitive service area during the tax year subject to tax under section 437A.5, subsection 2.

c. The total taxable kilowatt-hours of electricity generated by the taxpayer in Iowa during the tax year.

d. The total taxable pole miles of electric transmission lines in Iowa, by kilovolt, owned or leased by the taxpayer on the last day of the tax year.

e. The tentative replacement taxes imposed by section 437A.4, subsection 1, paragraph "a", section 437A.4, subsection 2, section 437A.5, subsection 1, paragraph "a", section 437A.5, subsection 2, and sections 437A.6 and 437A.7, due for the tax year.

f. For purposes of a municipal utility which is a member of a municipal electric cooperative association, the occurrence on or before September 1 of the preceding calendar year of an event described in section 437A.4, subsection 9, paragraph "a" or "b", and the date on which the one-hundred-eighty-day requirement under such paragraph was met.

2. Each taxpayer subject to a municipal transfer replacement tax, on or before March 31 following a tax year, shall file with the chief financial officer of each city located within an electric or natural gas competitive service area served by a municipal utility as of January 1, 1999, a return including, but not limited to, the following information:

a. The total taxable kilowatt-hours of electricity delivered by the taxpayer within each electric competitive service area described in section 437A.4, subsection 4, during the tax year and the

total taxable therms of natural gas delivered by the taxpayer within each natural gas competitive service area described in section 437A.5, subsection 4, during the tax year.

b. For a municipal utility taxpayer, the total transfers made by the taxpayer under section 384.89 within each competitive service area during the preceding calendar year, allocated between electric-related transfers and natural gas-related transfers and total credits described in sections 437A.4, subsection 5, and 437A.5, subsection 5.

c. The transfer replacement taxes imposed by sections 437A.4, subsection 1, paragraph "b", and 437A.5, subsection 1, paragraph "b", due for the tax year.

3. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with forms and rules prescribed by the director in the case of a return filed pursuant to subsection 1, and in accordance with forms and rules prescribed by the chief financial officer of the city in the case of a return filed pursuant to subsection 2.

4. a. At the time of filing the return required by subsection 1 with the director, the taxpayer shall calculate the tentative replacement tax due for the tax year. The director shall compute any adjustments to the replacement tax required by subsection 7 and by section 437A.4, subsection 8, and section 437A.5, subsection 8, and notify the taxpayer of any such adjustments in accordance with the requirements of such provisions. The director and the department of management shall compute the allocation of replacement taxes among local taxing districts and report such allocations to county treasurers pursuant to section 437A.15. Based on such allocations, the treasurer of each county shall notify each taxpayer on or before August 31 following a tax year of its replacement tax obligation to the county treasurer. On or before September 30, 2000, and on or before September 30 of each subsequent year, the taxpayer shall remit to the county treasurer of each county to which such replacement tax is allocated pursuant to section 437A.15, one-half of the replacement tax so allocated, and on or before the succeeding March 31, the taxpayer shall remit to the county treasurers the remaining replacement tax so allocated. If notification of a taxpayer's replacement tax obligation is not mailed by a county treasurer on or before August 31 following a tax year, such taxpayer shall have thirty days from the date the notification is mailed to remit one-half of the replacement tax otherwise required by this subsection to be remitted to such county treasurer on or before September 30. If a taxpayer fails to timely remit replacement taxes as provided in this subsection, the county treasurer of each affected county shall notify the director of such failure.

b. If a distribution electric cooperative member or a municipal utility purchasing member sub-

ject to section 437A.15, subsection 3, paragraph "b", does not make timely payment of the correct amount of replacement tax to the generation and transmission electric cooperative, the generation and transmission electric cooperative shall notify the director in writing within ten days after September 10. The director shall then notify the generation and transmission electric cooperative in writing within five days after delivery of notice to the director of the paid amount to be remitted to the appropriate county treasurer and shall also notify the county treasurer. The generation and transmission electric cooperative shall remit the amount determined by the director to the appropriate county treasurer by September 30. If the generation and transmission electric cooperative timely notifies the director and timely remits to the county treasurer the amounts of replacement tax, as determined by the director, the generation and transmission electric cooperative shall not be liable for that unpaid replacement tax due from the distribution electric cooperative member or municipal utility purchasing member. The generation and transmission electric cooperative shall also not be liable for a special utility property tax levy, if any, and shall not be entitled to a tax credit, if any, attributable to the unpaid replacement tax. The county treasurer and the director shall enforce payment of the replacement tax against the appropriate distribution electric cooperative member or municipal utility purchasing member pursuant to sections 437A.9 through 437A.13. The county treasurer shall enforce payment of the special utility property tax levy, if any, against the appropriate distribution electric cooperative member or municipal utility purchasing member. For purposes of this paragraph:

(1) Written notice to the director must be either delivered to the director by electronic means, United States postal service, or a common carrier, by ordinary, certified, or registered mail directed to the attention of the director, be personally delivered to the director, or be served on the director by personal service during business hours. If the notice is mailed, a notice is considered delivered on the date of the postmark. If a postmark date is not present on the mailed article, the date of receipt of notice shall be considered the date of the mailing. A notice is considered delivered on the date personal service or personal delivery to the office of the director is made.

(2) Written notice to a generation and transmission electric cooperative must be delivered to the cooperative by electronic means, United States postal service, or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the manager of the cooperative, be personally delivered to the manager of the cooperative, or be served on the manager of the cooperative by personal service during business hours. For the purpose of mailing, a notice is considered delivered on the date of the postmark. If a post-

mark date is not present on the mailed article, the date of receipt of notice shall be considered the date of the mailing. A notice is considered delivered on the date personal service or personal delivery to the office of the manager of the cooperative is made.

c. If a generation and transmission electric cooperative, after notice, does not timely pay the correct amount of replacement tax or special utility property tax levy attributable to the excess property tax liability to the appropriate county treasurer, after receiving the required payment from the distribution electric cooperative member or municipal utility purchasing member, such replacement tax shall be enforced solely against the generation and transmission electric cooperative under sections 437A.9 through 437A.13, and shall not be enforced against the paying distribution electric cooperative member or municipal utility purchasing member, and the special utility property tax levy shall be enforced solely against the generation and transmission electric cooperative.

d. Notwithstanding paragraph "a", a taxpayer who owns or leases a new electric power generating plant and who has no other operating property in the state of Iowa except for operating property directly serving the new electric power generating plant as described in section 437A.16 shall pay the replacement generation tax associated with the allocation of the local amount to the county treasurer of the county in which the local amount is located and shall remit the remaining replacement generation tax, if any, to the director according to paragraph "a" for remittance of the tax to county treasurers. The director shall notify each taxpayer on or before August 31 following a tax year of its remaining replacement generation tax to be remitted to the director. All remaining replacement generation tax revenues received by the director shall be deposited in the property tax relief fund created in section 426B.1, and shall be distributed as provided in section 426B.2.

5. At the time of filing the return required by subsection 2, the taxpayer shall calculate the municipal transfer replacement tax due for the tax year. Municipal transfer replacement taxes shall be paid to the chief financial officer of the city to which the taxes are allocated at such time and place as directed by the city council.

6. Notwithstanding subsections 1 through 5, a taxpayer shall not be required to file a return otherwise required by this section or remit any replacement tax for any tax year in which the taxpayer's replacement tax liability before credits is three hundred dollars or less, provided that all electric companies, electric cooperatives, municipal utilities, and natural gas companies shall file a return, regardless of the taxpayer's replacement tax liability.

7. Following the determination of electric and natural gas delivery tax rates by the director pur-

suant to section 437A.4, subsection 3, and section 437A.5, subsection 3, if an adjustment resulting from a taxpayer appeal is made to taxes levied and paid by a taxpayer with respect to any of the assessment years 1993 through 1997 used in determining such rates, the director shall recalculate the delivery tax rate for any affected electric or natural gas competitive service area to reflect the impact of such adjustment as if such adjustment had been reflected in the initial determination of average centrally assessed property tax liability allocated to electric or natural gas service pursuant to section 437A.4, subsection 3, paragraph "a", and section 437A.5, subsection 3, paragraph "a". Rate recalculations shall be made and published in the Iowa administrative bulletin by the director on or before March 31 following the calendar year in which a final determination of the adjustment is made. Taxpayers shall report to the director any increase or decrease in the tentative replacement tax required to be shown to be due pursuant to subsection 1, paragraph "e", for any tax year with the return for the year in which the recalculated tax rates which gave rise to the adjustment are published in the Iowa administrative bulletin. The director and the department of management shall redetermine the allocation of replacement taxes pursuant to section 437A.15 for each affected tax year. If a taxpayer has overpaid replacement taxes, the overpayment shall be reported by the director to such taxpayer and to the appropriate county treasurers and shall be a credit against the replacement taxes owed by such taxpayer for the year in which the recalculated rates which gave rise to the overpayment are published in the Iowa administrative bulletin. If a taxpayer has overpaid centrally assessed property taxes for assessment years prior to tax year 1999, such overpayment shall be a credit against replacement taxes owed by such taxpayer for the year in which the overpayment is determined. Unused credits may be carried forward and used to reduce future replacement tax liabilities until exhausted.

2003 Acts, ch 106, §10, 15  
 Subsection 4, paragraph d, applies retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 106, §15  
 Subsection 4, NEW paragraph d

#### **437A.14 Correction of errors — refunds or credits of replacement tax paid — information confidential — penalty.**

1. a. If an amount of replacement tax, penalty, or interest has been paid which was not due under this chapter, a city's chief financial officer or county treasurer to whom such erroneous payment was made shall do one of the following:

(1) Credit the amount of the erroneous payment against any replacement tax due, or to become due, from the taxpayer on the books of the city or county.

(2) Refund the amount of the erroneous payment to the taxpayer.

b. Claims for refund or credit of replacement taxes paid shall be filed with the director. A claim for refund or credit that is not filed with the director within three years after the replacement tax payment upon which a refund or credit is claimed became due, or one year after the replacement tax payment was made, whichever time is later, shall not be allowed. A claim for refund or credit of tax alleged to be unconstitutional not filed with the director within ninety days after the replacement tax payment upon which a refund or credit is claimed became due shall not be allowed. As a precondition for claiming a refund or credit of alleged unconstitutional taxes, such taxes must be paid under written protest which specifies the particulars of the alleged unconstitutionality. Claims for refund or credit may only be made by, and refunds or credits may only be made to, the person responsible for paying the replacement tax, or such person's successors. The director shall notify affected county treasurers of the acceptance or denial of any refund claim. Section 421.10 applies to claims denied by the director.

If an amount of overpaid replacement tax is attributable to payment of excess property tax liability as described in section 437A.15, subsection 3, paragraph "b", a claim for refund or credit may only be made by, and a refund or credit shall only be made to, the person who made such excess payment. Such claim shall not be made by the person who collected the tax from another person.

2. It is unlawful for any present or former officer or employee of the state to divulge or to make known in any manner to any person the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area disclosed on a tax return, return information, or investigative or audit information. A person who violates this section is guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person, in addition to any other penalty, shall also be dismissed from office or discharged from employment. This section does not prohibit turning over to duly authorized officers of the United States or tax officials of other states such kilowatt-hours or therms pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

3. Unless otherwise expressly permitted by a section referencing this chapter, the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area shall not be divulged to any person or entity, other than the taxpayer, the department, or the internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such infor-

mation from the department. A subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service, for use in a nontax proceeding is void.

4. Notwithstanding subsections 2 and 3, the chief financial officer of any local taxing authority and any designee of such officer shall have access to any computations made by the director pursuant to the provisions of this chapter, and any tax return or other information used by the director in making such computations, which affect the replacement tax owed by any such taxpayer.

Notwithstanding this section, providing information relating to the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area to the task force established in section 437A.15, subsection 7, or to the study committee established in section 476.6, subsection 20, is not a violation of this section.

5. Local taxing authority employees are deemed to be officers and employees of the state for purposes of subsection 2.

6. Claims for refund or credit of municipal transfer replacement tax shall be filed with the appropriate city's chief financial officer. Subsection 1 applies with respect to the transfer replacement tax and the city's chief financial officer shall have the same authority as is granted to the director under this section with respect to a return filed pursuant to section 437A.8, subsection 2.

7. Claims for refund or credit of special utility property tax levies shall be filed with the appropriate county treasurer. Subsection 1 applies with respect to the special utility property tax levy and the county treasurer shall have the same authority as is granted to the director under this section.

2000 amendment to subsection 1, paragraph b, takes effect April 19, 2000, and applies retroactively to tax years beginning on and after January 1, 1999; 2000 Acts, ch 1114, §17, 18

Section not amended; internal reference change applied

#### **437A.15 Allocation of revenue.**

1. The director and the department of management shall compute the allocation of all replacement tax revenues other than transfer replacement tax revenues among the local taxing districts in accordance with this section and shall report such allocation by local taxing districts to the county treasurers on or before August 15 following a tax year.

2. The director shall determine and report to the department of management the total replacement taxes to be collected from each taxpayer for the tax year on or before July 30 following such tax year.

3. a. All replacement taxes owed by a taxpayer shall be allocated among the local taxing districts in which such taxpayer's property is located in accordance with a general allocation formula determined by the department of management on

the basis of general property tax equivalents. General property tax equivalents shall be determined by applying the levy rates reported by each local taxing district to the department of management on or before June 30 following a tax year to the taxable value of taxpayer property allocated to each such local taxing district as adjusted and reported to the department of management in such tax year by the director pursuant to section 437A.19, subsection 2. The general allocation formula for a tax year shall allocate to each local taxing district that portion of the replacement taxes owed by each taxpayer which bears the same ratio as such taxpayer's general property tax equivalents for each local taxing district bears to such taxpayer's total general property tax equivalents for all local taxing districts in Iowa.

When allocating natural gas delivery taxes on deliveries of natural gas to a new electric power generating plant, ten percent of those natural gas delivery taxes shall be allocated over new gas property built to directly serve the new electric power generating plant and ninety percent of those natural gas delivery taxes shall be allocated to the general property tax equivalents of all gas property within the natural gas competitive service area or areas where the new gas property is located.

b. Notwithstanding other provisions of this section, if excess property tax liability has been assigned pursuant to section 437A.4, subsection 3, paragraph "c", subparagraph (4), and has not been removed, the allocation of electric delivery replacement tax attributable to the excess property tax liability shall be made by the director and the department of management so as to allocate the electric delivery replacement tax attributable to the excess property tax liability among those local taxing districts in which the property associated with the excess property tax liability is located. In order to ensure that the electric delivery replacement tax attributable to the excess property tax liability is paid to the appropriate county treasurer for disposition to the local taxing districts, each distribution electric cooperative member and each municipal utility purchasing member subject to section 437A.4, subsection 3, paragraph "c", subparagraph (4), shall pay to the appropriate generation and transmission electric cooperative the electric delivery replacement tax attributable to the excess property tax liability by September 10. The amount of electric delivery replacement tax attributable to the excess property tax liability shall equal that percentage of total electric delivery replacement tax liability that the excess property tax liability bears to the total property tax liability contained in the electric delivery tax component. The generation and transmission electric cooperative shall pay the electric delivery replacement tax attributable to the excess property tax liability to the appropriate county treasurer.

c. If paragraph "b" is applicable, on or before

August 1, the director shall notify each distribution electric cooperative member, each municipal utility purchasing member, and each generation and transmission electric cooperative of the amount of electric delivery replacement tax to be paid to the generation and transmission electric cooperative. On or before August 1, the director shall notify the generation and transmission electric cooperative of the amount of replacement tax liability attributable to the excess property tax liability that is payable to each county treasurer. The director shall determine the amount of any special utility property tax levy or tax credit attributable to the excess property tax liability which shall be reflected in the amount required to be paid by each distribution electric cooperative member and each municipal utility purchasing member to the generation and transmission electric cooperative.

d. If, during the tax year, a taxpayer transferred operating property or an interest in operating property to another taxpayer, the transferee taxpayer's replacement tax associated with that property shall be allocated, for the tax year in which the transfer occurred, under this section in accordance with the general allocation formula on the basis of the general property tax equivalents of the transferor taxpayer.

e. Notwithstanding the provisions of this section, if during the tax year a person who was not a taxpayer during the prior tax year acquires a new major addition, as defined in section 437A.3, subsection 18, paragraph "d", the replacement tax associated with that major addition shall be allocated, for that tax year, under this section in accordance with the general allocating formula on the basis of the general property tax equivalents established under section 437A.15, except that the levy rates established and reported to the department of management on or before June 30 following the tax year in which the major addition was acquired shall be applied to the prorated assessed value of the major addition and provided that section 437A.19, subsection 2, paragraph "b", subparagraph (2), is in any event applicable. For purposes of this paragraph, "*prorated assessed value of the major addition*" means the assessed value of the major addition as of January 1 of the year following the tax year in which the major addition was acquired multiplied by the percentage derived by dividing the number of months that the major addition existed during the tax year by twelve, counting any portion of a month as a full month.

f. Notwithstanding the provisions of this section, if a taxpayer is a municipal utility or a municipal owner of an electric power facility financed under the provisions of chapter 28F or 476A, the assessed value, other than the local amount, of a new electric power generating plant shall be allocated to each taxing district in which the municipal utility or municipal owner is serving customers and has electric meters in operation in the ra-

tio that the number of operating electric meters of the municipal utility or municipal owner located in the taxing district bears to the total number of operating electric meters of the municipal utility or municipal owner in the state as of January 1 of the tax year. If the municipal utility or municipal owner of an electric power facility financed under the provisions of chapter 28F or 476A has a new electric power generating plant but the municipal utility or municipal owner has no operating electric meters in this state, the municipal utility or municipal owner shall pay the replacement generation tax associated with the new electric power generating plant allocation of the local amount to the county treasurer of the county in which the local amount is located and shall remit the remaining replacement generation tax, if any, to the director at the times contained in section 437A.8, subsection 4, for remittance of the tax to the county treasurers. All remaining replacement generation tax revenues received by the director shall be deposited in the property tax relief fund created in section 426B.1, and shall be distributed as provided in section 426B.2.

4. On or before August 31 following tax years 1999, 2000, and 2001, each county treasurer shall compute a special utility property tax levy or tax credit for each taxpayer for which a replacement tax liability for each such tax year is reported to the county treasurer pursuant to subsection 1, and shall notify the taxpayer of the amount of such tax levy or tax credit. The amount of the special utility property tax levy or credit shall be determined for each taxpayer by the county treasurer by comparing the taxpayer's total replacement tax liability allocated to taxing districts in the county pursuant to this section with the anticipated tax revenues from the taxpayer for all taxing districts in the county. If the taxpayer's total replacement tax liability allocated to taxing districts in the county is less than the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall levy a special utility property tax equal to the shortfall which shall be added to and collected with the replacement tax owed by the taxpayer to the county treasurer for the tax year pursuant to section 437A.8, subsection 4. If the taxpayer's total replacement tax liability allocated to taxing districts in the county exceeds the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall issue a credit to the taxpayer which shall be applied to reduce the taxpayer's replacement tax liability to the county treasurer for the tax year. If the taxpayer's total replacement tax liability allocated to taxing districts in the county equals the anticipated tax revenues from the taxpayer for all taxing districts in the county, no levy or credit is required. Replacement tax liability for purposes of this subsection means replacement tax liability before credits allowed by section 437A.8, subsection 7. A recalculation of a special utility property

tax levy or credit shall not be made as a result of a subsequent recalculation of replacement tax liability under section 437A.8, subsection 7, or adjustment to assessed value under section 437A.19, subsection 2, paragraph "f". "Anticipated tax revenues from a taxpayer" means the product of the total levy rates imposed by the taxing districts and the value of taxpayer property allocated to the taxing districts and reported to the county auditor. Special utility property tax levies and credits shall be treated as replacement taxes for purposes of section 437A.11. If a special utility property tax levy payment becomes delinquent, the delinquent payment shall accrue interest and penalty in the same manner and amount as the replacement tax under section 437A.13.

It is the intent of the general assembly that the general assembly evaluate the impact of the imposition of the replacement tax for purposes of determining whether this subsection shall remain in effect and whether a determination shall be made as to the necessity of a recalculation as provided in this subsection for tax years beginning after tax year 2000.

5. The replacement tax, as adjusted by any special utility property tax levy or credit and remitted to a county treasurer by each taxpayer, shall be treated as a property tax when received and shall be disposed of by the county treasurer as taxes on real estate. Notwithstanding the allocation provisions of this section, nothing in this section shall deny any affected taxing entity, as defined in section 403.17, subsection 1, which has enacted an ordinance or entered into an agreement for the division and allocation of taxes authorized under section 403.19 and under which ordinance or agreement the taxes collected in respect of properties owned by any of the taxpayers remitting replacement taxes pursuant to the provisions of this chapter are being divided and allocated, the right to receive its share of the replacement tax revenues collected for any year which would otherwise be paid to such affected taxing entity under the terms of any such ordinance or agreement had this chapter not been enacted. To the extent that adjustment must be made to the allocation described in this section to give effect to the terms of such ordinances or agreements, the department of management and the county treasurer shall make such adjustments.

6. In lieu of the adjustment provided for in subsection 5, the assessed value of property described in section 403.19, subsection 1, may be reduced by the city or county by the amount of the taxable value of the property described in section 437A.16 included in such area on January 1, 1997, pursuant to amendment of the ordinance adopted by such city or county pursuant to section 403.19.

7. The department of management, in consultation with the department of revenue, shall coordinate the utility replacement tax task force and provide staffing assistance to the task force. It is

the intent of the general assembly that the task force include representatives of the department of management, department of revenue, electric companies, natural gas companies, municipal utilities, electric cooperatives, counties, cities, school boards, and industrial, commercial, and residential consumers, and other appropriate stakeholders.

The task force shall study the effects of the replacement tax on local taxing authorities, local taxing districts, consumers, and taxpayers and the department of management shall report to the general assembly by January 1 of each year through January 1, 2005, the results of the study and the specific recommendations of the task force for modifications to the replacement tax, if any, which will further the purposes of tax neutrality for local taxing authorities, local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter. The department of management shall also report to the legislative council by November 15 of each year through 2004, the status of the task force study and any recommendations.

2003 Acts, ch 106, §11 – 13, 15; 2003 Acts, ch 145, §286  
Subsection 3, paragraph f, and 2003 amendments to subsection 3, paragraph a, and subsection 7 apply retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 106, §15

Terminology change applied  
Subsection 3, paragraph a amended  
Subsection 3, NEW paragraph f  
Subsection 7 amended

#### 437A.16 Assessment exclusive.

All operating property and all other property that is primarily and directly used in the production, generation, transmission, or delivery of electricity or natural gas subject to replacement tax or transfer replacement tax is exempt from taxation except as otherwise provided by this chapter. This exemption shall not extend to taxes imposed under chapters 437, 438, and 468, taxpayers described in section 437A.8, subsection 6, or facilities or property described in section 437A.6, subsection 1, paragraphs “a” through “f”, and section 437A.7, subsection 3.

Section not amended; internal reference change applied

#### 437A.17A Centrally assessed property tax adjustment.

A municipal utility whose property tax assessment for the 1998 assessment year was adjusted by the department of revenue to include depreciation and whose property tax assessment for the 1997 assessment year did not include depreciation in determining its assessment shall be entitled to file a property tax adjustment form provided by the department. The tax adjustment form shall be filed by July 1, 1999. The tax adjustment form shall include an adjusted centrally assessed property tax computation determined by multiplying the centrally assessed property tax which was payable in the fiscal year beginning July 1, 1998,

based upon valuation determined for the 1997 assessment year allocated to electric service and natural gas service by the percentage of adjustment for depreciation made by the department for the 1998 assessment year. The adjusted centrally assessed property tax allocated to electric service and natural gas service shall be used to determine the replacement delivery tax rates in accordance with sections 437A.4 and 437A.5.

2003 Acts, ch 145, §286  
Terminology change applied

#### 437A.19 Adjustment to assessed value — reporting requirements.

1. a. A taxpayer whose property is subject to the statewide property tax shall report to the director by July 1, 1999, and by May 1 of each subsequent tax year, on forms prescribed by the director, the book value, as of the beginning and end of the preceding calendar year, of all of the following:

(1) The local amount of any major addition by local taxing district.

(2) The statewide amount of any major addition without notation of location.

(3) Any building in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(4) Any electric power generating plant in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(5) All other taxpayer property without notation of location.

(6) The local amount of any major addition eligible for the urban revitalization exemption provided for in chapter 404, by situs.

b. For purposes of this section:

(1) “*Book value*” means acquisition cost less accumulated depreciation determined under generally accepted accounting principles.

(2) “*Taxpayer property*” means property described in section 437A.16.

(3) “*To dispose of*” means to sell, abandon, decommitment, or retire an asset.

(4) “*Transfer*” means a transaction which results in a change of ownership of taxpayer property and includes a capital lease transaction.

c. For purposes of this subsection, “*taxpayer*” includes a person who would have been a taxpayer in calendar year 1998 had the provisions of this chapter been in effect for the 1998 assessment year.

d. If a taxpayer owns or leases pursuant to a capital lease less than the entire interest in a major addition, the local amount and statewide amount, if any, of such major addition shall be apportioned to the taxpayer on the basis of its per-

centage interest in such major addition.

2. Beginning January 1, 1999, the assessed value of taxpayer property shall be adjusted annually as provided in this section. The director, with respect to each taxpayer, shall do all of the following:

*a.* Adjust the assessed value of taxpayer property in each local taxing district by the change in book value during the preceding calendar year of the local amount of any major addition reported within such local taxing district.

*b.* (1) Adjust the assessed value of taxpayer property in each local taxing district by allocating the change in book value during the preceding calendar year of the statewide amount and all other taxpayer property described in subsection 1, paragraph “*a*”, subparagraph (5), to the assessed value of all taxpayer property in the state pro rata according to its preadjustment value.

(2) If, during the preceding calendar year, a taxpayer transferred an electric power generating plant or an interest in an electric power generating plant to a taxpayer who owned no other taxpayer property in this state as of the end of such preceding calendar year, in lieu of the adjustment provided in subparagraph (1), the director shall allocate the transferee taxpayer’s change in book value of the statewide amount during such preceding calendar year, if any, among local taxing districts in proportion to the allocation of the transferor’s assessed value among local taxing districts as of the end of such preceding calendar year.

*c.* In the case of taxpayer property described in subsection 1, paragraph “*a*”, subparagraphs (3) and (4), decrease the assessed value of taxpayer property in each local taxing district by the taxable value of such property within each such local taxing district on January 1, 1998.

*d.* In the event of a merger or consolidation of two or more taxpayers, to determine the assessed value of the surviving taxpayer, combine the assessed values of such taxpayers immediately prior to the merger or consolidation.

*e.* In the event any taxpayer property is eligible for the urban revitalization tax exemption described in chapter 404, adjust the assessed value of taxpayer property within each affected local taxing district to reflect such exemption.

*f.* In the event the base year assessed value of taxpayer property is adjusted as a result of taxpayer appeals, reduce the assessed value of taxpayer property in each local taxing district to reflect such adjustment. The adjustment shall be allocated in proportion to the allocation of the taxpayer’s assessed value among the local taxing districts determined without regard to this adjustment. An adjustment to the base year assessed value of taxpayer property shall be made as of January 1 of the year following the date on which the adjustment is finally determined.

In no event shall the adjustments set forth in this subsection reduce the assessed value of taxpayer property in any local taxing district below zero.

The director, on or before August 31 of each assessment year, shall report to the department of management and to the auditor of each county the adjusted assessed value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this subsection, the assessed value of taxpayer property in each local taxing district subject to adjustment under this section by the director means the assessed value of such property as of the preceding January 1 as determined and allocated among the local taxing districts by the director.

Nothing in this chapter shall be interpreted to authorize local taxing authorities to exclude from the calculation of levy rates the taxable value of taxpayer property reported to county auditors pursuant to this subsection.

In addition to reporting the assessed values as described in this subsection, the director, on or before October 31, 2003, in the case of January 1, 2003, values, and on or before August 31 of each subsequent assessment year, shall also report to the department of management and to the auditor of each county the taxable value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this chapter, “*taxable value*” means the value for all property subject to the replacement tax annually determined by the director, by dividing the estimated annual replacement tax liability for that property by the prior year’s consolidated taxing district rate for the taxing district where that property is located, then multiplying the quotient by one thousand. The prior year’s replacement tax amounts for that property shall be used to estimate the current tax year’s taxable value for that property. If property not subject to any threshold recalculation is generating replacement tax for the first time, or if a taxpayer’s replacement tax will not be changed by any threshold recalculation and the taxpayer believes that the replacement tax will vary more than ten percent from the previous tax year, the taxpayer shall report to the director by July 15 of the current calendar year, on forms prescribed by the director, the estimated replacement tax liability that will be attributable to that property for the current tax year. For the purposes of computing the taxable value of property in a taxing district, the taxing district’s share of the estimated replacement tax liability shall be the taxing district’s percentage share of the “assessed value allocated by property tax equivalent” multiplied by the total estimated replacement tax. “*Assessed value allocated by property tax equivalent*” shall be determined by dividing the taxpayer’s current year assessed valuation in a taxing

district by one thousand, and then multiplying by the prior year's consolidated tax rate.

2003 Acts, ch 106, §14, 15  
2003 amendment to subsection 2, paragraph f, applies retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, ch 106, §15  
Subsection 2, paragraph f amended

#### **437A.22 Statutes applicable.**

Sections 437A.9, 437A.10, 437A.12, 437A.13, and 437A.14, subsection 1, are applicable to electric companies, natural gas companies, electric cooperatives, municipal utilities, and persons whose property is subject to the statewide property tax. However, a required credit or refund of overpaid statewide property tax pursuant to section 437A.14, subsection 1, as it applies to this subchapter, shall be made by the director and not by city chief financial officers or county treasurers.

Section 422.26 applies with respect to the statewide property tax and penalties imposed by this chapter, except that, as applied to any tax imposed by this chapter, the lien provided shall be prior to and superior over all subsequent liens upon any personal property within this state or right to such personal property belonging to the taxpayer, without the necessity of recording the lien as provided in section 422.26. The requirement for recording, as applied to the statewide property tax imposed by this chapter, shall apply only to a lien upon real property. In order to preserve such lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, the director shall file with the recorder of the county in which the real property is located a notice of the lien.

The county recorder of each county shall prepare and keep in the recorder's office an index and record to show, under the names of taxpayers arranged alphabetically, all of the following:

1. The name of the taxpayer.
2. The name "State of Iowa" as claimant.
3. Time the notice of lien was received.
4. Date of notice.

5. Amount of lien then due.
6. Date of assessment.
7. Date when the lien is satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

The director, from moneys appropriated to the department of revenue for this purpose, shall pay a recording fee as provided in section 331.604 for the recording of the lien, or for its satisfaction.

Upon the payment of the replacement tax as to which the director has filed notice with a county recorder, the director shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

2003 Acts, ch 145, §286  
Terminology change applied

#### **437A.23 Deposit of tax proceeds.**

All revenues received from imposition of the statewide property tax shall be deposited in the general fund of the state. Fifty percent of the revenues shall be available, as appropriated by the general assembly, to the department of management for salaries, support, services, and equipment to administer the replacement tax. The balance of the revenues shall be available, as appropriated by the general assembly, to the department of revenue for salaries, support, services, and equipment to administer and enforce the replacement tax and the statewide property tax.

2003 Acts, ch 145, §286  
Terminology change applied

#### **437A.25 Rules.**

The director of revenue may adopt rules pursuant to chapter 17A for the administration and enforcement of this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 438

### PIPELINE COMPANIES TAX

#### **438.3 Statement required.**

Every pipeline company having lines in the state of Iowa shall annually, on or before the first day of April in each year, make out and deliver to the director of revenue a statement, verified by the oath of an officer or agent of such pipeline company making such statement, showing in detail for the year ended December 31 next preceding:

1. The name of the company.
2. The nature of the company, whether a person or persons, an association, copartnership, cor-

poration or syndicate, and under the laws of what state organized.

3. The location of its principal office or place of business.

4. The name and post-office address of the president, secretary, auditor, treasurer and superintendent or general manager.

5. The name and post-office address of the chief officer or managing agent of the company in Iowa.

6. The whole number of miles of pipeline

owned, operated or leased within the state, including a classification of the size, kind and weight thereof, separated, so as to show the mileage in each county, and each lesser taxing district.

7. A full and complete statement of the cost and actual present value of all buildings of every description owned by said pipeline company within the state and each lesser taxing district, not otherwise assessed.

8. The number, location, size and cost of each pressure pump or station.

9. Any and all other property owned by said pipeline company within the state which property must be classified and scheduled in such a manner as the director of revenue may by rule require.

10. The gross earnings of the entire company, and the gross earnings on business done within this state.

11. The operating expenses of the entire company and the operating expenses within this state.

12. The net earnings of the entire company and the net earnings within this state.

2003 Acts, ch 145, §286  
Terminology change applied

#### **438.4 Real estate holdings.**

Every pipeline company required by law to report to the director of revenue under the provisions of this chapter shall, on or before the first day of April, 1932, make to the director a detailed statement showing the amount of real estate owned or used by it on December 31, 1931, for pipeline purposes, the county in which said real estate is situated, including the rights of way, pumping or station grounds, buildings, storage or tank yards, equipment grounds for any and all purposes, with the estimated actual value thereof, in such manner as may be required by the director.

2003 Acts, ch 145, §286  
Terminology change applied

#### **438.5 Statement deemed permanent.**

Only one such detailed statement by any pipeline company shall be necessary, and when received by the director of revenue, it shall become the record of the pipeline lands of such company, and be deemed as annually thereafter reported for valuation and assessment by the director.

2003 Acts, ch 145, §286  
Terminology change applied

#### **438.6 Additional corrective statements.**

On or before the first day of April of each subsequent year, such company shall, in like manner, report all real estate acquired for any of the pipeline purposes above named during the preceding calendar year; and also, a list of any real estate, previously reported, disposed of during the same period, which disposition shall be noted by the director of revenue in an appropriate column opposite to the description of said tract in the original

report of the same in the record of pipeline land.

2003 Acts, ch 145, §286  
Terminology change applied

#### **438.7 Consolidated list of real estate.**

The director of revenue shall, by some convenient method of binding, arrange the statements required to be made by sections 438.4 to 438.6 so as to form a consolidated list of all real estate reported to the director as being owned or used for pipeline purposes within the state of Iowa.

2003 Acts, ch 145, §286  
Terminology change applied

#### **438.8 Gross earnings.**

For the purpose of making reports to the director of revenue, the gross earnings of a pipeline company, owning or operating a line or lines within this state, shall be computed and reported by said company upon such bases as the director may by rule require.

2003 Acts, ch 145, §286  
Terminology change applied

#### **438.9 Accounts — regulation.**

The director of revenue may prescribe such rules with respect to the keeping of accounts by the pipeline companies doing business or having property in this state as will insure the accurate division of the accounts and the information to be reported, and uniformity in reporting the same to the director.

2003 Acts, ch 145, §286  
Terminology change applied

#### **438.10 Rules — promulgation.**

The rules, method and requirements herein provided to be made by the director of revenue shall be made and communicated in writing or printing to the said several pipeline companies, and shall be and become binding upon said pipeline companies as provided in chapter 17A; provided that the director shall have the power to prescribe supplemental or additional rules and requirements in the manner prescribed by chapter 17A.

2003 Acts, ch 145, §286  
Terminology change applied

#### **438.11 Refusal to comply — penalty.**

If any pipeline company shall fail or refuse to obey and conform to the rules, method and requirements so made and prescribed by the director of revenue under the provisions of this chapter, or to make the reports herein provided, the director shall proceed to assess the property of such pipeline company so failing or refusing, according to the best information obtainable, and shall then add to the director's valuation of such pipeline company twenty-five percent thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year.

2003 Acts, ch 145, §286  
Terminology change applied

**438.12 Amended and explanatory statements.**

The director of revenue may demand, in writing, detailed, explanatory and amended statements of any of the items mentioned in section 438.3, or any other item deemed to be important, to be furnished to the director by such pipeline company within thirty days from such demand in such form as the director may designate, which shall be verified as required for the original statement. The returns, both original and amended, shall show such other facts as the director, in writing, shall require.

2003 Acts, ch 145, §286  
Terminology change applied

**438.13 Basis of valuation and assessment.**

The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire pipeline property within the state, except as otherwise provided, and the actual and taxable value so ascertained shall be assessed as provided by section 441.21; and shall include the rights of way, easements, the pipelines, stations, grounds, shops, buildings, pumps and all other property, real and personal exclusively used in the operation of such pipeline. In assessing said pipeline company and its equipment, the director of revenue shall take into consideration the gross earnings and the net earnings for the entire property, and per mile, for the year ending December 31 preceding, and any and all other matters necessary to enable the director to make a just and equitable assessment of said pipeline property.

2003 Acts, ch 145, §286  
See §441.18  
Terminology change applied

**438.14 Valuation and certification thereof.**

The director of revenue shall on or before the third Monday in August of each year determine the value of pipeline property located in each taxing district of the state, and in fixing said value shall take into consideration the structures, equipment, pumping stations, etc., located in said taxing district, and shall transmit to the county auditor of each such county through and into which any pipeline may extend, a statement showing the assessed value of said property in each of the taxing districts of said county. The said property shall then be taxed in said county and lesser taxing districts, based upon the valuation so certified, in the same manner as in other property.

2003 Acts, ch 145, §286  
Terminology change applied

**438.15 Assessed value in each taxing district — record.**

At the first meeting of the board of supervisors held after said statement is received by the county auditor, it shall cause the same to be entered on its minute book, and make and enter therein an order describing and stating the assessed value of each pipeline lying in each city, township or lesser taxing district in its county, through or into which said pipeline extends, as fixed by the director of revenue, which shall constitute the assessed value of said property for taxing purposes; and the taxes on said property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of said order to the council of the city, or the trustees of the township, as the case may be.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 439

### REASSESSMENT OF TAXES

**439.1 Reassessment and relevy.**

When by reason of nonconformity to any law, or by any omission, informality, or irregularity, or for any other cause, any tax heretofore or hereafter levied and assessed against any person, company, association, or corporation by the director of revenue is invalid or is adjudged illegal, the director may assess and levy a tax against such person, company, association, or corporation for the year or years for which such tax is invalid or illegal, or when necessary may assess and certify the same to the proper county officers, who shall levy such tax as by law in such cases made and provided, with the same force and effect as though done at the proper time and under any valid law, whether

in force at the time of said levy and assessment or thereafter enacted.

2003 Acts, ch 145, §286  
Terminology change applied

**439.2 Voluntary payments.**

When any person, company, association, or corporation, against whom any tax has been assessed and levied by the director of revenue and held invalid or illegal, shall have paid the same voluntarily or shall otherwise waive such invalidity and illegality, the director shall accept such tax in lieu of the tax to be raised by the reassessment and relevy provided for in section 439.1.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 440

### ASSESSMENT OF OMITTED PROPERTY

#### 440.2 Assessment of omitted property.

When the director of revenue is vested with the power and duty to assess property and an assessment has, for any reason, been omitted, the director shall proceed to assess the property at any time within two years from the date at which such assessment should have been made. The omitted assessment may apply to not more than the assessment year in which the omitted assessment is made and the prior assessment year. Chapter 429 shall apply to assessments of omitted property.

2003 Acts, ch 145, §286  
Terminology change applied

#### 440.5 Procedure — penalty.

If it is made to appear that the property is assessable by the director of revenue as omitted property, the director shall proceed in the manner in which the director would have proceeded had the assessment not been omitted, except that the director shall find the value of the omitted property for each year during which it has been omitted

but for not more than the two previous assessment years and shall add ten percent to each yearly value as a penalty.

2003 Acts, ch 145, §286  
Terminology change applied

#### 440.6 Fraudulent withholding — penalty.

In case the property has been fraudulently withheld from assessment, the director of revenue may, in addition to said ten percent add any additional percent, not exceeding fifty percent.

2003 Acts, ch 145, §286  
Terminology change applied

#### 440.7 Entry on tax books.

Should an assessment be made at such time in the year that, in the opinion of the director of revenue, said assessment cannot conveniently be entered on the current tax books, the director may direct that the assessment be entered on the first ensuing tax books.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 441

### ASSESSMENT AND VALUATION OF PROPERTY

#### 441.5 Examination and certification of applicants — incumbents.

For the purpose of examining and certifying candidates for the positions of assessor and deputy assessor, the director of revenue shall prepare and administer a written examination. The examinations shall be administered twice each year in the city of Des Moines. Notification of the time, place and date of the examinations shall be mailed to each city and county assessor, county auditor and chairperson of each city and county conference board at least thirty days prior to the date of the examination.

These examinations shall be conducted by the director of revenue in the same manner as other similar examinations, including secrecy regarding questions prior to the examination and in accordance with other rules as may be prescribed by the director of revenue. The examination shall cover the following and related subjects:

1. Laws pertaining to the assessment of property for taxation, with emphasis on market value assessment as provided in this chapter.
2. Laws on tax exemption.
3. Assessment of real estate and personal property, including market value assessment in accordance with this chapter and including fundamental principles and practices of property ap-

praisal and valuation which are consistent with market value assessment as provided in this chapter.

4. The rights of taxpayers and property owners related to the assessment of property for taxation.
5. The duties of the assessor.
6. Other items related to the position of assessor.

Only individuals who possess a high school diploma or its equivalent are eligible to take the examination. A person desiring to take the examination shall complete an application prior to the administration of the examination.

The director of revenue shall grade the examination taken. The director shall notify, in writing, each applicant of the score attained by the applicant on the examination. An individual who attains a score of seventy percent or greater on the examination is eligible to be certified by the director of revenue as a candidate for any assessor position. Any person who passes the examination and who possesses at least two years of appraisal related experience as determined by the director of revenue shall be granted regular certification and become eligible for appointment to a six-year term as assessor. Any person who passes the examination but who lacks such experience shall be

granted temporary certification, and shall be eligible for a provisional appointment as assessor.

Any person possessing temporary certification who receives a provisional appointment as assessor shall, during the person's first eighteen months in office, be required to complete a course of study prescribed and administered by the director of revenue. Upon the successful completion of this course of study, the assessor shall be granted regular certification and shall be eligible to remain in office for the balance of the assessor's six-year term. All expenses incurred in obtaining regular certification shall be defrayed by the assessment expense fund.

Following the administration of the examination, the director of revenue shall establish a register containing the names, in alphabetical order, of all individuals who are eligible for appointment as assessor. The test scores of individuals on the register shall be given to a city or county conference board upon request. All eligible individuals shall remain on the register for a period of two years following the date of certification granted by the director.

Incumbent assessors who have served six consecutive years shall be placed on the register of individuals eligible for appointment as assessor. In order to be appointed to the position of assessor, the assessor shall comply with the continuing education requirements. The number of credits required for certification as eligible for appointment as assessor in a jurisdiction other than where the assessor is currently serving shall be prorated according to the percentage of the assessor's term which is covered by the continuing education requirements of section 441.8. The credit necessary for certification for appointment is the product of one hundred fifty multiplied by the quotient of the number of months served of an assessor's term covered by the continuing education requirements of section 441.8 divided by seventy-two. If the number of credits necessary for certification for appointment as determined under this paragraph results in a partial credit hour, the credit hour shall be rounded to the nearest whole number.

2003 Acts, ch 145, §286  
Terminology change applied

#### **441.6 Appointment of assessor.**

When a vacancy occurs in the office of city or county assessor, the examining board shall, within seven days of the occurrence of the vacancy, request the director of revenue to forward a register containing the names of all individuals eligible for appointment as assessor. The examining board may, at its own expense, conduct a further examination, either written or oral, of any person whose name appears on the register, and shall make written report of the examination and submit the report together with the names of those individuals certified by the director of revenue to the conference board within fifteen days after the re-

ceipt of the register from the director of revenue.

Upon receipt of the report of the examining board, the chairperson of the conference board shall by written notice call a meeting of the conference board to appoint an assessor. The meeting shall be held not later than seven days after the receipt of the report of the examining board by the conference board. The physical condition, general reputation of the applicants, and their fitness for the position as determined by the examining board shall be taken into consideration in making the appointment. At the meeting, the conference board shall appoint an assessor from the register of eligible candidates. However, if a special examination has not been conducted previously for the same vacancy, the conference board may request the director of revenue to hold a special examination pursuant to section 441.7. The chairperson of the conference board shall give written notice to the director of revenue of the appointment and its effective date within ten days of the decision of the board.

2003 Acts, ch 145, §286  
Terminology change applied

#### **441.7 Special examination.**

If the conference board fails to appoint an assessor from the list of individuals on the register, the conference board shall request permission from the director of revenue to hold a special examination in the particular city or county in which the vacancy has occurred. Permission may be granted by the director of revenue after consideration of factors such as the availability of candidates in that particular city or county. The director of revenue shall conduct no more than one special examination for each vacancy in an assessing jurisdiction. The examination shall be conducted by the director of revenue as provided in section 441.5, except as otherwise provided in this section. The examining board shall give notice of holding the examination for assessor by posting a written notice in a conspicuous place in the county courthouse in the case of county assessors or in the city hall in the case of city assessors, stating that at a specified date, an examination for the position of assessor will be held at a specified place. Similar notice shall be given at the same time by one publication of the notice in three newspapers of general circulation in the case of a county assessor, or in case there are not three such newspapers in a county, then in newspapers which are available, or in one newspaper of general circulation in the city in the case of city assessor. The conference board of the city or county in which a special examination is held shall reimburse the department of revenue for all expenses incurred in the administration of the examination, to be paid for by the respective city or county assessment expense fund. Following the administration of this special examination, the director of revenue shall certify to the examining board a new list of candidates eligi-

ble to be appointed as assessor and the examining board and conference board shall proceed in accordance with the provisions of section 441.6.

2003 Acts, ch 145, §286  
Terminology change applied

**441.8 Term — continuing education — filling vacancy.**

The term of office of an assessor appointed under this chapter shall be for six years. Appointments for each succeeding term shall be made in the same manner as the original appointment except that not less than ninety days before the expiration of the term of the assessor the conference board shall hold a meeting to determine whether or not it desires to reappoint the incumbent assessor to a new term.

Effective January 1, 1980, the conference board shall have the power to reappoint the incumbent assessor only if the incumbent assessor has satisfactorily completed the continuing education program provided for in this section.

The director of revenue shall develop and administer a program of continuing education which shall emphasize assessment and appraisal procedures, and the assessment laws of this state, and which shall include the subject matter specified in section 441.5.

The director of revenue shall establish, designate, or approve courses, workshops, seminars, or symposiums to be offered as part of the continuing education program, the content of these courses, workshops, seminars, or symposiums and the number of hours of classroom instruction for each. The director of revenue may provide that no more than thirty hours of tested credit may be received for the submission of a narrative appraisal approved by a professional appraisal society designated by the director. At least once each year the director of revenue shall evaluate the continuing education program and make necessary changes in the program.

Upon the successful completion of courses, workshops, seminars, a narrative appraisal or symposiums contained in the program of continuing education, as demonstrated by attendance at sessions of the courses, workshops, seminars or symposiums and, in the case of a course designated by the director of revenue, attaining a grade of at least seventy percent on an examination administered at the conclusion of the course, or the submission of proof that a narrative appraisal has been approved by a professional appraisal society designated by the director of revenue the assessor or deputy assessor shall receive credit equal to the number of hours of classroom instruction contained in those courses, workshops, seminars, or symposiums or the number of hours of credit specified by the director of revenue for a narrative appraisal. An assessor or deputy assessor shall not be allowed to obtain credit for a course, workshop, seminar, or symposium for which the assessor or

deputy assessor has previously received credit during the current term or appointment except for those courses, workshops, seminars, or symposiums designated by the director of revenue. Only one narrative appraisal may be approved for credit during the assessor's or deputy assessor's current term or appointment and credit shall not be allowed for a narrative appraisal approved by a professional appraisal society prior to the beginning of the assessor's or deputy assessor's current term or appointment. The examinations shall be confidential, except that the director of revenue and persons designated by the director may have access to the examinations.

Upon receiving credit equal to one hundred fifty hours of classroom instruction during the assessor's current term of office of which at least ninety of the one hundred fifty hours are from courses requiring an examination upon conclusion of the course, the director of revenue shall certify to the assessor's conference board that the assessor is eligible to be reappointed to the position. For persons appointed to complete an unexpired term, the number of credits required to be certified as eligible for reappointment shall be prorated according to the amount of time remaining in the present term of the assessor. If the person was an assessor in another jurisdiction, the assessor may carry forward any credit hours received in the previous position in excess of the number that would be necessary to be considered current in that position.

Within each six-year period following the appointment of a deputy assessor, the deputy assessor shall comply with this section except that upon the successful completion of ninety hours of classroom instruction of which at least sixty of the ninety hours are from courses requiring an examination upon conclusion of the course, the deputy assessor shall be certified by the director of revenue as being eligible to remain in the position. If a deputy assessor fails to comply with this section, the deputy assessor shall be removed from the position until successful completion of the required hours of credit. If a deputy is appointed to the office of assessor, the hours of credit obtained as deputy pursuant to this section shall be credited to that individual as assessor and for the individual to be reappointed at the expiration of the term as assessor, that individual must obtain the credits which are necessary to total the number of hours for reappointment.

Each conference board shall include in the budget for the operation of the assessor's office funds sufficient to enable the assessor and any deputy assessor to obtain certification as provided in this section. The conference board shall also allow the assessor and any deputy assessor sufficient time off from their regular duties to obtain certification. The director of revenue shall adopt rules pursuant to chapter 17A to implement and administer this section.

If the incumbent assessor is not reappointed as

above provided, then not less than sixty days before the expiration of the term of said assessor, a new assessor shall be selected as provided in section 441.6.

In the event of the removal, resignation, death, or removal from the county of the said assessor, the conference board shall proceed to fill the vacancy by appointing an assessor to serve the unexpired term in the manner provided in section 441.6. Until the vacancy is filled, the chief deputy shall act as assessor, and in the event there be no deputy, in the case of counties the auditor shall act as assessor and in the case of cities having an assessor the city clerk shall act as assessor.

2003 Acts, ch 145, §286  
Terminology change applied

#### **441.10 Examination and appointment of deputies — incumbents.**

Immediately after the appointment of the assessor, and at other times as the conference board directs, one or more deputy assessors may be appointed by the assessor. Each appointment shall be made from either the list of eligible candidates provided by the director of revenue, which shall contain only the names of those persons who achieve a score of seventy percent or greater on the examination administered by the director of revenue, or the list of candidates eligible for appointment as city or county assessor. Examinations for the position of deputy assessor shall be conducted in the same manner as examinations for the position of city or county assessor.

Following the administration of the examination, the director of revenue shall establish a register containing the names, in alphabetical order, of all individuals who are eligible for appointment as a deputy assessor. The test scores of individuals on the register shall be given to a city or county conference board upon request. All eligible individuals shall remain on the register for a period of two years following the date of certification granted by the director.

Incumbent deputy assessors who have served six consecutive years shall be placed on the register of individuals eligible for appointment as deputy assessor. In order to be appointed to the position of deputy assessor, the deputy assessor shall comply with the continuing education requirements. The number of credits required for certification as eligible for appointment as a deputy assessor in a jurisdiction other than where the deputy assessor is currently serving shall be prorated according to the percentage of the deputy assessor's term which is covered by the continuing education requirements of section 441.8. The credit necessary for certification for appointment is the product of ninety multiplied by the quotient of the number of months served of a deputy assessor's term covered by the continuing education requirements of section 441.8 divided by seventy-two. If the number of credits necessary for certification

for appointment as determined under this paragraph results in a partial credit hour, the credit hour shall be rounded to the nearest whole number.

The assessor may peremptorily suspend or discharge any deputy assessor under the assessor's direction upon written charges for neglect of duty, disobedience of orders, misconduct, or failure to properly perform the deputy assessor's duties. Within five days after delivery of written charges to the employee, the deputy assessor may appeal by written notice to the secretary or chairperson of the examining board. The board shall grant the deputy assessor a hearing within fifteen days, and a decision by a majority of the examining board is final. The assessor shall designate one of the deputies as chief deputy, and the assessor shall assign to each deputy the duties, responsibilities, and authority as is proper for the efficient conduct of the assessor's office.

2003 Acts, ch 145, §286  
Terminology change applied

#### **441.11 Incumbent deputy assessors.**

The director of revenue shall grant a restricted certificate to any deputy assessor holding office as of January 1, 1976. A deputy assessor possessing such a certificate shall be considered eligible to remain in the deputy's present position provided continuing education requirements are met. To become eligible for another deputy assessor position, a deputy assessor presently holding office is required to obtain certification as provided for in sections 441.5 and 441.10. The number of credit hours required for certification as eligible for appointment as a deputy in a jurisdiction other than where the deputy is currently serving shall be prorated according to the completed portion of the deputy's six-year continuing education period.

2003 Acts, ch 145, §286  
Terminology change applied

#### **441.17 Duties of assessor.**

The assessor shall:

1. Devote full time to the duties of the assessor's office and shall not engage in any occupation or business interfering or inconsistent with such duties. This subsection does not preclude an assessor from being a candidate for elective office during the term of appointment as assessor. If an assessor is elected to a city or county office, to a statewide elective office, or to the general assembly, the assessor shall resign as assessor before the beginning of the term of the office to which the assessor was elected.

2. Cause to be assessed, in accordance with section 441.21, all the property in the assessor's county or city, except property exempt from taxation, or the assessment of which is otherwise provided for by law.

3. Have access to all public records of the county and, so far as practicable, make or cause to be made a careful examination of all such records

and files in order to obtain all available information which may contribute to the accurate listing at its taxable value, and to the proper persons, of all property subject to assessment by the assessor.

4. Cooperate with the director of revenue as may be necessary or required, and obey and execute all orders, directions, and instructions of the director of revenue, insofar as the same may be required by law.

5. Have power to apply to the district court of the county for an order to examine witnesses and requiring the production of books and records of any person, firm, association or corporation within the county, whenever the assessor has reason to believe that such person, firm, association or corporation has not listed property as provided by law. The proceeding for the examination of witnesses and examination of the books and records of any such taxpayer, to determine the existence of taxable property, shall be instituted and conducted in the manner provided for the discovery of property under the provisions of chapter 630. The court shall make an appropriate finding as to the existence of taxable property not listed. All taxable property discovered thereby shall thereupon be assessed by the assessor in the manner provided by law.

In all cases where the court finds that the taxpayer has not listed the taxpayer's property, as provided by law, and in all hearings where the court decides a matter against the taxpayer, the costs shall be paid by the taxpayer, otherwise they shall be paid out of the assessment expense fund. The fees and mileage to be paid witnesses shall be the same as prescribed by law in proceedings in the district courts of this state in civil cases. Where the costs are taxed to the taxpayer they shall be added to the taxes assessed against said taxpayer and the taxpayer's property and shall be collected in the same manner as are other taxes.

6. Make up all assessor's books and records as prescribed by the director of revenue, turn the completed assessor's books and records required for the preparation of the tax list over to the county auditor each year when the board of review has concluded its hearings and the county auditor shall proceed with the preparation of the current year tax list and the assessor shall cooperate with the auditor in the preparation of the tax lists.

7. Submit on or before May 1 of each year completed assessment rolls to the board of review.

8. Lay before the board of review such information as the assessor may possess which will aid said board in performing its duties in adjusting the assessments to the valuations required by law.

9. Furnish to the director of revenue any information which the assessor may have relative to the ownership of any property that may be assessable within this state, but not assessable or subject to being listed for taxation by the assessor.

10. Measure the exterior length and exterior width of all mobile homes and manufactured

homes except those for which measurements are contained in the manufacturer's and importer's certificate of origin, and report the information to the county treasurer. Check all manufactured or mobile homes for inaccuracy of measurements as necessary or upon written request of the county treasurer and report the findings immediately to the county treasurer. The assessor shall make frequent inspections and checks within the assessor jurisdiction of all manufactured or mobile homes and manufactured home communities or mobile home parks and make all the required and needed reports to carry out the purposes of this section.

11. Cause to be assessed for taxation property which the assessor believes has been erroneously exempted from taxation. Revocation of a property tax exemption shall commence with the assessment for the current assessment year, and shall not be applied to prior assessment years.

2003 Acts, ch 145, §286  
Terminology change applied

#### **441.19 Owner to assist — provisions for assessment.**

The assessor shall list every person in the assessor's county or city as the case may be and assess all the property in the county or city, except property exempted or otherwise assessed. A person who refuses to assist in making out a list of the person's property, or of any property which the person is by law required to assist in listing, is guilty of a simple misdemeanor.

1. Supplemental and optional to the procedure for the assessment of property by the assessor as provided in this chapter, the assessor may require from all persons required to list their property for taxation as provided by sections 428.1 and 428.2, a supplemental return to be prescribed by the director of revenue upon which the person shall list the person's property. The supplemental return shall be in substantially the same form as now prescribed by law for the assessment rolls used in the listing of property by the assessors. Every person required to list property for taxation shall make a complete listing of the property upon supplemental forms and return the listing to the assessor as promptly as possible. The return shall be verified over the signature of the person making the return and section 441.25 applies to any person making such a return. The assessor shall make supplemental return forms available as soon as practicable after the first day of January of each year. The assessor shall make supplemental return forms available to the taxpayer by mail, or at a designated place within the taxing district.

2. Upon receipt of such supplemental return from any person the assessor shall prepare a roll assessing such person as hereinafter provided. In the preparation of such assessment roll the assessor shall be guided not only by the information contained in such supplemental roll, but by any other information the assessor may have or which

may be obtained by the assessor as prescribed by the law relating to the assessment of property. The assessor shall not be bound by any values as listed in such supplemental return, and may include in the assessment roll any property omitted from the supplemental return which in the knowledge and belief of the assessor should be listed as required by law by the person making the supplemental return. Upon completion of such roll the assessor shall deliver to the person submitting such supplemental return a copy of the assessment roll, either personally or by mail.

3. Any taxpayer aggrieved by the action of the assessor in the preparation of an assessment roll upon which a supplemental return has been made shall have the same rights and privileges of appeal as provided by law in connection with the assessment rolls prepared in entirety by the assessor, but no assessment rolls prepared by the assessor after receiving a supplemental return shall be deemed insufficient or invalid because of the fact that such assessment roll does not bear the signature of the person assessed, and the signature of the person listing property upon the supplemental return shall be deemed a signature on the roll as prepared by the assessor.

4. The supplemental returns herein provided for shall be preserved in the same manner as assessment rolls, but shall be confidential to the assessor, board of review, or director of revenue, and shall not be open to public inspection, but any final assessment roll as made out by the assessor shall be a public record, provided that such supplemental return shall be available to counsel of either the person making the return or of the public, in case any appeal is taken to the board of review or to the court.

5. In the event of failure of any person required to list property to make a supplemental return, as required herein, on or before the fifteenth day of February of any year when such listing is required, the assessor shall proceed in the listing and assessment of the person's property as provided by this chapter, and no person subject to taxation shall be relieved of the person's obligation to list the person's property through failure to make a supplemental return as herein provided, and any roll prepared by the assessor after receiving a supplemental return or when prepared in accordance with other provisions of this chapter, shall be a valid assessment.

6. The provisions of this chapter relating to assessment rolls shall be applicable to the preparation of rolls upon which a supplemental return has been received, insofar as they are not in conflict with the provision of this section.

On or before February 15 of each year, each owner of industrial real estate shall submit to the local assessor a report listing by year of acquisition and by acquisition cost the owner's machinery as de-

scribed in section 427A.1, subsection 1, paragraph "c", and specifying any machinery added or removed during the preceding assessment year. A report containing an itemized list of machinery by year of acquisition and by acquisition cost shall be required only when deemed necessary by the assessor. The reports shall be submitted on forms prescribed by the director of revenue or on forms submitted by the taxpayer and approved by the assessor which forms shall contain the same information as is required to be reported on forms prescribed by the director. If a person shall knowingly enter false information on the report, the person shall be guilty of a simple misdemeanor. Also, if a person refuses to file the report provided for in this paragraph, the assessor shall proceed in accordance with the provisions of section 441.24.

2003 Acts, ch 145, §286

For future amendments to subsections 1 and 2 effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §1, 42

Terminology change applied

#### 441.20 Reserved.

For future text of this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §2, 42

#### 441.21 Actual, assessed and taxable value.

1. *a.* All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and, except as otherwise provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.

*b.* The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. "Market value" is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

The actual value of special purpose tooling, which is subject to assessment and taxation as real property under section 427A.1, subsection 1, paragraph “e”, but which can be used only to manufacture property which is protected by one or more United States or foreign patents, shall not exceed the fair and reasonable exchange value between a willing buyer and a willing seller, assuming that the willing buyer is purchasing only the special purpose tooling and not the patent covering the property which the special purpose tooling is designed to manufacture nor the rights to manufacture the patented property. For purposes of this paragraph, special purpose tooling includes dies, jigs, fixtures, molds, patterns, and similar property. The assessor shall not take into consideration the special value or use value to the present owner of the special purpose tooling which is designed and intended solely for the manufacture of property protected by a patent in arriving at the actual value of the special purpose tooling.

c. In assessing and determining the actual value of special purpose industrial property having an actual value of five million dollars or more, the assessor shall equalize the values of such property with the actual values of other comparable special purpose industrial property in other counties of the state. Such special purpose industrial property includes, but is not limited to chemical plants. If a variation of ten percent or more exists between the actual values of comparable industrial property having an actual value of five million dollars or more located in separate counties, the assessors of the counties shall consult with each other and with the department of revenue to determine if adequate reasons exist for the variation. If no adequate reasons exist, the assessors shall make adjustments in the actual values to provide for a variation of ten percent or less. For the purposes of this paragraph, special purpose industrial property includes structures which are designed and erected for operation of a unique and special use, are not rentable in existing condition, and are incapable of conversion to ordinary commercial or industrial use except at a substantial cost.

d. Actual value of property in one assessing jurisdiction shall be equalized as compared with actual value of property in an adjoining assessing jurisdiction. If a variation of five percent or more exists between the actual values of similar, closely adjacent property in adjoining assessing jurisdictions in Iowa, the assessors thereof shall determine whether adequate reasons exist for such variation. If no such reasons exist, the assessors shall make adjustments in such actual values to reduce the variation to five percent or less.

e. The actual value of agricultural property shall be determined on the basis of productivity and net earning capacity of the property determined on the basis of its use for agricultural purposes capitalized at a rate of seven percent and applied uniformly among counties and among

classes of property. Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule.

f. In counties or townships in which field work on a modern soil survey has been completed since January 1, 1949, the assessor shall place emphasis upon the results of the survey in spreading the valuation among individual parcels of such agricultural property.

g. Notwithstanding any other provision of this section, the actual value of any property shall not exceed its fair and reasonable market value, except agricultural property which shall be valued exclusively as provided in paragraph “e” of this subsection.

2. In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor. The following shall not be taken into consideration: Special value or use value of the property to its present owner, and the good will or value of a business which uses the property as distinguished from the value of the property as property. However, in assessing property that is rented or leased to low-income individuals and families as authorized by section 42 of the Internal Revenue Code, as amended, and which section limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property. The assessor shall not consider any tax credit equity or other subsidized financing as income provided to the property in determining the assessed value. Upon adoption of uniform rules by the revenue department or succeeding authority covering assessments and valuations of such properties, said valuation on such properties shall be determined in accordance therewith for assessment purposes to assure uniformity, but such rules shall not be inconsistent with or change the foregoing means of determining the actual, market, taxable and assessed values.

3. “Actual value”, “taxable value”, or “assessed value” as used in other sections of the Code in relation to assessment of property for taxation shall mean the valuations as determined by this section; however, other provisions of the Code providing special methods or formulas for assessing or

valuing specified property shall remain in effect, but this section shall be applicable to the extent consistent with such provisions. The assessor and department of revenue shall disclose at the written request of the taxpayer all information in any formula or method used to determine the actual value of the taxpayer's property.

The burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable or capricious; however, in protest or appeal proceedings when the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

4. For valuations established as of January 1, 1979, the percentage of actual value at which agricultural and residential property shall be assessed shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus six percent of the amount so determined. However, if the difference between the dividend so determined for either class of property and the dividend for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is less than six percent, the 1979 dividend for the other class of property shall be the dividend as determined for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus a percentage of the amount so determined which is equal to the percentage by which the dividend as determined for the other class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is increased in arriving at the 1979 dividend for the other class of property.

The divisor for each class of property shall be the total actual value of all such property in the state in the preceding year, as reported by the assessors on the abstracts of assessment submitted for 1978, plus the amount of value added to said total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. The director shall utilize information reported on abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, and each year thereafter, the percentage of actual value as equalized by the director of revenue as provided in section 441.49 at which agricultural and residential property shall be assessed shall be calculated in accordance with the methods provided herein including the limitation of increases in agricultural and residential assessed values to the percentage increase of the other class of property if the other class increases less than the allowable limit adjusted to include the applicable and current values as equalized by the director of revenue, except that any references to six percent in this subsection shall be four percent.

5. For valuations established as of January 1, 1979, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 7, shall be assessed as a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the total actual valuation for each class of property established for 1978, plus six percent of the amount so determined. The divisor for each class of property shall be the valuation for each class of property established for 1978, as reported by the assessors on the abstracts of assessment for 1978, plus the amount of value added to the total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. For valuations established as of January 1, 1979, property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be considered as one class of property and shall be assessed as a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1978 by the department of revenue, plus ten percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be the valua-

tion established for 1978, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1979. For valuations established as of January 1, 1980, commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 7, shall be assessed at a percentage of the actual value of each class of property. The percentage shall be determined for each class of property by the director of revenue for the state in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1979, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1979, plus four percent of the amount so determined. The divisor for each class of property shall be the total actual value of all such property in 1979, as equalized by the director of revenue pursuant to section 441.49, plus the amount of value added to the total actual value by the revaluation of existing properties in 1980. The director shall utilize information reported on the abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be assessed at a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1979 by the department of revenue, plus eight percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be the valuation established for 1979, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1980. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value as equalized by the director of revenue as provided in section 441.49 at which commercial property and industrial property, excluding properties referred to in section 427A.1, subsection 7, shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to six percent in this subsection shall be four percent. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value at which

property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to ten percent in this subsection shall be eight percent. Beginning with valuations established as of January 1, 1979, and each year thereafter, property valued by the department of revenue pursuant to chapter 434 shall also be assessed at a percentage of its actual value which percentage shall be equal to the percentage determined by the director of revenue for commercial property, industrial property, or property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438, whichever is lowest.

6. Beginning with valuations established as of January 1, 1978, the assessors shall report the aggregate taxable values and the number of dwellings located on agricultural land and the aggregate taxable value of all other structures on agricultural land. Beginning with valuations established as of January 1, 1981, the agricultural dwellings located on agricultural land shall be valued at their market value as defined in this section and agricultural dwellings shall be valued as rural residential property and shall be assessed at the same percentage of actual value as is all other residential property.

7. For the purpose of computing the debt limitations for municipalities, political subdivisions and school districts, the term "*actual value*" means the "*actual value*" as determined by subsections 1 to 3 of this section without application of any percentage reduction and entered opposite each item, and as listed on the tax list as provided in section 443.2 as "*actual value*".

Whenever any board of review or other tribunal changes the assessed value of property, all applicable records of assessment shall be adjusted to reflect such change in both assessed value and actual value of such property.

8. *a.* Any normal and necessary repairs to a building, not amounting to structural replacements or modification, shall not increase the taxable value of the building. This paragraph applies only to repairs of two thousand five hundred dollars or less per building per year.

*b.* Notwithstanding paragraph "*a*", any construction or installation of a solar energy system on property classified as agricultural, residential, commercial, or industrial property shall not increase the actual, assessed and taxable values of the property for five full assessment years.

*c.* As used in this subsection, "*solar energy system*" means either of the following:

(1) A system of equipment capable of collecting and converting incident solar radiation or wind energy into thermal, mechanical or electrical energy and transforming these forms of energy by a separate apparatus to storage or to a point of use which is constructed or installed after January 1, 1978.

(2) A system that uses the basic design of the building to maximize solar heat gain during the cold season and to minimize solar heat gain in the hot season and that uses natural means to collect, store and distribute solar energy which is constructed or installed after January 1, 1981.

In assessing and valuing the property for tax purposes, the assessor shall disregard any market value added by a solar energy system to a building. The director of revenue shall adopt rules, after consultation with the department of natural resources, specifying the types of equipment and structural components to be included under the guidelines provided in this subsection.

9. Not later than November 1, 1979, and November 1 of each subsequent year, the director shall certify to the county auditor of each county the percentages of actual value at which residential property, agricultural property, commercial property, industrial property, and property valued by the department of revenue pursuant to chapters 428, 433, 434, 437, and 438 in each assessing jurisdiction in the county shall be assessed for taxation. The county auditor shall proceed to determine the assessed values of agricultural property, residential property, commercial property, industrial property, and property valued by the department of revenue pursuant to chapters 428, 433, 434, 437, and 438 by applying such percentages to the current actual value of such property, as reported to the county auditor by the assessor, and the assessed values so determined shall be the taxable values of such properties upon which the levy shall be made.

10. The percentage of actual value computed by the director for agricultural property, residential property, commercial property, industrial property and property valued by the department of revenue pursuant to chapters 428, 433, 434, 437, and 438 and used to determine assessed values of those classes of property does not constitute a rule as defined in section 17A.2, subsection 11.

11. Beginning with valuations established on or after January 1, 1995, as used in this section, "*residential property*" includes all land and buildings of multiple housing cooperatives organized under chapter 499A and includes land and buildings used primarily for human habitation which land and buildings are owned and operated by organizations that have received tax-exempt status under section 501(c)(3) of the Internal Revenue Code and rental income from the property is not taxed as unrelated business income under section 422.33, subsection 1A.

12. Beginning with valuations established on or after January 1, 2002, as used in this section, "*agricultural property*" includes the real estate of a vineyard and buildings used in connection with the vineyard, including any building used for processing wine if such building is located on the

same parcel as the vineyard.

2003 Acts, ch 145, §286

Subsection 12 applies retroactively to assessment years beginning on or after January 1, 2002; 2002 Acts, ch 1153, §2

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §3, 42

Terminology change applied

#### 441.21A Reserved.

For future text of this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §4, 42

#### 441.23 Notice of valuation.

If there has been an increase or decrease in the valuation of the property, or upon the written request of the person assessed, the assessor shall, at the time of making the assessment, inform the person assessed, in writing, of the valuation put upon the taxpayer's property, and notify the person, if the person feels aggrieved, to appear before the board of review and show why the assessment should be changed. However, if the valuation of a class of property is uniformly decreased, the assessor may notify the affected property owners by publication in the official newspapers of the county. The owners of real property shall be notified not later than April 15 of any adjustment of the real property assessment.

For future amendments to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §5, 42

#### 441.24 Refusal to furnish statement.

1. If a person refuses to furnish the verified statements required in connection with the assessment of property by the assessor, or to list the corporation's or person's property, the director of revenue, or assessor, as the case may be, shall proceed to list and assess the property according to the best information obtainable, and shall add to the taxable valuation one hundred percent thereof, which valuation and penalty shall be separately shown, and shall constitute the assessment; and if the valuation of the property is changed by a board of review, or on appeal from a board of review, a like penalty shall be added to the valuation thus fixed.

2. However, all or part of the penalty imposed under this section may be waived by the board of review upon application to the board by the assessor or the property owner. The waiver or reduction in the penalty shall be allowed only on the valuation of real property against which the penalty has been imposed.

2003 Acts, ch 145, §286

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §6, 42

Terminology change applied

#### 441.26 Assessment rolls and books.

The director of revenue shall each year prescribe the form of assessment roll to be used by all

assessors in assessing property, in this state, also the form of pages of the assessor's assessment book. The assessment rolls shall be in a form that will permit entering, separately, the names of all persons assessed, and shall also contain a notice in substantially the following form:

If you are not satisfied that the foregoing assessment is correct, you may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment, such protest to be confined to the grounds specified in section 441.37.

Dated: . . . . day of . . . . . (month), . . . . (year)  
.....  
County/City Assessor.

The notice in 1981 and each odd-numbered year thereafter shall contain a statement that the assessments are subject to equalization pursuant to an order issued by the director of revenue, that the county auditor shall give notice on or before October 15 by publication in an official newspaper of general circulation to any class of property affected by the equalization order, and that the board of review shall be in session from October 15 to November 15 to hear protests of affected property owners or taxpayers whose valuations have been adjusted by the equalization order.

The assessment rolls shall be used in listing the property and showing the values affixed to the property of all persons assessed. The rolls shall be made in duplicate. The duplicate roll shall be signed by the assessor, detached from the original and delivered to the person assessed if there has been an increase or decrease in the valuation of the property. If there has been no change in the evaluation, the information on the roll may be printed on computer stock paper and preserved as required by this chapter. If the person assessed requests in writing a copy of the roll, the copy shall be provided to the person. The pages of the assessor's assessment book shall contain columns ruled and headed for the information required by this chapter and that which the director of revenue deems essential in the equalization work of the director. The assessor shall return all assessment rolls and schedules to the county auditor, along with the completed assessment book, as provided in this chapter, and the county auditor shall carefully keep and preserve the rolls, schedules and book for a period of five years from the time of its filing in the county auditor's office.

Beginning with valuations for January 1, 1977 and each succeeding year, for each parcel of property entered in the assessment book, the assessor shall list the classification of the property.

2003 Acts, ch 145, §286  
For future amendments to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §7, 8, 42  
Terminology change applied

**441.27 Uniform assessment rolls.**

The director of revenue shall from time to time prepare and certify to each assessor such instructions as to a uniform method of making up the assessment rolls as the director of revenue thinks necessary to secure a compliance with the law and uniform returns, which shall be printed upon each assessment roll, and also prepare instructions for the same purpose as to making up the assessment book, which shall be printed therein.

2003 Acts, ch 145, §286  
Terminology change applied

**441.33 Sessions of board of review.**

The board of review shall be in session from May 1 through the period of time necessary to act on all protests filed under section 441.37 but not later than May 31 each year and for an additional period as required under section 441.37 and shall hold as many meetings as are necessary to discharge its duties. On or before May 31 in those years in which a session has not been extended as required under section 441.37, the board shall return all books, records and papers to the assessor except undisposed of protests and records pertaining to those protests. If it has not completed its work by May 31, in those years in which the session has not been extended under section 441.37, the director of revenue may authorize the board of review to continue in session for a period necessary to complete its work, but the director of revenue shall not approve a continuance extending beyond July 15. On or before May 31 or on the final day of any extended session required under section 441.37 or authorized by the director of revenue, the board of review shall adjourn until May 1 of the following year. It shall adopt its own rules of procedure, elect its own chairperson from its membership, and keep minutes of its meetings. The board shall appoint a clerk who may be a member of the board or any other qualified person, except the assessor or any member of the assessor's staff. It may be reconvened by the director of revenue. All undisposed protests in its hands on July 15 shall be automatically overruled and returned to the assessor together with its other records.

Within fifteen days following the adjournment of any regular or special session, the board of review shall submit to the director of revenue, on forms prescribed by the director, a report of any actions taken during that session.

2003 Acts, ch 145, §286  
Terminology change applied

**441.35 Powers of review board.**

- The board of review shall have the power:
1. To equalize assessments by raising or lowering the individual assessments of real property, including new buildings, made by the assessor.
  2. To add to the assessment rolls any taxable property which has been omitted by the assessor.
  3. To add to the assessment rolls for taxation property which the board believes has been erro-

neously exempted from taxation. Revocation of a property tax exemption shall commence with the assessment for the current assessment year, and shall not be applied to prior assessment years.

In any year after the year in which an assessment has been made of all of the real estate in any taxing district, it shall be the duty of the board of review to meet as provided in section 441.33, and where it finds the same has changed in value, to revalue and reassess any part or all of the real estate contained in such taxing district, and in such case, it shall determine the actual value as of January 1 of the year of the revaluation and reassessment and compute the taxable value thereof, and any aggrieved taxpayer may petition for a revaluation of the taxpayer's property, but no reduction or increase shall be made for prior years. If the assessment of any such property is raised, or any property is added to the tax list by the board, the clerk shall give notice in the manner provided in section 441.36, provided, however, that if the assessment of all property in any taxing district is raised the board may instruct the clerk to give immediate notice by one publication in one of the official newspapers located in the taxing district, and such published notice shall take the place of the mailed notice provided for in section 441.36, but all other provisions of said section shall apply. The decision of the board as to the foregoing matters shall be subject to appeal to the district court within the same time and in the same manner as provided in section 441.38.

For future amendments to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §9, 10, 42

#### **441.36 Change of assessment — notice.**

All changes in assessments authorized by the board of review, and reasons therefor, shall be entered in the minute book kept by said board and on the assessment roll. Said minute book shall be filed with the assessor after the adjournment of the board of review and shall at all times be open to public inspection. In case the value of any specific property or the entire assessment of any person, partnership, or association is increased, or new property is added by the board, the clerk shall give immediate notice thereof by mail to each at the post-office address shown on the assessment rolls, and at the conclusion of the action of the board therein the clerk shall post an alphabetical list of those whose assessments are thus raised and added, in a conspicuous place in the office or place of meeting of the board, and enter upon the records a statement that such posting has been made, which entry shall be conclusive evidence of the giving of the notice required. The board shall hold an adjourned meeting, with at least five days intervening after the posting of said notices, before final action with reference to the raising of assessments or the adding of property to the rolls is taken, and the posted notices shall state the time

and place of holding such adjourned meeting, which time and place shall also be stated in the proceedings of the board.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §11, 42

#### **441.37 Protest of assessment — grounds.**

1. Any property owner or aggrieved taxpayer who is dissatisfied with the owner's or taxpayer's assessment may file a protest against such assessment with the board of review on or after April 16, to and including May 5, of the year of the assessment. In any county which has been declared to be a disaster area by proper federal authorities after March 1 and prior to May 20 of said year of assessment, the board of review shall be authorized to remain in session until June 15 and the time for filing a protest shall be extended to and include the period from May 25 to June 5 of such year. Said protest shall be in writing and signed by the one protesting or by the protester's duly authorized agent. The taxpayer may have an oral hearing thereon if request therefor in writing is made at the time of filing the protest. Said protest must be confined to one or more of the following grounds:

*a.* That said assessment is not equitable as compared with assessments of other like property in the taxing district. When this ground is relied upon as the basis of a protest the legal description and assessments of a representative number of comparable properties, as described by the aggrieved taxpayer shall be listed on the protest, otherwise said protest shall not be considered on this ground.

*b.* That the property is assessed for more than the value authorized by law, stating the specific amount which the protesting party believes the property to be overassessed, and the amount which the party considers to be its actual value and the amount the party considers a fair assessment.

*c.* That the property is not assessable, is exempt from taxes, or is misclassified and stating the reasons for the protest.

*d.* That there is an error in the assessment and state the specific alleged error.

*e.* That there is fraud in the assessment which shall be specifically stated.

In addition to the above, the property owner may protest annually to the board of review under the provisions of section 441.35, but such protest shall be in the same manner and upon the same terms as heretofore prescribed in this section.

2. A property owner or aggrieved taxpayer who finds that a clerical or mathematical error has been made in the assessment of the owner's or taxpayer's property may file a protest against that assessment in the same manner as provided in this section, except that the protest may be filed for previous years. The board may correct clerical or mathematical errors for any assessment year in

which the taxes have not been fully paid or otherwise legally discharged.

Upon the determination of the board that a clerical or mathematical error has been made the board shall take appropriate action to correct the error and notify the county auditor of the change in the assessment as a result of the error and the county auditor shall make the correction in the assessment and the tax list in the same manner as provided in section 443.6.

The board shall not correct an error resulting from a property owner's or taxpayer's inaccuracy in reporting or failure to comply with section 441.19.

3. After the board of review has considered any protest filed by a property owner or aggrieved taxpayer and made final disposition of the protest, the board shall give written notice to the property owner or aggrieved taxpayer who filed the protest of the action taken by the board of review on the protest. The written notice to the property owner or aggrieved taxpayer shall also specify the reasons for the action taken by the board of review on the protest.

For future amendments to subsection 1, paragraphs a and b, effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §12, 42

#### **441.39 Trial on appeal.**

The court shall hear the appeal in equity and determine anew all questions arising before the board which relate to the liability of the property to assessment or the amount thereof. The court shall consider all of the evidence and there shall be no presumption as to the correctness of the valuation of assessment appealed from. Its decision shall be certified by the clerk of the court to the county auditor, and the assessor, who shall correct the assessment books accordingly.

For future amendments to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §13, 42

#### **441.42 Appeal on behalf of public.**

Any officer of a county, city, township, drainage district, levee district, or school district interested or a taxpayer thereof may in like manner make complaint before said board of review in respect to the assessment of any property in the township, drainage district, levee district or city and an appeal from the action of the board of review in fixing the amount of assessment on any property concerning which such complaint is made, may be taken by any of such aforementioned officers.

Such appeal is in addition to the appeal allowed to the person whose property is assessed and shall be taken in the name of the county, city, township, drainage district, levee district, or school district interested, and tried in the same manner, except that the notice of appeal shall also be served upon the owner of the property concerning which the complaint is made and affected thereby or person

required to return said property for assessment.

For future amendments to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §14, 42

#### **441.43 Power of court.**

Upon trial of any appeal from the action of the board of review fixing the amount of assessment upon any property concerning which complaint is made, the court may increase, decrease, or affirm the amount of the assessment appealed from.

For future amendments to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §15, 42

#### **441.45 Abstract to state department of revenue.**

The county assessor of each county and each city assessor shall, on or before July 1 of each year, make out and transmit to the department of revenue an abstract of the real property in the assessor's county or city, as the case may be, and file a copy of the abstract with the county auditor, in which the assessor shall set forth:

1. The number of acres of land and the aggregate taxable values of the land, exclusive of city lots, returned by the assessors, as corrected by the board of review.

2. The aggregate taxable values of real estate by class in each township and city in the county, returned as corrected by the board of review.

3. Other facts required by the director of revenue.

If a board of review continues in session beyond June 1, under sections 441.33 and 441.37, the abstract of the real property shall be made out and transmitted to the department of revenue within fifteen days after the date of final adjournment by the board.

2003 Acts, ch 145, §286

For future amendments to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §16, 42

Terminology change applied

#### **441.47 Adjusted valuations.**

The director of revenue on or about August 15, 1977, and every two years thereafter shall order the equalization of the levels of assessment of each class of property in the several assessing jurisdictions by adding to or deducting from the valuation of each class of property such percentage in each case as may be necessary to bring the same to its taxable value as fixed in this chapter and chapters 427 to 443. The director shall adjust to actual value the valuation of any class of property as set out in the abstract of assessment when the valuation is at least five percent above or below actual value as determined by the director. For purposes of such value adjustments and before such equalization the director shall adopt, in the manner prescribed by chapter 17A, such rules as may be necessary to determine the level of assessment for each class of property in each county. The rules

shall cover: (1) The proposed use of the assessment-sales ratio study set out in section 421.17, subsection 6; (2) the proposed use of any statewide income capitalization studies; (3) the proposed use of other methods that would assist the director in arriving at the accurate level of assessment of each class of property in each assessing jurisdiction.

2003 Acts, ch 145, §286

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §17, 42

Terminology change applied

#### **441.47A Reserved.**

For future text of this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §18, 42

#### **441.48 Notice of adjustment.**

Before the director of revenue shall adjust the valuation of any class of property any such percentage, the director shall serve ten days' notice by mail, on the county auditor of the county whose valuation is proposed to be adjusted and the director shall hold an adjourned meeting after such ten days' notice, at which time the county or assessing jurisdiction may appear by its city council or board of supervisors, city or county attorney, and other assessing jurisdiction, city or county officials, and make written or oral protest against such proposed adjustment, which protest shall consist simply of a statement of the error, or errors, complained of with such facts as may lead to their correction, and at such adjourned meeting final action may be taken in reference thereto.

2003 Acts, ch 145, §286

Terminology change applied

#### **441.49 Adjustment by auditor.**

The director shall keep a record of the review and adjustment proceedings and finish the proceedings on or before October 1 unless for good cause the proceedings cannot be completed by that date. The director shall notify each county auditor by mail of the final action taken at the proceedings and specify any adjustments in the valuations of any class of property to be made effective for the jurisdiction.

However, an assessing jurisdiction may request the director to permit the use of an alternative method of applying the equalization order to the property values in the assessing jurisdiction, provided that the final valuation shall be equivalent to the director's equalization order. The assessing jurisdiction shall notify the county auditor of the request for the use of an alternative method of applying the equalization order and the director's disposition of the request. The request to use an alternative method of applying the equalization order, including procedures for notifying affected property owners and appealing valuation adjustments, shall be made within ten days from the date the county auditor receives the equalization

order and the valuation adjustments, and appeal procedures shall be completed by November 30 of the year of the equalization order. Compliance with the provisions of section 441.21 is sufficient grounds for the director to permit the use of an alternative method of applying the equalization order.

On or before October 15 the county auditor shall cause to be published in official newspapers of general circulation the final equalization order. The publication shall include, in type larger than the remainder of the publication, the following statement: "Assessed values are equalized by the department of revenue every two years. Local taxing authorities determine the final tax levies and may reduce property tax rates to compensate for any increase in valuation due to equalization." Failure to publish the equalization order has no effect upon the validity of the orders.

The county auditor shall add to or deduct from the valuation of each class of property in the county the required percentage, rejecting all fractions of fifty cents or less in the result, and counting all fractions over fifty cents as one dollar. For any special charter city that levies and collects its own tax based on current year assessed values, the equalization percentage shall be applied to the following year's values, and shall be considered the equalized values for that year for purposes of this chapter.

The local board of review shall reconvene in special session from October 15 to November 15 for the purpose of hearing the protests of affected property owners or taxpayers within the jurisdiction of the board whose valuation of property if adjusted pursuant to the equalization order issued by the director of revenue will result in a greater value than permitted under section 441.21. The board of review shall accept protests only during the first ten days following the date the local board of review reconvenes. The board of review shall limit its review to only the timely filed protests. The board of review may adjust all or a part of the percentage increase ordered by the director of revenue by adjusting the actual value of the property under protest to one hundred percent of actual value. Any adjustment so determined by the board of review shall not exceed the percentage increase provided for in the director's equalization order. The determination of the board of review on filed protests is final, subject to review by the director of revenue for the purpose of determining whether the board's actions substantially altered the equalization order. In making the review, the director has all the powers provided in chapter 421, and in exercising the powers the director is not subject to chapter 17A. Not later than fifteen days following the adjournment of the board, the board of review shall submit to the director of revenue, on forms prescribed by the director, a report of all actions taken by the board of review during this session.

Not later than ten days after the date the final equalization order is issued, the city or county officials of the affected county or assessing jurisdiction may appeal the final equalization order to the state board of tax review. The appeal shall not delay the implementation of the equalization orders.

Tentative and final equalization orders issued by the director of revenue are not rules as defined in section 17A.2, subsection 7.

2003 Acts, ch 145, §286  
Terminology change applied

**441.50 Appraisers employed.**

The conference board shall have power to employ appraisers or other technical or expert help to assist in the valuation of property, the cost thereof to be paid in the same manner as other expenses of the assessor’s office. The conference board may certify for levy annually an amount not to exceed forty and one-half cents per thousand dollars of assessed value of taxable property for the purpose of establishing a special appraiser’s fund, to be used only for such purposes. From time to time the conference board may direct the transfer of any unexpended balance in the special appraiser’s fund to the assessment expense fund.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §19, 42

**441.73 Litigation expense fund.**

1. A litigation expense fund is created in the state treasury. The litigation expense fund shall be used for the payment of litigation expenses incurred by the state to defend property valuations established by the director of revenue pursuant to section 428.24 and chapters 430A, 433, 434, 437, 437A, and 438, and for the payment of litigation expenses incurred by the state to defend the imposition of replacement taxes and statewide prop-

erty taxes under chapter 437A.

2. If the director of revenue determines that foreseeable litigation expenses will exceed the amount available from appropriations made to the department of revenue, the director of revenue may apply to the executive council for use of funds on deposit in the litigation expense fund. The initial application for approval shall include an estimate of potential litigation expenses, allocated to each of the next four succeeding calendar quarters and substantiated by a breakdown of all anticipated costs for legal counsel, expert witnesses, and other applicable litigation expenses.

3. The executive council may approve expenditures from the litigation expense fund on a quarterly basis. Prior to each quarter, the director of revenue shall report to the executive council and give a full accounting of actual litigation expenses to date as well as estimated litigation expenses for the remaining calendar quarters of the fiscal year. The executive council may adjust quarterly expenditures from the litigation expense fund based on this information.

4. The executive council shall transfer for the fiscal year beginning July 1, 1992, and each fiscal year thereafter, from funds established in sections 425.1 and 426.1, an amount necessary to pay litigation expenses. The amount of the fund for each fiscal year shall not exceed seven hundred thousand dollars. The executive council shall determine annually the proportionate amounts to be transferred from the two separate funds. At any time when no litigation is pending or in progress the balance in the litigation expense fund shall not exceed one hundred thousand dollars. Any excess moneys shall be transferred in a proportionate amount back to the funds from which they were originally transferred.

2003 Acts, ch 145, §286; 2003 Acts, ch 178, §9  
Terminology change applied  
Subsection 4 amended

**CHAPTER 443**

**TAX LIST**

**443.1 Consolidated tax.**

All taxes which are uniform throughout any township or school district shall be formed into a single tax and entered upon the tax list in a single column, to be known as a consolidated tax, and each receipt shall show the percentage levied for each separate fund.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §20, 42

**443.2 Tax list.**

Before the first day of July in each year, the county auditor shall transcribe the assessments of the townships and cities into a book or record, to

be known as the tax list, properly ruled and headed, with separate columns, in which shall be entered the names of the taxpayers, descriptions of lands, number of acres and value, numbers of city lots and value, and each description of tax, with a column for polls and one for payments, and shall complete it by entering the amount due on each installment, separately, and carrying out the total of both installments. The total of all columns of each page of each book or other record shall balance with the tax totals. After computing the amount of tax due and payable on each property, the county auditor shall round the total amount of tax due and payable on the property to the nearest

even whole dollar.

The county auditor shall list the aggregate actual value and the aggregate taxable value of all taxable property within the county and each political subdivision including property subject to the statewide property tax imposed under section 437A.18 on the tax list in order that the actual value of the taxable property within the county or a political subdivision may be ascertained and shown by the tax list for the purpose of computing the debt-incurring capacity of the county or political subdivision. As used in this section, “*actual value*” is the value determined under section 441.21, subsections 1 to 3, prior to the reduction to a percentage of actual value as otherwise provided in section 441.21. “*Actual value*” of property subject to statewide property tax is the assessed value under section 437A.18.

Limitation on section, §445.15

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §21, 42

#### **443.3 Correction — tax apportioned.**

At the time of transcribing said assessments into the tax list, the county auditor shall correct all transfers up to date and place the legal descriptions of all real estate in the name of the owner at said date as shown by the transfer book in the auditor’s office. At the end of the list for each township or city the auditor shall make an abstract thereof, and apportion the consolidated tax among the respective funds to which it belongs, according to the amounts levied for each.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §22, 42

#### **443.6 Corrections by auditor.**

The auditor may correct any error in the assessment or tax list, and the assessor or auditor may assess and list for taxation any omitted property.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §23, 42

#### **443.7 Notice.**

Before assessing and listing for taxation any omitted property, the assessor or auditor shall notify by mail the person in whose name the property is taxed, to appear before the assessor or auditor at the assessor’s or auditor’s office within ten days from the date of the notice and show cause, if any, why the correction or assessment should not be made.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §24, 42

#### **443.9 Adjustment of accounts.**

If such correction or assessment is made after the books or other records approved by the state auditor have passed into the hands of the treasurer, the treasurer shall be charged or credited

therefor as the case may be. In the event such assessment of omitted property is made by the assessor after the tax records have passed into the hands of the auditor or treasurer, such correction or assessment shall be entered on the records by the auditor or treasurer.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §25, 42

#### **443.12 Corrections by treasurer.**

When property subject to taxation is withheld, overlooked, or from any other cause is not listed and assessed, the county treasurer shall, when apprised thereof, at any time within two years from the date at which such assessment should have been made, demand of the person, firm, corporation, or other party by whom the same should have been listed, or to whom it should have been assessed, or of the administrator thereof, the amount the property should have been taxed in each year the same was so withheld or overlooked and not listed and assessed, together with six percent interest thereon from the time the taxes would have become due and payable had such property been listed and assessed.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §26, 42

#### **443.13 Action by treasurer — apportionment.**

Upon failure to pay such sum within thirty days, with all accrued interest, the treasurer shall cause an action to be brought in the name of the treasurer for the use of the proper county, to be prosecuted by the county attorney, or such other person as the board of supervisors may appoint, and when such property has been fraudulently withheld from assessment, there shall be added to the sum found to be due a penalty of fifty percent upon the amount, which shall be included in the judgment. The amount thus recovered shall be by the treasurer apportioned ratably as the taxes would have been if they had been paid according to law.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §27, 42

#### **443.14 Duty of treasurer.**

The treasurer shall assess any real property subject to taxation which may have been omitted by the assessor, board of review, or county auditor, and collect taxes thereon, and in such cases shall note, opposite the tract or lot assessed, the words “by treasurer”.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §28, 42

#### **443.15 Time limit.**

The assessment shall be made within two years after the tax list shall have been delivered to the treasurer for collection, and not afterwards, if the property is then owned by the person who should

have paid the tax.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §29, 42

**443.17 Presumption of two-year ownership.**

In any action or proceeding, now pending or hereafter brought, to recover taxes upon property not listed or assessed for taxation during the lifetime of any decedent, it shall be presumed that any property, any evidence of ownership of property, and any evidence of a promise to pay, owned by a decedent at the date of the decedent's death, had been acquired and owned by such decedent more than two years before the date of the decedent's death; and the burden of proving that any such property had been acquired by such decedent less than two years before the date of the decedent's death shall be upon the heirs, legatees, and legal representatives of any such decedent.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §30, 42

**443.18 Real estate — duty of owner.**

In all cases where real estate subject to taxation has not been assessed, the owner, or an agent of the owner, shall have the same done by the treasurer, and pay the taxes thereon; and if the owner fails to do so the treasurer shall assess the same and collect the tax assessed as the treasurer does other taxes.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §31, 42

**443.19 Irregularities, errors and omissions — effect.**

No failure of the owner to have such property assessed or to have the errors in the assessment corrected, and no irregularity, error or omission in the assessment of such property, shall affect in any manner the legality of the taxes levied thereon, or affect any right or title to such real estate which

would have accrued to any party claiming or holding under and by virtue of a deed executed by the treasurer as provided by this title,\* had the assessment of such property been in all respects regular and valid.

\*Chapters 421B, 427C, 435, 452A, and 453A were not enacted as part of this title and were moved into this title by the Code editor in Code 1993; chapters 421B, 427C, 435, 452A, and 453A contain applicable provisions pertaining to those chapters

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §32, 42

**443.21 Assessments certified to county auditor.**

All assessors and assessing bodies, including the department of revenue having authority over the assessment of property for tax purposes shall certify to the county auditor of each county the assessed values of all the taxable property in such county as finally equalized and determined, and the same shall be transcribed onto the tax lists as required by section 443.2.

2003 Acts, ch 145, §286

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §33, 42

Terminology change applied

**443.22 Uniform assessments mandatory.**

All assessors and assessing bodies, including the department of revenue having authority over the assessment of property for tax purposes, shall comply with sections 428.4, 428.29, 434.15, 438.13, 441.21, and 441.45. The department of revenue having authority over the assessments, shall exercise its powers and perform its duties under section 421.17 and other applicable laws so as to require the uniform and consistent application of said section.

2003 Acts, ch 145, §286

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §34, 42

Terminology change applied

**443.23 Definition.** Repealed by 2003 Acts, ch 44, § 112. See § 443.23A.

**CHAPTER 443A**

**LAND TAX**

For text of future provisions in this chapter effective July 1, 2005, unless repealed by 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §35, 36, 42

**CHAPTER 444**

**TAX LEVIES**

**444.1 Basis for amount of tax.**

In all taxing districts in the state, including

townships, school districts, cities and counties, when by law then existing the people are autho-

rized to determine by vote, or officers are authorized to estimate or determine, a rate of taxation required for any public purpose, such rate shall in all cases be estimated and based upon the adjusted taxable valuation of such taxing district for the preceding calendar year.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §37, 42

#### **444.2 Amounts certified in dollars.**

When an authorized tax rate within a taxing district, including townships, school districts, cities and counties, has been thus determined as provided by law, the officer or officers charged with the duty of certifying the authorized rate to the county auditor or board of supervisors shall, before certifying the rate, compute upon the adjusted taxable valuation of the taxing district for the preceding fiscal year, the amount of tax the rate will raise, stated in dollars, and shall certify the computed amount in dollars and not by rate, to the county auditor and board of supervisors.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §38, 42

#### **444.3 Computation of rate.**

When the valuations for the several taxing districts shall have been adjusted by the several boards for the current year, the county auditor shall thereupon apply such a rate, not exceeding the rate authorized by law, as will raise the amount required for such taxing district, and no larger amount. For purposes of computing the rate under this section, the adjusted taxable valuation of the property of a taxing district does not

include the valuation of property of a railway corporation or its trustee which corporation has been declared bankrupt or is in bankruptcy proceedings. Nothing in the preceding sentence exempts the property of such railway corporation or its trustee from taxation and the rate computed under this section shall be levied on the taxable property of such railway corporation or its trustee.

For future amendment to this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §39, 42

### COMPUTATION OF TAX

#### **444.9 Reserved.**

For future text of this section effective July 1, 2005, unless repealed pursuant to 2003 Acts, 1st Ex, ch 1, §43, see 2003 Acts, 1st Ex, ch 1, §40, 42

### LEVIES BY DEPARTMENT OF REVENUE

#### **444.22 Annual levy.**

In each year the director of revenue shall fix the rate in percentage to be levied upon the assessed valuation of the taxable property of the state necessary to raise the amount for general state purposes as shall be designated by the department of management.

2003 Acts, ch 145, §286  
Terminology change applied

#### **444.23 Rate certified to county auditor.**

The director of revenue shall certify the rate so fixed to the auditor of each county.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 445

### TAX COLLECTION

#### **445.5 Statement and receipt.**

1. As soon as practicable after receiving the tax list prescribed in chapter 443, the treasurer shall deliver to the titleholder, by regular mail, or if requested by the titleholder, by electronic transmission, a statement of taxes due and payable which shall include the following information:

- a. The year of tax.
- b. A description of the parcel.
- c. The assessed value of the parcel, itemized by the value for land, dwellings, and buildings, for the current year and the previous year as valued by the assessor after application of any equalization orders.
- d. The taxable value of the parcel, itemized by the value for land, dwellings, and buildings, for the current year and the previous year after application of any equalization orders, assessment limitations, and itemized valuation exemptions.

e. The complete name of all taxing authorities receiving a tax distribution, the amount of the distribution, and the percentage distribution for each named authority, listed from the highest to the lowest distribution percentage.

f. The consolidated levy rate for one thousand dollars of taxable valuation multiplied by the taxable valuation to produce the gross taxes levied before application of credits against levied taxes for the previous and current fiscal years.

g. The itemized credits against levied taxes deducted from the gross taxes levied in order to produce the net taxes owed for the previous and current fiscal years.

h. The amount of property tax dollars reduced on each parcel as a result of the moneys received from the property tax relief fund pursuant to section 426B.2, subsections 1 and 2.

i. The total amount of taxes levied by each tax-

ing authority in the previous fiscal year and the current fiscal year and the difference between the two amounts, expressed as a percentage increase or decrease.

2. The county treasurer shall each year, upon request, deliver to the following persons or entities, or their duly authorized agents, a copy of the tax statement or tax statement information:

- a. Contract purchaser.
- b. Lessee.
- c. Mortgagee.
- d. Financial institution organized or chartered or holding an authorization certificate pursuant to chapter 524, 533, or 534.
- e. Federally chartered financial institution.

The treasurer may negotiate and charge a reasonable fee not to exceed the cost of producing the information for the requestor for a tax statement or tax statement information provided by the treasurer.

3. A person other than those listed in subsection 2, who requests a tax statement or tax statement information, shall pay a fee to the treasurer at a rate not to exceed two dollars per parcel.

4. The county treasurer shall deliver to the taxpayer a receipt stating the year of tax, date of payment, a description of the parcel, and the amount of taxes, interest, fees, and costs paid except when payment of taxes is made by check, then a receipt shall be issued only upon request. The receipt shall be in full of the first half, second half, or full year amounts unless a payment is made un-

der section 445.36A or 435.24, subsection 6.

2003 Acts, ch 24, §8  
 Subsection 1, unnumbered paragraph 1 amended

**445.57 Monthly apportionment.**

On or before the tenth day of each month, the county treasurer shall apportion all taxes collected during the preceding month, except partial payment amounts collected pursuant to section 445.36A, subsection 1 and section 435.24, subsection 6, paragraph “a”, among the several funds to which they belong according to the amount levied for each fund, and shall apportion the interest, fees, and costs on the taxes to the general fund, and shall enter those amounts upon the treasurer’s cash account, and report the amounts to the county auditor.

The county treasurer shall apportion all interest and penalties on the replacement taxes and special utility property tax levies collected by the county treasurer to the general fund. Replacement taxes collected by the county treasurer shall be apportioned as set forth in this section.

Fees and charges including service delivery fees, credit card fees, and electronic funds transfer charges payable to a third party, not to the county, that are imposed for completing an electronic financial transaction with the county are not considered taxes collected for the purposes of this section.

2003 Acts, ch 18, §5  
 NEW unnumbered paragraph 3

**CHAPTER 446**

**TAX SALES**

**446.9 Notice of sale — service — publication — costs.**

1. A notice of the date, time, and place of the annual tax sale shall be served upon the person in whose name the parcel subject to sale is taxed. The county treasurer shall serve the notice by sending it by regular first class mail to the person’s last known address not later than May 1 of each fiscal year. The notice shall contain a description of the parcel to be sold which is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. It shall also contain the amount of delinquent taxes for which the parcel is liable each year, the amount of the interest and fees, and the amount of the service fee as provided in section 446.10, subsection 2, all to be incorporated as a single sum. The notice shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

2. Publication of the date, time, and place of the annual tax sale shall be made once by the trea-

surer in at least one official newspaper in the county as selected by the board of supervisors and designated by the treasurer at least one week, but not more than three weeks, before the day of sale. The publication shall contain a description of the parcel to be sold that is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. All items offered for sale pursuant to section 446.18 may be indicated by an “s” or by an asterisk. The publication shall also contain the name of the person in whose name the parcel to be sold is taxed and the amount delinquent for which the parcel is liable each year, the amount of the interest and fees, and the amount of the service fee as provided in section 446.10, subsection 2, all to be incorporated as a single sum. The publication shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

3. In addition to the notice required by subsection 1 and the publication required by subsection

2, the treasurer shall send, at least one week but not more than three weeks before the day of sale, a notice of sale in the form prescribed by subsection 1, by regular first class mail to any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor of the parcel who has a recorded lease or memorandum of a recorded lease, and to any other person who has an interest of record in the parcel, if the mortgagee, vendor, lessor, or other person having an interest of record has done both of the following:

a. Requested on a form prescribed by the treasurer that notice of sale be sent to the person.

b. Filed the request form with the treasurer at least one month prior to the date of sale, together with a fee of twenty-five dollars per parcel.

The request for notice is valid for a period of five years from the date of filing with the treasurer. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection.

4. Notice required by subsections 1 and 3 shall be deemed completed when the notice is enclosed in a sealed envelope with the proper postage on the envelope, is addressed to the person entitled to receive it at the person's last known mailing address, and is deposited in a mail receptacle provided by the United States postal service. Failure to receive a mailed notice is not a defense to the payment of the total amount due.

5. If, for good cause, a parcel is not included in the publication specified in subsection 2, notice shall be given by publication or by posting a description of the parcel and the date, time, and place of the tax sale in the treasurer's office for two weeks before the regular or any adjourned tax sale and, at the time of the publication or posting, by mailing the notice required in subsection 1.

2003 Acts, ch 44, §64  
1999 amendments to subsections 1 and 2 apply to tax sales held on or after February 17, 1999; 99 Acts, ch 4, §4  
Subsections 1 and 2 amended

## CHAPTER 450

### INHERITANCE TAX

#### 450.1 Definitions — construction.

1. For purposes of this chapter, unless the context otherwise requires:

a. “*Internal Revenue Code*” means the same as defined in section 422.3.

b. “*Person*” includes plural as well as singular, and artificial as well as natural persons.

c. “*Personal representative*” means an administrator, executor, or trustee as each is defined in section 633.3.

d. “*Real estate or real property*” for the purpose of appraisal under this chapter means real estate which is the land and appurtenances, including structures affixed thereto.

e. “*Stepchild*” means the child of a person who was married to the decedent at the time of the decedent's death, or the child of a person to whom the decedent was married, which person died during the marriage to the decedent.

2. This chapter shall not be construed to confer upon a county attorney authority to represent the state in any case, and the county attorney shall represent the department of revenue only when specially authorized by the department to do so.

2003 Acts, ch 95, §1, 24; 2003 Acts, ch 145, §286  
2003 amendment applies to estates of decedents dying on or after July 1, 2003; 2003 Acts, ch 95, §24  
Terminology change applied  
Section stricken and rewritten

#### 450.2 Taxable estates and property.

The following estates and property and any interest in or income from any of the following estates and property, which pass from the decedent owner in any manner described in this chapter, are

subject to tax as provided in this chapter:

1. Real estate and tangible personal property located in this state regardless of whether the decedent was a resident of this state at death.

2. Intangible personal property owned by a decedent domiciled in this state.

2003 Acts, ch 95, §2, 24  
2003 amendment applies to estates of decedents dying on or after July 1, 2003; 2003 Acts, ch 95, §24  
Section stricken and rewritten

#### 450.3 Property included.

The tax hereby imposed shall be collected upon the net market value and shall go into the general fund of the state to be determined as herein provided, of any property passing as follows:

1. By will or under the statutes of inheritance of this or any other state or country.

2. By deed, grant, sale, gift, or transfer made within three years of the death of the grantor or donor, which is not a bona fide sale for an adequate and full consideration in money or money's worth and which is in excess of the annual gift tax exclusion allowable for each donee under section 2503, subsections (b) and (e), of the Internal Revenue Code. If both spouses consent, a gift made by one spouse to a person who is not the other spouse is considered, for the purposes of this subsection, as made one half by each spouse under the same terms and conditions provided for in section 2513 of the Internal Revenue Code. The net market value of a transfer described in this subsection shall be the net market value determined as of the date of the transfer.

3. By deed, grant, sale, gift or transfer made or

intended to take effect in possession or enjoyment after the death of the grantor or donor. A transfer of property in respect of which the transferor reserves to the transferor a life income or interest shall be deemed to have been intended to take effect in possession or enjoyment at death, provided, that if the transferor reserves to the transferor less than the entire income or interest, the transfer shall be deemed taxable thereunder only to the extent of a like proportion of the value of the property transferred.

4. To the extent of any property with respect to which the decedent has at the time of death a general power of appointment, or with respect to which the decedent has within three years of death exercised or released a general power of appointment by a disposition which is of a nature that if it were a transfer of property owned by the decedent, the property would be includable in the decedent's gross estate under this section whether the general power was created before or after the taking effect of this chapter. A transfer involving creation of a general power of appointment shall be treated as a transfer of a fee or equivalent interest in the property subject thereto to the donee of the power. Any transfer involving creation of any other power of appointment shall be treated, except when an election is made under subsection 7, as the transfer of a life estate or term of years in the property subject thereto to the donee of the power and as the transfer of the remainder interests to those who would take if the power is not exercised.

5. Property which is held in joint tenancy by the decedent and any other person or persons or any deposit in banks, or other institution in their joint names and payable to either or to the survivor, except such part as may be proven to have belonged to the survivor; or any interest of a decedent in property owned by a joint stock or other corporate body whereby the survivor or survivors become beneficially entitled to the decedent's interest upon the death of a shareholder. However, if such property is so held by the decedent and the surviving spouse as the only co-owners, one half of such property is not subject to taxation under the provisions of this chapter, but if the surviving spouse proves that the surviving spouse contributed to acquisition of such property an amount, in money or other property, greater than one half of the cost of the property held in joint tenancy, the portion of such property which is not subject to taxation under the provisions of this chapter shall be the proportion which the actual contribution by the surviving spouse is of the total contribution to acquisition of such property. The tax imposed upon the passing of property under the provisions of this subsection shall apply to property held under all such contracts or agreements whether made before or after the taking effect of this chapter.

6. When the decedent shall have disposed of

the decedent's estate in any manner to take effect at the decedent's death with a request secret or otherwise that the beneficiary give, pay to, or share the property or any interest therein received from the decedent, with other person or persons, or to so dispose of beneficial interests conferred by the decedent upon the beneficiaries as that the property so passing would be taxable under the provisions of this chapter if passing directly by will or deed from the decedent owner to those to receive the gift from the beneficiary, compliance with such request shall constitute a transfer taxable under the provisions of this chapter, at the highest rate possible in like cases of transfers by will or deed.

7. Which qualifies as a qualified terminable interest property as defined in section 2056(b)(7)(B) of the Internal Revenue Code, shall, if an election is made, be treated and considered as passing in fee, or its equivalent, to the surviving spouse in the estate of the donor-grantor. Property on which the election is made shall be included in the gross estate of the surviving spouse and shall be deemed to have passed in fee from the surviving spouse to the persons succeeding to the remainder interest, unless the property was sold, distributed, or otherwise disposed of prior to the death of the surviving spouse. A sale, disposition, or disposal of the property prior to the death of the surviving spouse shall void the election, and shall subject the property disposed of, less amounts received or retained by the surviving spouse, to tax in the donor-grantor's estate in the same manner as if the tax had been deferred under sections 450.44 through 450.49.

Unless the will or trust instrument provides otherwise, the estate of the surviving spouse shall have the right to recover from the persons succeeding to the remainder interests, the additional tax imposed, if any, without interest, on the surviving spouse by reason of the election being made. The amount of tax recovered, if any, shall be a credit in the donee's estate against the tax imposed on the qualified terminable interest property.

An election under this subsection can only be made if an election in relation to the qualified terminable interest property is also made for federal estate tax purposes.

The director of revenue shall adopt and promulgate all rules necessary for the enforcement and administration of this subsection including the form and manner of making the election.

2003 Acts, ch 95, §3, 24; 2003 Acts, ch 145, §286  
2003 amendment to subsection 2 applies to estates of decedents dying on or after July 1, 2003; 2003 Acts, ch 95, §24  
Terminology change applied  
Subsection 2 amended

#### **450.6 Accrual of tax — maturity — extension of time.**

The tax imposed by this chapter accrues at the death of the decedent owner, and shall be paid to the department of revenue on or before the last

day of the ninth month after the death of the decedent owner except if otherwise provided in this chapter. If in the opinion of the director of revenue additional time should be granted for payment to avoid hardship, the director may extend the period to a date not exceeding ten years from the last day of the month in which the death of the decedent occurred. In the case of an extension the tax bears interest at the rate in effect under section 421.7 from the expiration of the last day of the ninth month after the decedent's death. Interest shall be computed on a monthly basis with a fraction of a month counted as a full month.

Upon the approval of the executive council, the tax liability of a beneficiary, heir, surviving joint tenant or other transferee may be paid, in lieu of money, in whole or in part by the transfer of real property or tangible personal property to the state or a political subdivision of the state to be used for public purposes. Before the tax liability may be paid by transfer of property to a political subdivision, the governing body of the political subdivision shall also approve the transfer. The property transferred in payment of tax shall have been included in the decedent's gross estate for inheritance tax purposes and its value for the payment of the tax shall be the same as its value for inheritance tax purposes. The acceptance or rejection of the property in payment of the tax liability and the value of the property shall be certified by the executive council to the director of revenue. The acceptance of the property transferred acts as payment and satisfaction of the inheritance tax liability to the extent of the value of the transferred property, but notwithstanding any other provision, the taxpayer is not entitled to a refund if the transferred property has a value in excess of the tax liability.

2003 Acts, ch 145, §286  
Interest on delinquent taxes, §450.63  
Terminology change applied

#### 450.7 Lien of tax.

1. Except for the share of the estate passing to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants, the tax is a charge against and a lien upon the estate subject to tax under this chapter, and all property of the estate or owned by the decedent from the death of the decedent until paid, subject to the following limitation:

Inheritance taxes owing with respect to a passing of property of a deceased person are no longer a lien against the property ten years from the date of death of the decedent owner regardless of whether the decedent owner died prior to or subsequent to July 1, 1995, except to the extent taxes are attributable to remainder or deferred inter-

ests and are deferred in accordance with the provisions of this chapter.

2. Notice of the lien is not required to be recorded. The rights of the state under the lien have priority over all subsequent mortgages, purchases, or judgment creditors; and a conveyance after the decedent's death of the property subject to a lien does not discharge the property except as otherwise provided in this chapter. However, if additional tax is determined to be owing under this chapter or chapter 451 after the lien has been released under paragraph "a" or "b", the lien does not have priority over subsequent mortgages, purchases, or judgment creditors unless notice of the lien is recorded in the office of the recorder of the county where the estate is probated, or where the property is located if the estate has not been administered. The department of revenue may release the lien by filing in the office of the clerk of the court in the county where the property is located, the decedent owner died, or the estate is pending or was administered, one of the following:

a. A receipt in full payment of the tax.

b. A certificate of nonliability for the tax as to all property reported in the estate.

c. A release or waiver of the lien as to all or any part of the property reported in the estate, which shall release the lien as to the property designated in the release or waiver.

3. The sale, exchange, mortgage, or pledge of property by the personal representative pursuant to a testamentary direction or power, pursuant to section 633.387, or under order of court, divests the property from the lien of the tax. The proceeds from that sale, exchange, mortgage, or pledge shall be held by the personal representative subject to the same priorities for the payment of the tax as existed with respect to the property before the transaction, and the personal representative is personally liable for payment of the tax to the extent of the proceeds.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.12 Liabilities deductible.

1. Subject to the limitations in subsections 2 and 3, there shall be deducted from the gross value of the estate only the liabilities defined as follows:

a. The debts owing by the decedent at the time of death, the local and state taxes accrued before the decedent's death, the federal estate tax and federal taxes owing by the decedent, a reasonable sum for funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to section 2053 of the Internal Revenue Code.

b. A liability shall not be deducted unless the personal representative or other person filing the inheritance tax return as provided in section 450.22 certifies that it has been paid or, if not paid, the director of revenue is satisfied that it will be

paid. If the amount of liabilities deductible under this section exceeds the amount of property subject to the payment of the liabilities, the excess shall be deducted from other property included in the gross estate on a prorated basis that the gross value of each item of other property bears to the total gross value of all the other property. Subject to the previous provision, a liability is deductible whether or not the liability is legally enforceable against the decedent's estate.

2. If the decedent's gross estate includes property with a situs outside of Iowa, the liabilities deductible under subsection 1 shall be prorated on the basis that the gross value of property with a situs in Iowa bears to the total gross estate. Only the Iowa portion of the liabilities shall be deductible in computing the tax imposed by this chapter. However, a liability secured by a lien on property shall be allocated to the state where the property has a situs and shall not be prorated except to the extent the liability exceeds the value of the property.

3. If a liability under subsection 1 is secured by property, or a portion of property, not included in the decedent's gross estate, only that portion of the liability attributable to property or a portion of property included in the decedent's gross estate is deductible in computing the tax imposed by this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.20 Record of deferred estates.

The department of revenue shall keep a separate record of any deferred estate upon which the tax due is not paid on or before the last day of the ninth month after the death of the decedent, showing substantially the same facts as are required in other cases, and also showing:

1. The date and amount of all bonds given to secure the payment of the tax with a list of the sureties thereon.

2. The name of the person beneficially entitled to such estate or interest, with place of residence.

3. A description of the property or a statement of conditions upon which such deferred estate is based or limited.

2003 Acts, ch 95, §4, 24; 2003 Acts, ch 145, §286  
2003 amendment to unnumbered paragraph 1 applies to estates of decedents dying on or after July 1, 2003; 2003 Acts, ch 95, §24  
Terminology change applied  
Unnumbered paragraph 1 amended

#### 450.21 Administration on application of director.

If, upon the death of any person leaving an estate that may be liable to a tax under this chapter, a will disposing of the estate is not offered for probate, or an application for administration made within four months from the time of the decease, the director of revenue may, at any time thereafter, make application to the proper court, setting forth that fact and requesting that a personal rep-

resentative be appointed, and the court shall appoint a personal representative to administer upon the estate.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.27 Commission to appraisers.

When an appraisal of real estate is requested by the department of revenue, as provided in section 450.37, or is otherwise required by this chapter, the clerk shall issue a commission to the appraisers, who shall fix a time and place for appraisal, except that if the only interest that is subject to tax is a remainder or deferred interest upon which the tax is not payable until the determination of a prior estate or interest for life or term of years, the clerk shall not issue the commission until the determination of the prior estate, except at the request of the department of revenue when the parties in interest seek to remove an inheritance tax lien. When valuing the real estate for purposes of inheritance tax, an appraiser does not have the jurisdiction to determine what property or partial interests may or may not be subject to tax. Whole interests in the property should be appraised and the question of the actual property or partial interest subject to inheritance tax is to be determined by means of the administrative procedures pursuant to section 450.94. All joint property that is to be appraised should be listed at its full market value. Long-term leases are not considered in determining the value of property when being appraised.

2003 Acts, ch 145, §286  
1999 amendment is effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 152, §33, 40  
Terminology change applied

#### 450.28 Notice of appraisal.

It shall be the duty of all appraisers appointed under the provisions of this chapter, upon receiving a commission as herein provided, to give notice to the director of revenue, the attorney of record of the estate, if any, and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall further state that the director of revenue or any person interested in the estate or property appraised may, within sixty days after filing of the appraisal with the clerk of court, file objections to the appraisal. The notice shall be served by certified mail and such notice is deemed completed when the notice is deposited in the mail and postmarked for delivery.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.29 Notice of filing.

Upon service of such notice and the making of such appraisal, the notice and appraisal shall be filed with the clerk, and a copy of the appraisal shall at once be filed by the clerk with

the director of revenue. The clerk shall send a notice, by ordinary mail, to the attorney of record of the estate, if any, to the personal representative of the estate, and to each person known to be interested in the estate or property appraised. The notice shall state the date the appraisal was filed with the clerk of court and shall include a copy of the appraisal.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.31 Objections.

The director of revenue or any person interested in the estate or property appraised may, within sixty days after filing of the appraisal with the clerk, file objections to said appraisal and give notice thereof as in beginning civil actions, to the director of revenue or the representative of the estate or trust, if any, otherwise to the person interested as heir, legatee, or transferee, on the hearing of which as an action in equity either party may produce evidence competent or material to the matters therein involved.

2003 Acts, ch 145, §286  
Service of notice, R.C.P. 1.302 – 1.315  
Terminology change applied

#### 450.33 Appeal and notice.

The director of revenue or anyone interested in the property appraised may appeal to the supreme court from the order of the district court fixing the value of the property of said estate. Notice of appeal shall be served within sixty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.34 Bond on appeal.

In case of appeal the appellant, if not the director of revenue, shall give bond to be approved by the clerk of the court, which bond shall provide that the said appellant and sureties shall pay the tax for which the property may be liable with cost of appeal.

2003 Acts, ch 145, §286  
Presumption of approval, §636.10  
Terminology change applied

#### 450.36 Appraisal of other property.

If there is an estate or real property subject to tax and the records in the clerk's office do not disclose that there may be a tax due under this chapter, the persons interested in the real property shall report the matter to the department of revenue with a request that the real property be appraised.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.37 Value for computing the tax.

1. Unless the value has been determined under chapter 450B, the tax shall be computed based

upon one of the following:

*a.* The fair market value of the property in the ordinary course of trade determined under subsection 2.

*b.* The alternate value of the property, if the personal representative so elects, that has been established for federal estate tax purposes under section 2032 of the Internal Revenue Code. The election shall be exercised on the return by the personal representative or other person signing the return, within the time prescribed by law for filing the return or before the expiration of any extension of time granted for filing the return.

2. Fair market value of real estate in the ordinary course of trade shall be established by agreement, including an agreement to accept the values as finally determined for federal estate tax purposes. The agreement shall be between the department of revenue, the personal representative, and the persons who have an interest in the property.

*a.* If an agreement has not been reached on the fair market value of real property in the ordinary course of trade, the director of revenue has thirty days after the return is filed to request an appraisal under section 450.27. If an appraisal request is not made within the thirty-day period, the value listed on the return is the agreed value of the real property.

*b.* If an agreement is not reached on the fair market value of personal property in the ordinary course of trade, the personal representative or any person interested in the personal property may appeal to the director of revenue for a revision of the department of revenue's determination of the value and after the appeal hearing may seek judicial review of the director's decision. The provisions of section 450.94, subsection 3, relating to appeal of a determination of the department and review of the director's decision apply to an appeal and review made under this subsection.

3. In addition to the applicable period of limitation for examination and determination, the department shall make an examination to adjust the value of real property for Iowa inheritance tax purposes to the value accepted by the internal revenue service for federal estate tax purposes. The department shall make an examination and adjustment for the value of the real property at any time within six months from the date of receipt by the department of written notice from the personal representative for the estate that all federal estate tax matters between the estate and the internal revenue service have been concluded. To begin the running of the six-month period, the notice shall be in writing in a form sufficient to inform the department of the final disposition of the federal estate tax obligation with the internal revenue service and a copy of the federal document showing the final disposition and final federal adjustments of all real property values must be attached. The department shall make an adjust-

ment to the value of real property for inheritance tax purposes to the value accepted for federal estate tax purposes regardless of whether an inheritance clearance has been issued, an appraisal has been obtained on the real property indicating a contrary value, whether there has been an acceptance of another value for real property by the department, or whether an agreement has been entered into by the department and the personal representative for the estate and persons having an interest in the real property regarding the value of the real property. Notwithstanding the period of limitation specified in section 450.94, subsection 3, the personal representative for the estate shall have six months from the day of final disposition of any real property valuation matter between the personal representative for the estate and the internal revenue service to claim a refund of an overpayment of tax due to the change in the valuation of real property by the internal revenue service.

2003 Acts, ch 145, §286

1999 amendments to subsections 2 and 3 are effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §47, 89; 99 Acts, ch 152, §34, 40

Terminology change applied

#### 450.46 Deferred estate — valuation.

Upon the determination of a prior estate or interest, when the remainder or deferred estate or interest or a part of it is subject to tax and the tax upon the remainder or deferred interest has not been paid, the persons entitled to the remainder or deferred interest shall immediately report to the department of revenue the fact of the determination of the prior estate, and upon receipt of the report, or upon information from any source, of the determination of a prior estate when the remainder interest has not been valued for the purpose of assessing tax, the property shall be valued as provided in like cases in section 450.44 and the tax upon the remainder interest shall be paid by the person who owns the remainder interest on or before the last day of the ninth month after the determination of the prior estate. If the tax is not paid within this time the court shall then order the property, or as much as necessary to pay the tax, penalty, and interest, to be sold.

2003 Acts, ch 145, §286

Terminology change applied

#### 450.47 Life and term estates in personal property.

If an estate or interest for life or term of years in personal property is given to one or more persons other than those exempt by this chapter and the remainder or deferred estate to others, the property devised or conveyed shall be valued under section 450.37 as provided in ordinary estates and the value of the estates or interests devised or conveyed shall be determined as provided in section 450.51, and the tax upon the estates or interests liable for the tax shall be paid to the department of revenue from the property valued or by the per-

sons entitled to the estate or interest on or before the last day of the ninth month after the death of the testator, grantor, or donor. However, payment of the tax upon a deferred estate or remainder interest may be deferred until the determination of the prior estate by the giving of a good and sufficient bond as provided in section 450.48.

2003 Acts, ch 145, §286

Terminology change applied

#### 450.49 Bonds — conditions.

All bonds required by this chapter shall be payable to the department of revenue and shall be conditioned upon the payment of the tax, interest, and costs for which the estate may be liable, and for the faithful performance of all the duties hereby imposed upon and required of the person whose acts are by such bond to be guaranteed, and shall be in an amount equal to twice the amount of the tax, interest, and costs that may be due, but in no case less than five hundred dollars, and must be secured by not less than two resident freeholders or by a fidelity or surety company authorized by the commissioner of insurance to do business in this state.

2003 Acts, ch 145, §286

Terminology change applied

#### 450.50 Removal of property from state — bond.

It shall be unlawful for any person to remove from this state any property, or the proceeds thereof, that may be subject to the tax imposed by this chapter, without paying the said tax to the department of revenue. Any person violating the provisions of this section shall be guilty of a serious misdemeanor and upon conviction shall be fined an amount equal to twice the amount of tax, interest, and costs for which the estate may be liable; provided, however, that the penalty hereby imposed shall not be enforced if, prior to the removal of such property or the proceeds thereof, the person desiring to effect such removal files with the clerk a bond conditioned upon the payment of the tax, interest, and costs, as is provided in section 450.49 hereof.

2003 Acts, ch 145, §286

Terminology change applied

#### 450.51 Annuities — life and term estates.

The value of any annuity, deferred estate, or interest, or any estate for life or term of years, subject to inheritance tax shall be determined for the purpose of computing the tax by the use of current, commonly used tables of mortality and actuarial principles pursuant to regulations prescribed by the director of revenue. The taxable value of annuities, life or term, deferred, or future estates, shall be computed at the rate of four percent per annum of the established value of the property in which the estate or interest exists or is founded.

2003 Acts, ch 145, §286

Mortality table, at end of this chapter

Terminology change applied

**450.53 Duty to pay tax — penalties.**

1. All personal representatives, except guardians and conservators, and other persons charged with the management or settlement of any estate or trust from which a tax is due under this chapter, shall file an inheritance tax return, within the time limits set by section 450.6, with a copy of any federal estate tax return and other documents required by the director which may reasonably tend to prove the amount of tax due, and at the time of filing, shall pay to the department of revenue the amount of the tax due from any devisee, grantee, donee, heir, or beneficiary of the decedent, except in cases where payment of the tax is deferred until the determination of a prior estate. The owner of the future interest shall file a supplemental inheritance tax return and pay to the department of revenue the tax due within the time limits set in this chapter. The inheritance tax returns shall be in the form prescribed by the director.

2. A person in possession of assets to be reported for purposes of taxation, including a personal representative or trustee, who willfully makes a false or fraudulent return, or willfully fails to pay the tax, supply the information, make, sign, or file the required return within the time required by law, is guilty of a fraudulent practice.

3. A person who willfully attempts in any manner to evade taxes imposed by this chapter or avoid payment of the tax, is guilty of an aggravated misdemeanor.

4. The jurisdiction of any offense as defined in this section is in the county of the residence of the decedent at the time of death. If the decedent is a nonresident of the state, jurisdiction is in any county in which property subject to the tax is located.

5. A prosecution for any offense defined in this section shall be commenced not later than six years following the commission of the offense.

2003 Acts, ch 145, §286  
Terminology change applied

**450.54 Sale to pay tax.**

Personal representatives or the director of revenue may sell as much of the property of the decedent as will enable them to pay the tax, in the same manner as provided by law for the sale of that property for the payment of debts of testators or intestates.

2003 Acts, ch 145, §286  
Terminology change applied

**450.55 Means to collect tax.**

The provisions of sections 422.26 and 422.30, pertaining to jeopardy assessments and distress warrants, apply to the unpaid tax, penalty, and interest imposed under this chapter. In addition the director of revenue may bring, or cause to be brought in the director's name of office, suit for the collection of the tax, penalty, interest, and costs, against the personal representative or against the

person entitled to property subject to the tax, or upon any bond given to secure payment of the tax, either jointly or severally, and upon obtaining judgment may cause execution to be issued as is provided by statute in other cases. The proceedings shall conform as nearly as may be to those for the collection of ordinary debt by suit.

2003 Acts, ch 145, §286  
Terminology change applied

**450.57 Tax deducted from legacy or collected.**

Every personal representative or referee having in charge or trust any property of an estate subject to tax which is made payable by the personal representative or referee, shall deduct the tax from the property or shall collect the tax from the legatee or person entitled to the property and pay the tax to the department of revenue, and the personal representative or referee shall not deliver any specific legacy or property subject to tax to any person until the personal representative or referee has collected the tax.

2003 Acts, ch 145, §286  
Terminology change applied

**450.58 Final settlement to show payment.**

The final settlement of the account of a personal representative shall not be accepted or allowed unless it shows, and the court finds, that all taxes imposed by this chapter upon any property or interest in property that are made payable by the personal representative and to be settled by the account, have been paid, and that the receipt of the department of revenue for the tax has been obtained as provided in section 450.64. Any order contravening this section is void.

2003 Acts, ch 145, §286  
Similar provision, §422.27  
Terminology change applied

**450.60 Director to represent state.**

The director of revenue shall, with all the rights and privileges of a party in interest, represent the state in any such proceedings.

2003 Acts, ch 145, §286  
Terminology change applied

**450.62 Legacies charged upon real estate.**

If legacies subject to tax are charged upon or payable out of real estate, the heir or devisee, before paying the tax, shall deduct the tax from it and pay it to the personal representative or department of revenue, and the tax shall remain a charge against and be a lien upon the real estate until it is paid. Payment of the tax shall be enforced by the personal representative or director of revenue as provided in this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

**450.64 Receipt showing payment.**

Upon payment of the tax in full the department of revenue shall forthwith transmit a receipt to the

person designated by the taxpayer signing the return showing payment of the tax. If the tax is not paid in full, a taxpayer whose tax liability is paid in full may request a receipt as to that taxpayer's share of the tax.

2003 Acts, ch 145, §286  
Terminology change applied

#### **450.65 Director to enforce collection.**

It shall be the duty of the director of revenue to enforce the collection of the delinquent inheritance tax, and the provisions of law with reference thereto.

2003 Acts, ch 145, §286  
Terminology change applied

#### **450.66 Investigation by director.**

The director of revenue may issue a citation to any person who the director may believe or has reason to believe has any knowledge or information concerning any property which the director believes or has reason to believe has been transferred by any person and as to which there is or may be a tax due to the state under the provisions of the inheritance tax laws of this state, and by such citation require such person to appear before the director or anyone designated by the director at the county seat of the county where said person resides and at a time to be designated in such citation, and testify under oath as to any fact or information within the person's knowledge touching the quantity, value, and description of any such property and the disposition thereof which may have been made by any person, and to produce and submit to the inspection of the director of revenue, any books, records, accounts, or documents in the possession of or under the control of any person so cited.

2003 Acts, ch 145, §286  
Terminology change applied

#### **450.67 Inspection of books, records, etc.**

The director of revenue may also inspect and examine the books, records, and accounts of any person, firm, or corporation, including the stock transfer books of any corporation, for the purpose of acquiring any information deemed necessary or desirable by the director for the proper enforcement of the inheritance tax laws of this state, and the collection of the full amount of the tax which may be due to the state thereunder.

2003 Acts, ch 145, §286  
Terminology change applied

#### **450.68 Information confidential.**

Any and all information acquired by the department of revenue under and by virtue of the means and methods provided for by sections 450.66 and 450.67 shall be deemed and held as confidential and shall not be disclosed by the department except so far as the same may be necessary for the enforcement and collection of the inheritance tax

provided for by the laws of this state; provided, however, that the director of revenue may authorize the examination of the information by other state officers, or, if a reciprocal arrangement exists, by tax officers of another state or of the federal government.

Federal tax returns, copies of returns, return information as defined in section 6103(b) of the Internal Revenue Code, and state inheritance tax returns, which are required to be filed with the department for the enforcement of the inheritance and estate tax laws of this state, shall be deemed and held as confidential by the department. However, such returns or return information, may be disclosed by the director to officers or employees of other state agencies, subject to the same confidentiality restrictions imposed on the officers and employees of the department.

It shall be unlawful for any present or former officer or employee of the state to disclose, except as provided by law, any return, return information or any other information deemed and held confidential under the provisions of this section. Any person violating the provisions of this section shall be guilty of a serious misdemeanor.

2003 Acts, ch 145, §286  
Terminology change applied

#### **450.69 Contempt.**

Refusal of any person to attend before the director of revenue in obedience to any such citation, or to testify, or produce any books, accounts, records, or documents in the person's possession or under the person's control and submit the same to inspection of the department of revenue when so required, may, upon application of the director of revenue, be punished by any district court in the same manner as if the proceedings were pending in such court.

2003 Acts, ch 145, §286  
Contempts, chapter 665  
Terminology change applied

#### **450.70 Fees.**

Witnesses so cited before the director of revenue, and any sheriff or other officer serving such citation shall receive the same fees as are allowed in civil actions; to be audited by the department of revenue and paid upon the certificate of the director of revenue out of funds not otherwise appropriated.

2003 Acts, ch 145, §286  
Sheriff's fees, §331.655; witness fees, §622.69  
Terminology change applied

#### **450.71 Proof of amount of tax due.**

Before issuing a receipt for the tax, the director of revenue may demand from personal representatives or beneficiaries information as necessary to verify the correctness of the amount of the tax and interest, and when this demand is made they shall send to the director of revenue certified copies of wills, deeds, or other papers, or of those parts of their reports as the director may demand, and

upon the refusal or neglect of the parties to comply with the demand of the director, the clerk of the court shall comply with the demand, and the expenses of making copies and transcripts shall be charged against the estate, as are other costs in probate, or the tax may be assessed without deducting liabilities for which the estate is liable.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.81 Duty of recorder.

Each county recorder shall, upon the filing in the recorder's office of a deed, bill of sale, or other transfer of any description which shows upon its face that it was made or intended to take effect in possession or enjoyment at or after the death of the maker of the instrument, forward to the department of revenue a copy of the instrument.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.84 Costs charged against estate — exceptions.

If an estate or interest in an estate passes so as to be liable to taxation under this chapter, all costs of the proceedings for the assessment of the tax are chargeable to the estate as other costs in probate proceedings and, to discharge the lien, all costs as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court. When a decision adverse to the state has been rendered, with an order that the state pay the costs, the clerk of the court in which the action was pending shall certify the amount of the costs to the director of revenue, who shall, if the costs are correctly certified and the case has been finally terminated and the tax, if any is due, has been paid, audit the claim and direct the department of administrative services to issue a warrant on the treasurer of state in payment of the costs.

2003 Acts, ch 145, §260  
Section amended

#### 450.87 Transfer of corporation stock.

If a foreign personal representative assigns or transfers any corporate stock or obligations in this state standing in the name of a decedent or in trust for a decedent liable to tax, the tax shall be paid to the department of revenue on or before the transfer; otherwise the corporation permitting its stock to be transferred is liable to pay the tax, interest, and costs, and the director of revenue shall enforce the payment of the tax, interest, and costs.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.88 Corporations to report transfers.

Every Iowa corporation organized for pecuniary profit shall, on July 1 of each year, by its proper officers under oath, make a full and correct report to the director of revenue of all transfers of its stocks made during the preceding year by any person who appears on the books of the corporation as the

owner of the stock, when the transfer is made to take effect at or after the death of the owner or transferor, and all transfers which are made by a personal representative, referee, or any person other than the owner or person in whose name the stocks appeared of record on the books of the corporation, prior to the transfer. This report shall show the name of the owner of the stocks and the owner's place of residence, the name of the person at whose request the stock was transferred, the person's place of residence and the authority by virtue of which the person acted in making the transfer, the name of the person to whom the transfer was made, and the residence of the person, together with other information the officers reporting have relating to estates of persons deceased who may have been owners of stock in the corporation. If it appears that any stock transferred is subject to tax under this chapter, and the tax has not been paid, the director of revenue shall notify the corporation in writing of its liability for the payment of the tax, and shall bring suit against the corporation as in other cases unless payment of the tax is made within sixty days from the date of notice.

This section does not apply if the lien has been released under section 450.7 or the director has issued a consent to transfer.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.91 Foreign estates — reciprocity — personal property. Repealed by 2003 Acts, ch 95, § 23, 24.

Repeal applies to estates of decedents dying on or after July 1, 2003; 2003 Acts, ch 95, §24

#### 450.93 Unknown heirs.

Whenever the heirs or persons entitled to any estate or any interest therein are unknown or their place of residence cannot with reasonable certainty be ascertained, a tax of five percent shall be paid to the department of revenue upon all such estates or interests, subject to refund as provided herein in other cases; provided, however, that if it be afterwards determined that any estate or interest passes to aliens, there shall be paid within sixty days after such determination and before delivery of such estate or property, an amount equal to the difference between five percent, the amount paid, and the amount which such person should pay under the provisions of this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450.94 Return — determination — appeal.

1. "Taxpayer" as used in this section means a person liable for the payment of tax as stated in section 450.5.

2. The taxpayer shall file an inheritance tax return on forms to be prescribed by the director of revenue on or before the last day of the ninth

month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department shall notify the taxpayer of the total amount due together with any penalty and interest which shall be a sum certain if paid on or before the last day of the month in which the notice is dated, or on or before the last day of the following month if the notice is dated after the twentieth day of a month and before the first day of the following month.

3. If the amount paid is greater than the correct tax, penalty, and interest due, the department shall refund the excess with interest. Interest shall be computed at the rate in effect under section 421.7, under the rules prescribed by the director counting each fraction of a month as an entire month and the interest shall begin to accrue on the first day of the second calendar month following the date of payment or on the date the return was due to be filed or was filed, whichever is the latest. However, the director shall not allow a claim for refund or credit that has not been filed with the department within three years after the tax payment upon which a refund or credit is claimed became due, or one year after the tax payment was made, whichever time is later. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest due or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing, and upon the hearing the director shall determine the correct tax, penalty, and interest or refund due, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 450.59 within sixty days after the date of the notice of the director's decision.

4. Payments received must be credited first to the penalty and interest accrued and then to the tax due.

5. The amount of tax imposed under this chapter shall be assessed according to one of the following:

*a.* Within three years after the return is filed

with respect to property reported on the final inheritance tax return.

*b.* At any time after the tax became due with respect to property not reported on the final inheritance tax return, but not later than three years after the omitted property is reported to the department on an amended return or on the final inheritance tax return if one was not previously filed.

In addition to the applicable periods of limitations for examination and determination specified in paragraphs "a" and "b", the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the federal estate, gift, or generation skipping transfer tax. In order to begin the running of the six months assessment period, the notice shall be in writing in form sufficient to inform the department of the final disposition of any matter with respect to the federal estate, gift, or generation skipping transfer tax, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

2003 Acts, ch 145, §286  
1999 amendments to subsections 2 and 3 are effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §48, 89  
Terminology change applied

#### **450.97 Joint owners of bank accounts — duty to notify department of revenue.**

No person, bank, credit union, or savings and loan association shall permit the withdrawal of funds from a joint account by a surviving joint owner without first notifying the department of revenue of the balance in such account at the date of decedent's death and the name and address of the surviving joint owner. Such notification may be accomplished by mailing the required information to the department of revenue and withdrawal or payment of such funds may be made immediately thereafter as long as such mailing is accomplished by ordinary mail no later than the date of withdrawal or earlier if knowledge of the decedent's death is known by the depository. A person, bank, credit union, or savings and loan association shall only be liable for any inheritance tax due by the surviving joint owner for willful failure to report to the department of revenue as herein provided.

2003 Acts, ch 145, §286  
Terminology change applied

**DEPARTMENT OF REVENUE  
MORTALITY TABLES**

**TABLES FOR LIFE ESTATES  
AND REMAINDERS**

**(for estates of decedents dying  
on or after January 1, 1986)**

**1980 CSO-D MORTALITY TABLE  
BASED ON BLENDING  
50% MALE-50% FEMALE  
(PIVOTAL AGE 45)  
AGE NEAREST BIRTHDAY  
4% INTEREST**

The two factors across the page equal one hundred percent. Multiply the corpus of the estate by the first factor to obtain value of the life estate.

Use the second factor to obtain the remainder interest if the tax is to be paid at the time of probate, or to determine if there would be any tax due.

<b>Age of Life Tenant</b>	<b>Life Estate</b>	<b>Remainder</b>
0	.91904	.08096
1	.91919	.08081
2	.91689	.08311
3	.91443	.08557
4	.91186	.08814
5	.90914	.09086
6	.90629	.09371
7	.90329	.09671
8	.90014	.09986
9	.89683	.10317
10	.89338	.10662
11	.88977	.11023
12	.88603	.11397
13	.88219	.11781
14	.87328	.12172
15	.87429	.12571
16	.87027	.12973
17	.86617	.13383
18	.86200	.13800
19	.85773	.14227
20	.85333	.14667
21	.84878	.15122
22	.84404	.15596
23	.83912	.16088
24	.83399	.16601
25	.82865	.17135
26	.82306	.17694
27	.81724	.18276
28	.81117	.18883
29	.80487	.19513
30	.79833	.20167
31	.79155	.20845
32	.78451	.21549
33	.77723	.22277
34	.76970	.23030

35	.76192	.23808
36	.75389	.24611
37	.74562	.25438
38	.73710	.26290
39	.72836	.27164
40	.71940	.28060
41	.71022	.28978
42	.70083	.29917
43	.69122	.30878
44	.68138	.31862
45	.67131	.32869
46	.66101	.33899
47	.65046	.34954
48	.63966	.36034
49	.62860	.37140
50	.61730	.38270
51	.60576	.39424
52	.59399	.40601
53	.58199	.41801
54	.56979	.43021
55	.55740	.44260
56	.54483	.45517
57	.53206	.46794
58	.51906	.48094
59	.50582	.49418
60	.49234	.50766
61	.47862	.52138
62	.46471	.53529
63	.45064	.54936
64	.43647	.56353
65	.42226	.57774
66	.40801	.59199
67	.39372	.60628
68	.37936	.62064
69	.36489	.63511
70	.35031	.64969
71	.33565	.66435
72	.32098	.67902
73	.30639	.69361
74	.29199	.70801
75	.27787	.72213
76	.26405	.73595
77	.25053	.74947
78	.23727	.76273
79	.22422	.77578
80	.21134	.78866
81	.19866	.80134
82	.18625	.81375
83	.17419	.82581
84	.16260	.83740
85	.15151	.84849
86	.14093	.85907
87	.13081	.86919
88	.12108	.87892
89	.11163	.88837
90	.10235	.89765
91	.09309	.90691
92	.08368	.91632
93	.07390	.92610
94	.06350	.93650
95	.05221	.94779
96	.03994	.96006
97	.02678	.97322
98	.01321	.98679
99	.00000	1.00000

**TABLE FOR AN ANNUITY FOR LIFE**

**(for estates of decedents dying  
on or after January 1, 1986)**

1980 CSO-D MORTALITY TABLE  
BASED ON BLENDING  
50% MALE-50% FEMALE  
(PIVOTAL AGE 45)  
AGE NEAREST BIRTHDAY  
4% INTEREST

To find the present value of an Annuity or a given amount (specified sum) for life, multiply the Annuity by the Annuity Factor opposite the age at the nearest birthday of the person receiving the Annuity.

Age In Years	Life Expectancy In Years	Annuities \$1.00
0	73.30	22.976
1	72.56	22.980
2	71.63	22.922
3	70.70	22.861
4	69.76	22.796
5	68.82	22.728
6	67.87	22.657
7	66.93	22.582
8	65.98	22.504
9	65.03	22.421
10	64.07	22.334
11	63.12	22.244
12	62.16	22.151
13	61.21	22.055
14	60.27	21.957
15	59.32	21.857
16	58.39	21.757
17	57.46	21.654
18	56.53	21.550
19	55.61	21.443
20	54.69	21.333
21	53.77	21.219
22	52.85	21.101
23	51.93	20.978
24	51.01	20.850
25	50.08	20.716
26	49.15	20.576
27	48.23	20.431
28	47.30	20.279
29	46.36	20.122
30	45.43	19.958
31	44.50	19.789
32	43.57	19.613
33	42.64	19.431
34	41.72	19.242
35	40.79	19.048
36	39.87	18.847
37	38.94	18.640
38	38.03	18.428

39	37.11	18.209
40	36.21	17.985
41	35.30	17.756
42	34.41	17.521
43	33.52	17.280
44	32.63	17.035
45	31.75	16.783
46	30.88	16.525
47	30.01	16.261
48	29.15	15.991
49	28.30	15.715
50	27.45	15.433
51	26.61	15.144
52	25.77	14.850
53	24.94	14.550
54	24.13	14.245
55	23.32	13.935
56	22.52	13.621
57	21.73	13.301
58	20.95	12.976
59	20.18	12.645
60	19.41	12.308
61	18.66	11.966
62	17.91	11.618
63	17.18	11.266
64	16.45	10.912
65	15.75	10.557
66	15.05	10.200
67	14.38	9.843
68	13.71	9.484
69	13.06	9.122
70	12.42	8.758
71	11.79	8.391
72	11.17	8.024
73	10.57	7.660
74	10.00	7.300
75	9.44	6.947
76	8.91	6.601
77	8.39	6.263
78	7.90	5.932
79	7.42	5.605
80	6.96	5.283
81	6.52	4.967
82	6.09	4.656
83	5.68	4.355
84	5.29	4.065
85	4.93	3.788
86	4.58	3.523
87	4.26	3.270
88	3.95	3.027
89	3.66	2.791
90	3.37	2.559
91	3.09	2.327
92	2.81	2.092
93	2.52	1.848
94	2.22	1.588
95	1.90	1.305
96	1.56	.999
97	1.20	.670
98	.84	.330
99	.50	.000

Tables not amended; headnote revised

## CHAPTER 450A

### GENERATION SKIPPING TRANSFER TAX

#### 450A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Department*” means the department of revenue.
2. “*Director*” means the director of the department of revenue.
3. “*Direct skip*” means the same as the term is defined in section 2612(c) of the Internal Revenue Code.
4. “*Generation skipping transfer*” means the generation skipping transfer as defined in section 2611 of the Internal Revenue Code.
5. “*Internal Revenue Code*” means the same as the term is defined in section 422.3.

6. “*Taxable distribution*” means the same as the term is defined in section 2612(b) of the Internal Revenue Code.

7. “*Taxable termination*” means the same as the term is defined in section 2612(a) of the Internal Revenue Code.

8. “*Transferee*” means a person receiving property in a generation skipping transfer.

9. “*Transferor*”, “*trust*”, “*trustee*” and “*interest*” mean the same as those respective terms are defined in section 2652 of the Internal Revenue Code.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 450B

### QUALIFIED USE INHERITANCE TAX

#### 450B.2 Alternate election of value for qualified use.

Notwithstanding section 450.37, the value of qualified real property for the purpose of the tax imposed under chapter 450 may, at the election of the taxpayer, be its value for the use under which it qualifies as prescribed by section 2032A of the Internal Revenue Code. A taxpayer may make an election under this section only if all of the following conditions are met:

1. An election for federal estate tax purposes was made with regard to the qualified real property under section 2032A of the Internal Revenue Code.
2. All persons who signed the agreement referred to in section 2032A(d)(2) of the Internal Revenue Code make the election under this section and sign an agreement with the department of revenue consenting to the application of section 450B.3 with respect to the qualified real property.
3. The total decrease in the value of the qualified real property as a result of the election under this section does not exceed the dollar limitation specified in section 2032A(a)(2) of the Internal Revenue Code.

The election under this section shall be made by the taxpayer in the manner as the director of revenue may prescribe by rule. The value for the qualified use under this section shall be the value as determined and accepted for federal estate tax purposes.

The definitions and special rules specified in section 2032A(e) of the Internal Revenue Code shall apply with respect to qualified real property

for which an election was made under this section except that rules shall be prescribed by the director of revenue in lieu of the regulations promulgated by the secretary of treasury.

The director shall prescribe regulations setting forth the application of this chapter in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business within the meaning of section 6166(b)(1) of the Internal Revenue Code. Such regulations shall conform as nearly as possible with the regulations promulgated by the United States secretary of treasury in respect to such interests.

2003 Acts, ch 145, §286  
Terminology change applied

#### 450B.3 Additional inheritance tax applicable.

There is imposed upon the qualified heir an additional inheritance tax if, within ten years after the decedent’s death and before the death of the qualified heir, the qualified heir disposes of, other than to a member of the family, any interest in qualified real property for which an election under section 450B.2 was made or ceases to use for the qualified use the qualified real property for which an election under section 450B.2 was made as prescribed in section 2032A(c) of the Internal Revenue Code. The additional inheritance tax shall be the amount computed under section 450B.5 and shall be due six months after the date of the disposition or cessation of qualified use referred to in this section. The amount of the addi-

tional inheritance tax shall accrue interest at the rate of ten percent per year from nine months after the decedent's death to the due date of the tax. The tax shall be paid to the department of revenue and shall be deposited into the general fund of the state. Taxes not paid within the time prescribed in this section shall draw interest at the rate of ten percent per annum until paid. There shall not be an additional inheritance tax if the disposition or cessation occurs ten years or more after the decedent's death.

2003 Acts, ch 145, §286  
Terminology change applied

#### **450B.6 Lien of tax.**

A lien is created in favor of the state for the additional inheritance tax which may be imposed by section 450B.3 on the qualified real property for which an election has been made under section 450B.2. The lien created by this section shall continue until the tax has been paid or ten years after the tax is due, whichever date occurs first. However, the lien shall expire ten years after the decedent's death if the qualified heir has not disposed of or ceased to use for the qualified use the qualified real property which would impose the tax under section 450B.3. The department of revenue may release the lien prior to the payment of the tax due, if any, if adequate security for payment of the

tax is given.

Unless the lien has been perfected by recording in the office of the recorder in the county where the estate is probated, a transfer of the qualified real property to a bona fide purchaser for value shall divest the property of the lien. If the lien is perfected by recording, the rights of the state under the lien have priority over all subsequent mortgagees, purchasers or judgment creditors. The lien may be foreclosed by the director of revenue in the same manner as is now prescribed for the foreclosure of real estate mortgages and upon judgment, execution shall be issued to sell as much of the property necessary to satisfy the tax, interest and costs due.

2003 Acts, ch 145, §286  
Terminology change applied

#### **450B.7 Other inheritance tax laws applicable.**

All the provisions of chapter 450 with respect to the payment, collection and administration of the inheritance tax imposed under that chapter, including the confidentiality of the tax return, are applicable to the provisions of this chapter to the extent consistent. The director of revenue shall adopt and promulgate all rules necessary for the enforcement and administration of this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 451

### IOWA ESTATE TAX

#### **451.5 Duty of personal representative.**

The personal representative of a decedent whose estate may be subject to the tax imposed by this chapter, shall file in the office of the director of revenue, on or before the last day of the ninth month after the death of the decedent, duplicate copies of the estate tax return provided for in the federal estate tax Act, and in like manner, duplicate copies of all supplemental or amended returns. The values of all items included in the gross estate, as shown by those returns, or supplemental or amended returns, shall be considered as the values of those items for the purposes of this chapter. In case of revaluation or correction of valuation of any of those items, either by supplemental or amended returns, or by the federal commissioner of internal revenue, or by an appellate tribunal by which the value is finally determined, the corrected values shall be considered as the values of those items for the purposes of this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

#### **451.6 Payment of tax.**

The tax imposed by this chapter shall be paid by

the personal representative to the department of revenue on or before the last day of the ninth month after the death of the decedent.

2003 Acts, ch 145, §286  
Terminology change applied

#### **451.9 Appeal.**

If any claim for refund or credit, or any part thereof, shall be denied or disallowed by the commissioner of internal revenue, the personal representative, the director of revenue, or any person having an interest in said estate which may be adversely affected by such denial or disallowance, may apply to the judge of the court having jurisdiction of such estate, for an order directing such personal representative to take, perfect, and prosecute an appeal from the decision of the commissioner of internal revenue to such court or tribunal as may have jurisdiction of such matter, and, upon the granting of such order, the director of revenue may assist in the prosecution of such appeal. The judge of the court granting such order may make a reasonable allowance for attorney fees for the prosecution of such appeal, and direct the manner in which the same, together with any other costs

or expenses which may be allowed by said court in connection therewith, shall be paid.

2003 Acts, ch 145, §286  
Terminology change applied

#### 451.11 Effect of disallowance.

If any claim for credit or refund or any part thereof, shall be finally determined adversely to such personal representative, for any reason other than lack of diligence or other failure of duty on the personal representative's part, the amount so denied or disallowed, or so much thereof as shall have been paid to the department of revenue under the provisions of this chapter, shall, upon a claim duly filed with, and proper showing made to, the director of revenue, be refunded by the department of revenue to such personal representative, and shall inure to the benefit of such estate.

2003 Acts, ch 145, §286  
Terminology change applied

#### 451.12 Applicable statutes — penalties.

All the provisions of chapter 450 with respect to

the lien provisions of section 450.7, and the determination, imposition, payment, and collection of the tax imposed under that chapter, including penalty and interest upon delinquent taxes and the confidentiality of the tax return, are applicable to this chapter, except as they are in conflict with this chapter. The exceptions to the lien provisions found in section 450.7 do not apply to this chapter. The penalty provisions set out in section 450.53 shall apply to a person in possession of assets to be reported for purposes of taxation who willfully makes a false or fraudulent return or willfully fails to pay the tax, supply the information, make, sign, or file the required return within the time required by law or a person who willfully attempts in any manner to evade taxes imposed by this chapter or avoid payment of the tax. The director of revenue shall adopt rules necessary for the enforcement of this chapter.

2003 Acts, ch 145, §286  
1999 amendment is effective July 1, 1999, for estates of decedents dying on or after that date; 99 Acts, ch 151, §49, 89  
Terminology change applied

## CHAPTER 452A

### MOTOR FUEL AND SPECIAL FUEL TAXES

#### 452A.2 Definitions.

As employed in this division:

1. "*Aviation gasoline*" means any gasoline which is capable of being used for propelling aircraft, which is invoiced as aviation gasoline or is received, sold, stored, or withdrawn from storage by any person for the purpose of propelling aircraft. Motor fuel capable of being used for propelling motor vehicles is not aviation gasoline.

2. "*Biofuel*" means an oxygenated product derived from soybean oil, vegetable oil, or animal fats that can be used in diesel engines or aircraft. Biofuel may be a blend with diesel fuel or it may be one hundred percent soybean oil, vegetable oil, or animal fats. Any biofuel product is a special fuel.

3. "*Blender*" means a person who owns and blends alcohol with gasoline to produce ethanol blended gasoline and blends the product at a non-terminal location. The blender is not restricted to blending alcohol with gasoline. Products blended with gasoline other than grain alcohol are taxed as gasoline. "*Blender*" also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. This blend is taxed as a special fuel.

4. "*Common carrier*" or "*contract carrier*" means a person involved in the movement of motor fuel or special fuel from the terminal or movement of the motor fuel or special fuel imported into this state, who is not an owner of the motor fuel or special fuel.

5. "*Dealer*" means a person, other than a distributor, who engages in the business of selling or distributing motor fuel or special fuel to the end user in this state.

6. "*Denatured ethanol*" means ethanol that is to be blended with gasoline, has been derived from cereal grains, complies with American society for testing and materials designation D-4806-95b, and may be denatured only as specified in Code of Federal Regulations, Titles 20, 21, and 27. Alcohol and denatured ethanol have the same meaning in this chapter.

7. "*Department*" means the department of revenue.

8. "*Director*" means the director of revenue.

9. "*Distributor*" means a person who acquires tax paid motor fuel or special fuel from a supplier, restrictive supplier or importer, or another distributor for subsequent sale at wholesale and distribution by tank cars or tank trucks or both. The department may require that the distributor be registered to have terminal purchase rights.

10. "*Eligible purchaser*" means a distributor of motor fuel or special fuel or an end user of special fuel who has purchased a minimum of two hundred forty thousand gallons of special fuel each year in the preceding two years. Eligible purchasers who elect to make delayed payments to a licensed supplier shall use electronic funds transfer. Additional requirements for qualifying as an eligible purchaser shall be established by rule.

11. "*Ethanol blended gasoline*" means motor fuel containing at least ten percent alcohol dis-

tilled from cereal grains.

12. “*Export*” means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

13. “*Exporter*” means a person or other entity who acquires fuel in this state for export to another state.

14. “*Import*” means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

15. “*Importer*” means a person who imports motor fuel or undyed special fuel in bulk or transport load into the state by truck, rail, or barge.

16. “*Licensed compressed natural gas and liquefied petroleum gas dealer*” means a person in the business of handling untaxed compressed natural gas or liquefied petroleum gas who delivers any part of the fuel into a fuel supply tank of any motor vehicle.

17. “*Licensed compressed natural gas and liquefied petroleum gas user*” means a person licensed by the department who dispenses compressed natural gas or liquefied petroleum gas, upon which the special fuel tax has not been previously paid, for highway use from fuel sources owned and controlled by the person into the fuel supply tank of a motor vehicle, or commercial vehicle owned or controlled by the person.

18. “*Licensee*” means a person holding an uncanceled supplier’s, restrictive supplier’s, importer’s, exporter’s, dealer’s, user’s, or blender’s license issued by the department under this division or any prior motor fuel tax law or any other person who possesses fuel for which the tax has not been paid.

19. “*Motor fuel*” means both of the following:

a. All products commonly or commercially known or sold as gasoline, including ethanol blended gasoline, casinghead, and absorption or natural gasoline, regardless of the products’ classifications or uses, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.

b. Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles which, when subjected to distillation of gasoline, naphtha, kerosene and similar petroleum products (American society for testing and materials designation D-86), shows not less than ten per centum distilled (recovered) below three hundred forty-seven degrees Fahrenheit (one hundred seventy-five degrees Centigrade) and not less than ninety-five per centum distilled (recovered) below four hundred sixty-four degrees Fahrenheit (two hundred forty degrees Centigrade).

“*Motor fuel*” does not include special fuel, and does not include liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, or naphthas and solvents unless the liquefied gases or

naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph “b”, in which event the resulting product shall be deemed to be motor fuel.

20. “*Naphthas and solvents*” shall mean and include those liquids which come within the distillation specifications for motor fuel set out under subsection 19, paragraph “b”, but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles.

21. “*Nonterminal storage facility*” means a facility where motor fuel or special fuel, other than liquefied petroleum gas, is stored that is not supplied by a pipeline or a marine vessel. “*Nonterminal storage facility*” includes a facility that manufactures products such as alcohol, biofuel, blend stocks, or additives which may be used as motor fuel or special fuel, other than liquefied petroleum gas, for operating motor vehicles or aircraft.

22. “*Racing fuel*” means leaded gasoline of one hundred ten octane or more that does not meet American society for testing and materials designation D-4814 for gasoline and is sold in bulk for use in nonregistered motor vehicles.

23. “*Regional transit system*” means regional transit system as defined in section 452A.57, subsection 11.

24. “*Restrictive supplier*” means a person who imports motor fuel or undyed special fuel into this state in tank wagons or in small tanks not otherwise licensed as an importer.

25. “*Special fuel*” means fuel oils and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles or turbine-powered aircraft, and includes any substance used for that purpose, except that it does not include motor fuel. Kerosene shall not be considered to be a special fuel, unless blended with other special fuels for use in a motor vehicle with a diesel engine.

26. “*Supplier*” means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. § 4101 for tax-free transactions in gasoline, a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, alcohol or alcohol derivative substances, or a person who produces, manufactures, or refines motor fuel or special fuel in this state. “*Supplier*” includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. “*Supplier*” does not include a retail dealer or wholesaler who merely blends alcohol with gasoline before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

27. “*Terminal*” means a motor fuel or special

fuel storage and distribution facility that is supplied by a pipeline or a marine vessel and from which the fuel may be removed at a rack. “Terminal” does not include a facility at which motor fuel or special fuel blend stocks and additives are used in the manufacture of products other than motor fuel or special fuel and from which no motor fuel or special fuel is removed.

28. “Terminal operator” means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If co-venturers own a terminal, “terminal operator” means the person who is appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

29. “Urban transit system” means Iowa urban transit system as defined in section 452A.57, subsection 6.

30. “Use” means the receipt, delivery, or placing of liquefied petroleum gas by a licensed liquefied petroleum gas user into a fuel supply tank of a motor vehicle while the vehicle is in the state, except that with respect to natural gas used as a special fuel, “use” means the receipt, delivery, or placing of the natural gas into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle.

31. “Withdrawn from terminal” means physical movement from a supplier to a distributor or eligible end user and includes an importer going out of state and obtaining fuel from a terminal and bringing the fuel into the state, and a restrictive supplier bringing fuel into the state even though not purchased directly from a terminal.

2003 Acts, ch 145, §286; 2003 Acts, ch 179, §129

Additional definitions, see §452A.57

Terminology change applied

NEW subsection 21 and former subsections 21 – 30 renumbered as 22

– 31

#### 452A.17 Refunds.

1. A person who uses motor fuel or undyed special fuel for any of the nontaxable purposes listed in this subsection, and who has paid the motor fuel or special fuel tax either directly to the department or by having the tax added to the price of the fuel, and who has a refund permit, upon presentation to and approval by the department of a claim for refund, shall be reimbursed and repaid the amount of the tax which the claimant has paid on the gallonage so used, except that the amount of a refund payable under this division may be applied by the department against any tax liability outstanding on the books of the department against the claimant.

a. The refund is allowable for motor fuel or undyed special fuel sold directly to and used for the following:

(1) The United States or any agency or instrumentality of the United States or where collection of the tax would be prohibited by the Constitution of the United States or the laws of the United

States or by the Constitution of the State of Iowa.

(2) An Iowa urban transit system which is used for a purpose specified in section 452A.57, subsection 6.

(3) A regional transit system, the state, any of its agencies, any political subdivision of the state, or any benefited fire district which is used for a purpose specified in section 452A.57, subsection 11, or for public purposes, including fuel sold for the transportation of pupils of approved public and nonpublic schools by a carrier who contracts with the public school under section 285.5.

(4) Fuel used in unlicensed vehicles, stationary engines, implements used in agricultural production, and machinery and equipment used for nonhighway purposes.

(5) Fuel used for producing denatured alcohol.

(6) Fuel used for idle time, power takeoffs, reefer units, pumping credits, and transport diversions, fuel lost through casualty, exports by distributors, and blending errors for special fuel. The department shall adopt rules setting forth specific requirements relating to refunds for idle time, power takeoffs, reefer units, pumping credits, and transport diversions, fuel lost through casualty, and blending errors for special fuel.

(7) A bona fide commercial fisher, licensed and operating under an owner’s certificate for commercial fishing gear issued pursuant to section 482.4.

(8) For motor fuel or undyed special fuel placed in motor vehicles and used, other than on a public highway, in the extraction and processing of natural deposits, without regard to whether the motor vehicle was registered under section 321.18. An applicant under this subparagraph shall maintain adequate records for a period of three years beyond the date of the claim.

(9) Undyed special fuel used in watercraft.

(10) Racing fuel.

b. A claim for refund is subject to the following conditions:

(1) The claim shall be on a form prescribed by the department and be certified by the claimant under penalty for false certificate.

(2) The claim shall include proof as prescribed by the department showing the purchase of the motor fuel or undyed special fuel on which a refund is claimed.

(3) An invoice shall not be acceptable in support of a claim for refund unless it is a separate serially numbered invoice covering no more than one purchase of motor fuel or undyed special fuel, prepared by the seller on a form approved by the department which will prevent erasure or alteration and unless it is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of fuel, the gallonage in figures, the per gallon price of the motor fuel or undyed special fuel, the total purchase price including the Iowa motor fuel or undyed special fuel tax and that the total pur-

chase price including tax has been paid. However, with respect to refund invoices made on a billing machine, the department may waive any of the requirements of this subparagraph.

(4) The claim shall state the gallonage of motor fuel that was used or will be used by the claimant other than in aircraft, watercraft, or to propel motor vehicles and the gallonage of undyed special fuel that was or will be used by the claimant other than in aircraft or to propel motor vehicles, the manner in which the motor fuel or undyed special fuel was used or will be used, and the equipment in which it was used or will be used.

(5) The claim shall state whether the claimant used fuel for aircraft, watercraft, or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the motor fuel on which the refund is claimed or whether the claimant used fuel for aircraft or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the undyed special fuel on which the refund is claimed.

(6) If an original invoice is lost or destroyed the department may in its discretion accept a copy identified and certified by the seller as being a true copy of the original.

(7) Claim shall be made by and the amount of the refund shall be paid to the person who purchased the motor fuel or undyed special fuel as shown in the supporting invoice unless that person designates another person as an agent for purposes of filing and receiving the refund for idle time, power takeoff, reefer units, pumping credits, and transport diversions. A governmental agency may be designated as an agent for another governmental agency for purposes of filing and receiving the refund under this section.

(8) In order to verify the validity of a claim for refund the department shall have the right to require the claimant to furnish such additional proof of validity as the department may determine and to examine the books and records of the claimant. Failure of a claimant to furnish the claimant's books and records for examination shall constitute a waiver of all rights to refund related to the transaction in question.

2. In lieu of the refund provided in this section, a person may receive an income tax credit as provided in chapter 422, division IX, but only as to motor fuel not used in motor vehicles, aircraft, or watercraft or as to undyed special fuel not used in motor vehicles or aircraft.

3. *a.* A claim for refund shall not be allowed unless the claimant has accumulated sixty dollars in credits for one calendar year. A claim for refund may be filed anytime the sixty dollar minimum has been met within the calendar year. If the sixty dollar minimum has not been met in the calendar year, the credit shall be claimed on the claimant's income tax return unless the taxpayer is not required to file an income tax return in which case

a refund shall be allowed. Once the sixty dollar minimum has been met, the claim for refund must be filed within three years following the end of the month in which the earliest invoice is dated.

*b.* A refund shall not be paid with respect to any motor fuel taken out of this state in supply tanks of watercraft, aircraft, or motor vehicles or with respect to any undyed special fuel taken out of this state in supply tanks of aircraft or motor vehicles.

2003 Acts, ch 50, §1

See §452A.81

Subsection 1, paragraph a, subparagraph (3) amended

#### 452A.57 Definitions.

1. “*Appropriate state agency*” or “*state agency*” means the department of revenue or the state department of transportation, whichever is responsible for control, maintenance, or supervision of the power, requirement, or duty referred to in the provision. The department of revenue shall administer the provisions of division I of this chapter, and the state department of transportation shall administer the provisions of division III. The state department of transportation shall have enforcement authority for division I as agreed upon by the director of revenue and the director of transportation.

2. “*Carrier*” means and includes any person who operates or causes to be operated any commercial motor vehicle on any public highway in this state.

3. “*Commercial motor vehicle*” means a passenger vehicle that has seats for more than nine passengers in addition to the driver, any road tractor, any truck tractor, or any truck having two or more axles which passenger vehicle, road tractor, truck tractor, or truck is propelled on the public highways by either motor fuel or special fuel. “*Commercial motor vehicle*” does not include a motor truck with a combined gross weight of less than twenty-six thousand pounds, operated as a part of an identifiable one-way fleet and which is leased for less than thirty days to a lessee for the purpose of moving property which is not owned by the lessor.

4. “*Department of revenue*” includes the director of revenue or the director's authorized representative.

5. “*Fuel taxes*” means the per gallon excise taxes imposed under divisions I and III of this chapter with respect to motor fuel and undyed special fuel.

6. An “*Iowa urban transit system*” is a system whereby motor buses are operated primarily upon the streets of cities for the transportation of passengers for an established fare and which accepts passengers who present themselves for transportation without discrimination up to the limit of the capacity of each motor bus. “*Iowa urban transit system*” also includes motor buses operated upon the streets of adjoining cities, whether inter-

state or intrastate, for the transportation of passengers without discrimination up to the limit of the capacity of the motor bus. Privately chartered bus services, motor carriers and interurban carriers subject to the jurisdiction of the state department of transportation, school bus services and taxicabs shall not be construed to be an urban transit system nor a part of any such system.

7. *“Mobile machinery and equipment”* means vehicles self-propelled by an internal combustion engine but not designed or used primarily for the transportation of persons or property on public highways and only incidentally operated or moved over a highway including but not limited to corn shellers, truck-mounted feed grinders, roller mills, ditch digging apparatus, power shovels, drag lines, earth moving equipment and machinery, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers and earth moving scrapers. However, *“mobile machinery and equipment”* does not include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property on public highways and to which machinery, such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus or lime spreaders, has been attached.

8. *“Motor vehicle”* shall mean and include all vehicles (except those operated on rails) which are propelled by internal combustion engines and are of such design as to permit their mobile use on public highways for transporting persons or property. A farm tractor while operated on a farm or for the purpose of hauling farm machinery, equipment or produce shall not be deemed to be a motor vehicle. *“Motor vehicle”* shall not include *“mobile machinery and equipment”* as defined in this section.

9. *“Person”* shall mean and include natural persons, partnerships, firms, associations, corporations, representatives appointed by any court and political subdivisions of this state and use of the singular shall include the plural.

10. *“Public highways”* shall mean and include any way or place available to the public for purposes of vehicular travel notwithstanding that it is temporarily closed.

11. *“Regional transit system”* means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one exist-

ing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride basis shall not be construed to be a regional transit system.

2003 Acts, ch 145, §286  
See §452A.2  
Terminology change applied

#### **452A.59 Administrative rules.**

The department of revenue and the state department of transportation are authorized and empowered to adopt rules under chapter 17A, relating to the administration and enforcement of this chapter as deemed necessary by the departments.

2003 Acts, ch 145, §286  
Terminology change applied

#### **452A.60 Forms of report, refund claim, and records.**

The department of revenue or the state department of transportation shall prescribe and furnish all forms, as applicable, upon which reports, returns, and applications shall be made and claims for refund presented under this chapter and may prescribe forms of record to be kept by suppliers, restrictive suppliers, importers, exporters, blenders, common carriers, contract carriers, licensed compressed natural gas and liquefied petroleum gas dealers and users, terminal operators, nonterminal storage facility operations, and interstate commercial motor vehicle operators.

The department of revenue or the state department of transportation may approve a form of record, other than a prescribed form, if the required information is presented in a reasonably accessible form which substantially complies with the prescribed form.

2003 Acts, ch 145, §286  
Terminology change applied

#### **452A.61 Timely filing of reports and returns — extension.**

The reports, returns, and remittances required under this chapter shall be deemed filed within the required time if postpaid, properly addressed, and postmarked on or before midnight of the day on which due and payable. If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date.

The department of revenue or the state department of transportation upon application may grant a reasonable extension of time for the filing of any required report, return, or tax payment.

2003 Acts, ch 145, §286  
Terminology change applied

#### **452A.62 Inspection of records.**

The department of revenue or the state department of transportation, whichever is applicable, is

hereby given the authority within the time prescribed for keeping records to do the following:

1. To examine, during the usual business hours of the day, the records, books, papers, receipts, invoices, storage tanks, and any other equipment of any of the following:

*a.* A distributor, supplier, restrictive supplier, importer, exporter, blender, terminal operator, common carrier, or contract carrier, pertaining to motor fuel or undyed special fuel withdrawn from a terminal or brought into this state.

*b.* A licensed compressed natural gas or liquefied petroleum gas dealer, user, or person supplying compressed natural gas or liquefied petroleum gas to a licensed compressed natural gas or liquefied petroleum gas dealer or user.

*c.* An interstate operator of motor vehicles to verify the truth and accuracy of any statement, report, or return, or to ascertain whether or not the taxes imposed by this chapter have been paid.

*d.* Any person selling fuels that can be used for highway use.

2. To examine the records, books, papers, receipts, and invoices of any distributor, supplier, restrictive supplier, importer, blender, exporter, terminal operator, licensed compressed natural gas or liquefied petroleum gas dealer or user, or any other person who possesses fuel upon which the tax has not been paid to determine financial responsibility for the payment of the taxes imposed by this chapter.

If a person under this section refuses access to pertinent records, books, papers, receipts, invoices, storage tanks, or any other equipment, the appropriate state agency shall certify the names and facts to any court of competent jurisdiction, and the court shall enter an order to enforce this chapter.

2003 Acts, ch 145, §286  
Terminology change applied

#### **452A.63 Information confidential.**

All information obtained by the department of revenue or the state department of transportation from the examining of reports, returns, or records required to be filed or kept under this chapter shall be treated as confidential and shall not be divulged except to other state officers, a member or members of the general assembly, or any duly appointed committee of either or both houses of the general assembly, or to a representative of the state having some responsibility in connection with the collection of the taxes imposed or in proceedings brought under this chapter. The appropriate state agency may make available to the public on or before forty-five days following the last day of the month in which the tax is required to be paid, the names of suppliers, restrictive suppliers, and importers and as to each of them the total gallons of motor fuel, undyed special fuel, and ethanol-blended gasoline withdrawn from terminals or imported into the state during that month.

The department of revenue or the state department of transportation, upon request of officials entrusted with enforcement of the motor vehicle fuel tax laws of the federal government or any other state, may forward to these officials any pertinent information which the appropriate state agency may have relative to motor fuel and special fuel, provided the officials of the other state furnish like information.

Any person violating this section, and disclosing the contents of any records, returns, or reports required to be kept or made under this chapter, except as otherwise provided, shall be guilty of a simple misdemeanor.

2003 Acts, ch 145, §286  
Terminology change applied

#### **452A.66 Statutes applicable to motor vehicle fuel tax.**

The appropriate state agency shall administer the taxes imposed by this chapter in the same manner as and subject to section 422.25, subsection 4 and section 422.52, subsection 3.

All the provisions of section 422.26 shall apply in respect to the taxes, penalties, interest, and costs imposed by this chapter excepting that as applied to any tax imposed by this chapter, the lien therein provided shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as therein provided. The requirements for recording shall, as applied to the tax imposed by this chapter, apply only to the liens upon real property. When requested to do so by any person from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director shall, upon being satisfied that such a situation exists, inform such person as to the amount of unpaid taxes due by such taxpayer under the provisions of this chapter. The giving of such information under such circumstances shall not be deemed a violation of section 452A.63 as applied to this chapter.

For future amendments to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §196, 205

Section not amended; footnote added

#### **452A.68 Power of department of revenue or the state department of transportation to cancel licenses.**

If a licensee files a false return of the data or information required by this chapter, or fails, refuses, or neglects to file a return required by this chapter, or to pay the full amount of fuel tax as required by this chapter, or is substantially delinquent in paying a tax due, owing, and administered by the department of revenue, and interest and penalty if appropriate, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the

corporation owes any delinquent tax of the licensee corporation, or interest or penalty on the tax, administered by the department, then after ten days' written notice by mail directed to the last known address of the licensee setting a time and place at which the licensee may appear and show cause why the license should not be canceled, and if the licensee fails to appear or if upon the hearing it is shown that the licensee failed to correctly report or pay the tax, the appropriate state agency may cancel the license and shall notify the licensee of the cancellation by mail to the licensee's last known address.

If a licensee abuses the privileges for which the license was issued, fails to produce records reasonably requested or fails to extend reasonable cooperation to the appropriate state agency, the licensee shall be advised in writing of a hearing scheduled to determine if the license shall be canceled. The appropriate state agency upon the presentation of a preponderance of evidence may cancel a license for cause.

The director of the appropriate state agency may reissue a license which has been canceled for cause. As a condition of reissuance of a license, in addition to requirements for issuing a new license, the director may require a waiting period not to exceed ninety days before a license can be reissued or a new license issued. The director shall adopt rules specifying those instances for which a waiting period will be required.

Upon receipt of written request from any licensee the appropriate state agency shall cancel the license of the licensee effective on the date of receipt of the request. If, upon investigation, the appropriate state agency finds that a licensee is no longer engaged in the activities for which a license was issued and has not been so engaged for a period of six months, the state agency shall cancel the license and give thirty days' notice of the cancellation mailed to the last known address of the licensee.

2003 Acts, ch 145, §286  
Terminology change applied

#### **452A.70 Discontinuance of licensed activity — liability for taxes and penalties.**

If a licensee ceases to engage in the state in activities for which the person's license was issued or discontinues, sells, or transfers the business in which the person has carried on that activity the licensee shall notify the department of revenue, which shall forward notice to the state department of transportation, in writing at least ten days prior to the time the cessation, discontinuance, sale or transfer takes effect. The notice shall give the date of proposed cessation or discontinuance, and, in the event of a proposed sale or transfer of the business, the date and the name and address of the purchaser or transferee. All fuel taxes, penalties and interest under this chapter not yet due and payable shall, together with any and all in-

terest accruing or penalties imposed under this chapter shall become due and payable concurrently with the cessation, discontinuances, sale or transfer, and it shall be the duty of the licensee to make a report and pay all the fuel taxes, interest, and penalties within ten days.

2003 Acts, ch 145, §286  
Terminology change applied

#### **452A.71 Refund of tax on fuel lost as result of casualty.**

Except as provided in section 452A.54, a person who has paid or has had charged to the person's account with a distributor, dealer, or user fuel taxes imposed under this chapter with respect to motor fuel or undyed special fuel in excess of one hundred gallons, which, while the person is the owner, is subsequently lost or destroyed through leakage, fire, explosion, lightning, flood, storm, or other casualty, except evaporation or unknown causes, shall be entitled to a refund of the tax so paid or charged. To qualify for the refund, the person shall notify the department of revenue in writing of the loss or destruction and the gallonage lost or destroyed within ten days from the date of discovery of the loss or destruction. Within sixty days after filing the notice, the person shall file with the department of revenue an affidavit sworn to by the person having immediate custody of the motor fuel or undyed special fuel at the time of the loss or destruction setting forth in full the circumstances and amount of the loss or destruction and such other information as the department of revenue may require. Any refund payable under this section may be applied by the department against any tax liability outstanding on the books of the department against the claimant.

2003 Acts, ch 145, §286  
Terminology change applied

#### **452A.72 Refund for fuel taxes erroneously or illegally collected or paid.**

If any fuel taxes, penalties, or interest have been erroneously or illegally collected by the appropriate state agency from a licensee, the appropriate state agency may apply the overpayment against any tax liability outstanding on the books of the department against the claimant, or shall certify the amount to the director of the department of administrative services, who shall draw a warrant for the certified amount on the treasurer of state payable to the licensee. The refund shall be paid to the licensee immediately.

A refund shall not be made under this section unless a written claim setting forth the circumstances for which the refund should be allowed is filed with the appropriate state agency within three years from the date of the payment of the taxes erroneously or illegally collected or paid.

However, if it is found during an examination by the appropriate state agency that a licensee paid, as a result of a mistake, an amount of tax, penalty, or interest which was not due, and the mistake is

found within three years of the overpayment, the appropriate state agency shall credit the amount against any penalty, interest or taxes due or shall refund the amount to the person.

2003 Acts, ch 145, §286  
Terminology change applied

#### **452A.73 Embezzlement of fuel tax money — penalty.**

Every sale of motor fuel in this state and every sale of undyed special fuel dispensed by the seller into a fuel supply tank of a motor vehicle shall, unless otherwise provided, be presumed to include as a part of the purchase price the fuel tax due the state of Iowa under the provisions of this chapter. Every person collecting fuel tax money as part of the selling price of motor fuel or undyed special fuel, shall hold the tax money in trust for the state of Iowa unless the fuel tax on the fuel has been previously paid to the state of Iowa. Any person receiving fuel tax money in trust and failing to remit it to the department of revenue on or before time required shall be guilty of theft.

2003 Acts, ch 145, §286  
Theft, chapter 714  
Terminology change applied

#### **452A.74 Unlawful acts — penalty.**

It shall be unlawful:

1. For any person to knowingly fail, neglect, or refuse to make any required return or statement or pay over fuel taxes required under this chapter.
2. For any person to knowingly make any false, incorrect, or materially incomplete record required to be kept or made under this chapter, to refuse to offer required books and records to the department of revenue or the state department of transportation for inspection on demand or to refuse to permit the department of revenue or the state department of transportation to examine the person's motor fuel or undyed special fuel storage tanks and handling or dispensing equipment.
3. For any seller to issue or any purchaser to receive and retain any incorrect or false invoice or sales ticket in connection with the sale or purchase of motor fuel or undyed special fuel.
4. For any claimant to alter any invoice or sales ticket, whether the invoice or sales ticket is to be used to support a claim for refund or income tax credit or not, provided, however, if a claimant's refund permit has been revoked for cause as provided in section 452A.19, the revocation shall serve as a bar to prosecution for violation of this subsection.
5. For any person to act as a supplier, restrictive supplier, importer, exporter, blender, or compressed natural gas or liquefied petroleum gas dealer or user without the required license.
6. For any person to use motor fuel, undyed special fuel, or dyed special fuel in the fuel supply tank of a vehicle with respect to which the person knowingly has not paid or had charged to the per-

son's account with a distributor or dealer, or with respect to which the person does not, within the time required in this chapter, report and pay the applicable fuel tax.

7. For any licensed compressed natural gas or liquefied petroleum gas dealer or user to dispense compressed natural gas or liquefied petroleum gas into the fuel supply tank of any motor vehicle without collecting the fuel tax.

8. Any delivery of compressed natural gas or liquefied petroleum gas to a compressed natural gas or liquefied petroleum gas dealer or user for the purpose of evading the state tax on compressed natural gas or liquefied petroleum gas, into facilities other than those licensed above knowing that the fuel will be used for highway use shall constitute a violation of this section. Any compressed natural gas or liquefied petroleum gas dealer or user for purposes of evading the state tax on compressed natural gas or liquefied petroleum gas, who allows a distributor to place compressed natural gas or liquefied petroleum gas for highway use in facilities other than those licensed above, shall also be deemed in violation of this section.

A person found guilty of an offense specified in this section is guilty of a fraudulent practice. Prosecution for an offense specified in this section shall be commenced within six years following its commission.

2003 Acts, ch 145, §286  
See §452A.19  
Fraudulent practices, see §714.8 through 714.14  
Terminology change applied

#### **452A.74A Additional penalty and enforcement provisions.**

In addition to the tax or additional tax, the following fines and penalties shall apply:

1. *Illegal use of dyed fuel.* The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:
  - a. A two hundred dollar fine for the first violation.
  - b. A five hundred dollar fine for a second violation within three years of the first violation.
  - c. A one thousand dollar fine for third and subsequent violations within three years of the first violation.
2. *Illegal importation of untaxed fuel.* A person who imports motor fuel or undyed special fuel without a valid importer's license or supplier's license shall be assessed a civil penalty as provided in this subsection. However, the owner or operator of the importing vehicle shall not be guilty of violating this subsection if it is shown by the owner or operator that the owner or operator reasonably did not know or reasonably should not have known of the illegal importation.
  - a. For a first violation, the importing vehicle shall be detained and a fine of two thousand dollars shall be paid before the vehicle will be re-

leased. The owner or operator of the importing vehicle or the owner of the fuel may be held liable for payment of the fine.

*b.* For a second violation, the importing vehicle shall be detained and a fine of five thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

*c.* For third and subsequent violations, the importing vehicle and the fuel shall be seized and a fine of ten thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

*d.* If the owner or operator of the importing vehicle or the owner of the fuel fails to pay the tax and fine for a first or second offense, the importing vehicle and the fuel may be seized. The department of revenue, the state department of transportation, or any peace officer, at the request of either department, may seize the vehicle and the fuel.

*e.* If the operator or owner of the importing vehicle or the owner of the fuel move the vehicle or the fuel after the vehicle has been detained and a sticker has been placed on the vehicle stating that "This vehicle cannot be moved until the tax, penalty, and interest have been paid to the Department of Revenue", an additional penalty of five thousand dollars shall be assessed against the operator or owner of the importing vehicle or the owner of the fuel.

*f.* For purposes of this subsection, "vehicle" means as defined in section 321.1.

3. *Improper receipt of refund.* If a person files an incorrect refund claim, in addition to the excess amount of the claim, a penalty of ten percent shall be added to the amount by which the amount claimed and refunded exceeds the amount actually due and shall be paid to the department. If a person knowingly files a fraudulent refund claim with the intent to evade the tax, the penalty shall be seventy-five percent in lieu of the ten percent. The person shall also pay interest on the excess refunded at the rate per month specified in section 421.7, counting each fraction of a month as an entire month, computed from the date the refund was issued to the date the excess refund is repaid to the state.

4. *Illegal heating of fuel.* The deliberate heating of taxable motor fuel or special fuel by dealers prior to consumer sale is a simple misdemeanor.

5. *Prevention of inspection.* The department of revenue or the state department of transportation may conduct inspections for coloration, markers, and shipping papers at any place where taxable fuel is or may be loaded into transport vehicles, produced, or stored. Any attempts by a person to prevent, stop, or delay an inspection of fuel

or shipping papers by authorized personnel shall be subject to a civil penalty of not more than one thousand dollars per occurrence. Any law enforcement officer or department of revenue or state department of transportation employee may physically inspect, examine or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel.

6. *Failure to conspicuously label a fuel pump.* A retailer who does not conspicuously label a fuel pump or other delivery facility as required by the internal revenue service, that dispenses dyed diesel fuel so as to notify customers that it contains dyed diesel fuel, shall pay to the department a penalty of one hundred dollars per occurrence.

7. *False or fraudulent report or return.* Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign, or verify any report or return required by this chapter and who makes a false or fraudulent report or return, or who fails to file a report or return with the intent to evade the tax, shall be guilty of a fraudulent practice. Any person who aids, abets, or assists another person in making any false or fraudulent report or return or false statement in any report or return with the intent to evade payment of tax shall be guilty of a fraudulent practice.

2003 Acts, ch 145, §286

Fraudulent practices, see §714.8 through 714.14

Terminology change applied

#### **452A.76 Enforcement authority.**

Authority to enforce division III is given to the state department of transportation. Employees of the state department of transportation designated enforcement employees have the power of peace officers in the performance of their duties; however, they shall not be considered members of the Iowa state patrol. The state department of transportation shall furnish enforcement employees with necessary equipment and supplies in the same manner as provided in section 80.18, including uniforms which are distinguishable in color and design from those of the Iowa state patrol. Enforcement employees shall be furnished and shall conspicuously display badges of authority.

Authority is given to the department of revenue, the state department of transportation, the department of public safety, and any peace officer as requested by such departments to enforce the provisions of division I and this division of this chapter. The department of revenue shall adopt rules providing for enforcement under division I and this division of this chapter regarding the use of motor fuel or special fuel in implements of husbandry. Enforcement personnel or requested peace officers are authorized to stop a conveyance suspected to be illegally transporting motor fuel or special fuel on the highways, to investigate the

cargo, and also have the authority to inspect or test the fuel in the supply tank of a conveyance to determine if legal fuel is being used to power the conveyance. The operator of any vehicle transporting motor fuel or special fuel shall, upon request, produce and offer for inspection the manifest or loading and delivery invoices pertaining to the load and trip in question and shall permit the authority to inspect and measure the contents of the vehicle. If the vehicle operator fails to produce the evidence or if, when produced, the evidence fails to contain the required information and it appears that there is an attempt to evade payment of the fuel tax, the vehicle operator will be subject to the penalty provisions contained in section 452A.74A. For purposes of this section, “vehicle” means as defined in section 321.1.

2003 Acts, ch 145, §286  
Terminology change applied

**452A.77 Moneys deposited in treasury — refunds — administration.**

All fees, taxes, interest, and penalties imposed under this chapter must be paid to the department of revenue or the state department of transportation, whichever is responsible for the collection. The appropriate state agency shall transmit each payment daily to the treasurer of state. Such payments shall be deposited by the treasurer of state in a fund, hereby created, within the state treasury which shall be known as the “*motor fuel tax fund*”, the net proceeds of which fund, after deductions by lawful transfers and refunds, shall be known as the “*motor vehicle fuel tax fund*”. The department of revenue and the state department of transportation shall certify monthly to the director of the department of administrative services amounts of refunds of tax approved during each month, and the director of the department of administrative services shall draw warrants in such amounts on the motor fuel tax fund and transmit them. There is hereby appropriated out of the money received under the provisions of this chapter and deposited in the motor fuel tax fund sufficient funds to pay such refunds as may be authorized in this chapter.

The general assembly may appropriate from the motor fuel tax fund such amounts as it determines are necessary for administrative expenses. Allocations and transfers of fees, taxes, interest and penalties imposed under this chapter, pursuant to any provision of the Code, shall be made from the motor fuel tax fund.

2003 Acts, ch 145, §261  
Unnumbered paragraph 1 amended

**452A.81 Agreement for refund of federal tax.**

1. The department of revenue is hereby authorized to enter into and empowered to carry out the provisions of agreements with any duly authorized agent or department of the United States

government for joint or cooperative action by the state and the United States government in the making of refunds of the federal tax on gasoline. Such agreements may provide that the department of revenue may receive applications for and make refunds of the federal tax on gasoline as an agent of the United States. Such agreements shall provide that the United States shall provide the department of revenue with sufficient funds in advance to pay all costs to the state in the performance of such agreements and in the making of such refunds. In the event such an agreement is concluded, the director of revenue is hereby designated, appointed and empowered, through the motor vehicle fuel tax division of the department, to, as an agent of the United States government, accept applications for refunds of the federal tax on gasoline and to make such refunds from such moneys provided to the director in advance by the federal government.

2. All moneys that may be paid in advance by the United States to the state to pay the cost to the state of performing such agreements and the cost of making such refunds are hereby appropriated to the department of revenue for such purposes. Neither the state nor the department of revenue shall be liable in any manner for the actions of the department of revenue or employees of the department in the receipt, administration, and expenditure of such federal funds including the making of refunds.

2003 Acts, ch 145, §286  
See refunds, §452A.17  
Terminology change applied

**452A.85 Tax payment for stored motor fuel, ethanol blended gasoline, special fuel, compressed natural gas, and liquefied petroleum gas — penalty.**

1. Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas under this chapter shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, or liquefied petroleum gas which will be subject to the increased excise tax rate.

2. Persons subject to the tax imposed under this section shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within thirty days of the prescribed inventory date. The department of revenue shall adopt rules pursuant to chapter 17A as are necessary to administer this section.

3. The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage as determined under subsection 1. The inventory tax rate is equal to the difference of the in-

creased excise tax rate less the previous excise tax rate.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 453A

### CIGARETTE AND TOBACCO TAXES

#### 453A.1 Definitions.

The following words, terms, and phrases, when used in this chapter, shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. “*Attorney general*” shall mean the attorney general of the state or the attorney general’s duly authorized assistants and employees.

2. “*Carton*” means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

3. “*Cigarette*” means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. Provided the definition herein shall not be construed to include cigars.

4. “*Cigarette vending machine*” means any self-service device offered for public use which, upon insertion of a coin, coins, paper currency, or by other means, dispenses cigarettes or tobacco products without the necessity of replenishing the device between each vending operation.

5. “*Cigarette vendor*” means any person who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more cigarette vending machines for the purpose of selling cigarettes at retail.

6. “*Counterfeit stamp*” shall mean any stamp, label, print, indicium, or character which evidences, or purports to evidence the payment of any tax levied by this chapter, and which stamp, label, print, indicium, or character has not been printed, manufactured or made by authority of the director as hereinafter provided, and issued, sold or circulated by the department.

7. “*Department*” means the department of revenue.

8. “*Director*” means the director of revenue or the director’s duly authorized assistants and employees.

9. “*Distributing agent*” shall mean and include every person in this state who acts as an agent of any manufacturer outside of the state by storing cigarettes received in interstate commerce from

such manufacturer subject to distribution or delivery to distributors upon orders received by said manufacturer in interstate commerce and transmitted to such distributing agent for fulfillment from such place of storage.

10. “*Distributing agent’s permit*” shall mean and include permits issued by the department to distributing agents.

11. “*Distributor*” shall mean and include every person in this state who manufactures or produces cigarettes or who ships, transports, or imports into this state or in any manner acquires or possesses cigarettes without stamps affixed for the purpose of making a “first sale” of the same within the state.

12. “*Drop shipment*” shall mean and include any delivery of cigarettes received by any person within this state when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

13. “*First sale*” shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this state.

14. “*Individual packages of cigarettes*” shall mean and include every package of cigarettes ordinarily sold at retail.

15. “*Manufacturer*” shall mean and include every person who ships cigarettes into this state from outside the state.

16. “*Manufacturer’s permit*” shall mean and include permits issued by the department to a manufacturer.

17. “*Package*” or “*pack*” means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

18. “*Person*” shall mean and include every individual, firm, association, joint stock company, syndicate, copartnership, corporation, trustee, agency or receiver, or respective legal representative.

19. “*Place of business*” is construed to mean and include any place where cigarettes are sold or where cigarettes are stored within or without the state of Iowa by the holder of an Iowa permit or kept for the purpose of sale or consumption; or if sold from any vehicle or train, the vehicle or train on which or from which such cigarettes are sold shall constitute a place of business.

20. “*Previously used stamp*” shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale, or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

21. “*Retailer*” shall mean and include every person in this state who shall sell, distribute, or offer for sale for consumption or possess for the purpose of sale for consumption, cigarettes irrespective of quantity or amount or the number of sales.

22. “*Retail permit*” shall mean and include permits issued to retailers.

23. “*Self-service display*” means any manner of product display, placement, or storage from which a person purchasing the product may take possession of the product, prior to purchase, without assistance from the retailer or employee of the retailer, in removing the product from a restricted access location.

24. “*Stamps*” means the stamp or stamps printed, manufactured or made by authority of the director and issued, sold or circulated by the department and by the use of which the tax levied is paid. It also means any impression, indicium, or character fixed upon packages of cigarettes by metered stamping machine or device which may be authorized by the director to the holder of state or manufacturers’ permits and by the use of which the tax levied is paid.

25. “*State permit*” shall mean and include permits issued by the department to distributors, wholesalers, and retailers.

26. “*Tobacco products*” means cigars; little cigars as defined in section 453A.42, subsection 5; cheroots; stogies; periques; granulated; plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; or refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not mean cigarettes.

27. “*Wholesaler*” shall mean and include every person other than a distributor or distributing agent who engages in the business of selling or distributing cigarettes within the state, for the purpose of resale.

2003 Acts, ch 145, §286  
Terminology change applied

#### 453A.2 Persons under legal age.

1. A person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

2. A person under eighteen years of age shall not smoke, use, possess, purchase, or attempt to

purchase any tobacco, tobacco products, or cigarettes.

3. Possession of cigarettes or tobacco products by an individual under eighteen years of age does not constitute a violation under this section if the individual under eighteen years of age possesses the cigarettes or tobacco products as part of the individual’s employment and the individual is employed by a person who holds a valid permit under this chapter or who lawfully offers for sale or sells cigarettes or tobacco products.

4. The Iowa department of public health, a county health department, a city health department, or a city may directly enforce this section in district court and initiate proceedings pursuant to section 453A.22 before a permit-issuing authority which issued the permit against a permit holder violating this section.

5. Payment and distribution of court costs, fees, and fines in a prosecution initiated by a city or county shall be made as provided in chapter 602 for violation of a city or county ordinance.

6. If a county health department, a city health department, or a city has not assessed a penalty pursuant to section 453A.22, subsection 2, for a violation of subsection 1, within sixty days of the adjudication of the violation, the matter shall be transferred to and be the exclusive responsibility of the Iowa department of public health. Following transfer of the matter, if the violation is contested, the Iowa department of public health shall request an administrative hearing before an administrative law judge, assigned by the division of administrative hearings of the department of inspections and appeals in accordance with the provisions of section 10A.801, to adjudicate the matter pursuant to chapter 17A.

7. A tobacco compliance employee training fund is created in the office of the treasurer of state. The fund shall consist of civil penalties assessed by the Iowa department of public health under section 453A.22 for violations of this section. Moneys in the fund are appropriated to the alcoholic beverages division of the department of commerce and shall be used to develop and administer the tobacco compliance employee training program under section 453A.5. Moneys deposited in the fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. Notwithstanding section 8.33, any unexpended balance in the fund at the end of the fiscal year shall be retained in the fund.

8. A person shall not be guilty of a violation of this section if conduct that would otherwise constitute a violation is performed to assess compliance with cigarette and tobacco products laws if any of the following applies:

a. The compliance effort is conducted by or under the supervision of law enforcement officers.

b. The compliance effort is conducted with the advance knowledge of law enforcement officers

and reasonable measures are adopted by those conducting the effort to ensure that use of cigarettes or tobacco products by individuals under eighteen years of age does not result from participation by any individual under eighteen years of age in the compliance effort.

For the purposes of this subsection, “law enforcement officer” means a peace officer as defined in section 801.4 and includes persons designated under subsection 4 to enforce this section.

2003 Acts, ch 26, §1, 5, 7; 2003 Acts, ch 179, §130, 159; 2003 Acts, 1st Ex, ch 2, §29, 33

For scheduled fines applicable to violations of subsections 1 and 2, see §805.8C, subsection 3, paragraphs b and c

Subsection 6 applies to violations pending on April 11, 2003, for which a penalty has not been assessed under §453A.22, subsection 2; cities and county health departments deemed to have jurisdiction to assess valid penalties on and after April 11, 2003, but before June 30, 2003, for violations pending on April 11, 2003; 2003 Acts, ch 26, §5, 7; 2003 Acts, 1st Ex, ch 2, §29, 33

NEW subsections 6 and 7 and former subsection 6 renumbered as 8

#### **453A.5 Tobacco compliance employee training program.**

1. The alcoholic beverages division of the department of commerce shall develop a tobacco compliance employee training program not to exceed two hours in length for employees and prospective employees of tobacco retailers to inform the employees about state and federal laws and regulations regarding the sale of cigarettes and tobacco products to persons under eighteen years of age and compliance with and the importance of laws regarding the sale of cigarettes and tobacco products to persons under eighteen years of age.

2. The tobacco compliance employee training program shall be made available to employees and prospective employees of tobacco retailers at no cost to the employee, the prospective employee, or the retailer, and in a manner which is as convenient and accessible to the extent practicable throughout the state so as to encourage attendance. Contingent upon the availability of specified funds for provision of the program, the division shall schedule the program on at least a monthly basis and the program shall be available at a location in at least a majority of counties.

3. Upon completion of the tobacco compliance employee training program, an employee or prospective employee shall receive a certificate of completion, which shall be valid for a period of two years, unless the employee or prospective employee is convicted of a violation of section 453A.2, subsection 1, in which case the certificate shall be void.

4. The tobacco compliance employee training program shall also offer periodic continuing employee training and recertification for employees who have completed initial training and received certificates of completion.

2003 Acts, ch 26, §2, 7  
NEW section

#### **453A.7 Printing and custody of stamps.**

The director of the department of administra-

tive services shall have printed or manufactured, cigarette and little cigar tax stamps of such design, size, denomination, and type and in such quantities as may be determined by the director of revenue. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes and little cigars or cigarette papers. The cigarette and little cigar tax stamps shall be in the possession of and under the control of the director of revenue and the director shall keep accurate records of all cigarette and little cigar tax stamps.

There is appropriated annually from the general fund of the state the sum of one hundred fifteen thousand dollars to carry out the provisions of this section.

2003 Acts, ch 145, §286

See annual Iowa Acts for temporary exceptions, changes, or other non-codified enactments modifying the funding provided under this section  
Terminology changes applied

#### **453A.22 Revocation — suspension — civil penalty.**

1. If a person holding a permit issued by the department under this division, including a retailer permit for railway car, has willfully violated section 453A.2, the department shall revoke the permit upon notice and hearing. If the person violates any other provision of this division, or a rule adopted under this division, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the department may revoke the permit issued to the person, after giving the permit holder an opportunity to be heard upon ten days' written notice stating the reason for the contemplated revocation and the time and place at which the person may appear and be heard. The hearing before the department may be held at a site in the state as the department may direct. The notice shall be given by mailing a copy to the permit holder's place of business as it appears on the application for a permit. If, upon hearing, the department finds that the violation has occurred, the department may revoke the permit.

2. If a retailer or employee of a retailer has violated section 453A.2 or section 453A.36, subsection 6, the department or local authority, or the Iowa department of public health following transfer of the matter to the Iowa department of public health pursuant to section 453A.2, subsection 6, in addition to the other penalties fixed for such violations in this section, shall assess a penalty upon the same hearing and notice as prescribed in subsection 1 as follows:

a. For a first violation, the retailer shall be assessed a civil penalty in the amount of three hundred dollars. Failure to pay the civil penalty as or-

dered under this subsection shall result in automatic suspension of the permit for a period of fourteen days.

b. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars or the retailer's permit shall be suspended for a period of thirty days. The retailer may select its preference in the penalty to be applied under this paragraph.

c. For a third violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars and the retailer's permit shall be suspended for a period of thirty days.

d. For a fourth violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars and the retailer's permit shall be suspended for a period of sixty days.

e. For a fifth violation within a period of four years, the retailer's permit shall be revoked.

3. If an employee of a retailer violates section 453A.2, subsection 1, the retailer shall not be assessed a penalty under subsection 2, and the violation shall be deemed not to be a violation of section 453A.2, subsection 1, for the purpose of determining the number of violations for which a penalty may be assessed pursuant to subsection 2, if the employee holds a valid certificate of completion of the tobacco compliance employee training program pursuant to section 453A.5 at the time of the violation. A retailer may assert only once in a four-year period the bar under either this subsection or subsection 4 against assessment of a penalty pursuant to subsection 2, for a violation of section 453A.2, that takes place at the same place of business location.

4. If an employee of a retailer violates section 453A.2, subsection 1, the retailer shall not be assessed a penalty under subsection 2, and the violation shall be deemed not to be a violation of section 453A.2, subsection 1, for the purpose of determining the number of violations for which a penalty may be assessed pursuant to subsection 2, if the retailer provides written documentation that the employee of the retailer has completed an in-house tobacco compliance employee training program or a tobacco compliance employee training program which is substantially similar to the I Pledge program which is approximately one hour in length as developed by the alcoholic beverages division of the department of commerce. A retailer may assert only once in a four-year period the bar under this subsection against assessment of a penalty pursuant to subsection 2, for a violation of section 453A.2, that takes place at the same place of business location.

5. If a permit is revoked a new permit shall not be issued to the permit holder for any place of busi-

ness, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority.

6. Notwithstanding subsection 5, if a retail permit is suspended or revoked under this section, the suspension or revocation shall only apply to the place of business at which the violation occurred and shall not apply to any other place of business to which the retail permit applies but at which the violation did not occur.

7. The department or local authority shall report the suspension or revocation of a retail permit under this section to the Iowa department of public health within thirty days of the suspension or revocation of the retail permit.

2003 Acts, ch 26, §3 - 5, 7

2003 amendments to subsection 2 apply to violations of §453A.2, subsection 1, by retailers or retailers' employees which are pending on April 11, 2003, and for which a penalty has not been assessed under §453A.22, subsection 2, Code 2003; 2003 Acts, ch 26, §5, 7

For future repeal of subsection 4, effective April 11, 2004, see 2003 Acts, ch 26, §6, 7

Subsection 2 amended

NEW subsections 3 and 4 and former subsections 3 - 5 renumbered as 5 - 7

#### **453A.23 Retailer's permit for railway car.**

1. Subject to this division, a retailer's permit may be issued by the department to any dining car company, sleeping car company, railroad or railway company. The permit shall authorize the holder to keep for sale, and sell, cigarettes at retail on any dining car, sleeping car, or passenger car operated by the applicant in, through, or across the state of Iowa, subject to all of the restrictions imposed upon retailers under this division. The application for the permit shall be in the form and contain the information required by the director. Each permit is good throughout the state. Only one permit is required for all cars operated in this state by the applicant, but a duplicate of the permit shall be posted in each car in which cigarettes are sold and no further permit shall be required or tax levied for the privilege of selling cigarettes in the cars. No cigarettes shall be sold in the cars without having affixed thereto stamps evidencing the payment of the tax as provided in this division.

2. As a condition precedent to the issuing of a retailer's permit for railway car, the applicant shall file with the department a bond in favor of the state for the benefit of all parties interested in the amount of five hundred dollars conditioned upon the payment of all taxes, fines and penalties and costs in this division.

3. The annual fee for a retailer's permit for railway cars shall be twenty-five dollars and two dollars for each duplicate thereof, which fee shall be paid to the department. The department shall issue duplicates of such permits from time to time as applied for by such companies.

4. The provisions of subsections 1 and 5 of section 453A.22 shall apply to the revocation of such permit and the issuance of a new one.

Section not amended; internal reference change applied

#### 453A.40 Inventory tax.

1. All persons required to be licensed under section 453A.13 as distributors having in their possession and held for resale on the effective date of an increase in the tax rate cigarettes or little cigars upon which the tax under section 453A.6 or 453A.43 has been paid, unused cigarette tax stamps which have been paid for under section 453A.8, or unused metered imprints which have been paid for under section 453A.12 shall be subject to an inventory tax on the items as provided in this section.

2. Persons subject to the inventory tax imposed under this section shall take an inventory as of the close of the business day next preceding the effective date of the increased tax rate of those items subject to the inventory tax for the purpose of determining the tax due. These persons shall report the tax on forms provided by the department of revenue and remit the tax due within thirty days of the prescribed inventory date. The department of revenue shall adopt rules as are necessary to carry out this section.

3. The rate of the inventory tax on each item subject to the tax as specified in subsection 1 is equal to the difference between the amount paid on each item under section 453A.6, 453A.8, 453A.12, or 453A.43 prior to the tax increase and the amount that is to be paid on each similar item under section 453A.6, 453A.8, 453A.12, or 453A.43 after the tax increase except that in computing the rate of the inventory tax any discount allowed or allowable under section 453A.8 shall not be considered.

2003 Acts, ch 145, §286  
Terminology change applied

#### 453A.42 Definitions.

When used in this division, unless the context clearly indicates otherwise, the following terms shall have the meanings, respectively, ascribed to them in this section:

1. *“Business”* means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

2. *“Consumer”* means any person who has title to or possession of tobacco products in storage, for use or other consumption in this state.

3. *“Director”* means the director of the department of revenue.

4. *“Distributor”* means any and each of the following:

a. Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without

the state any tobacco products for sale;

b. Any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;

c. Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers.

5. *“Little cigar”* means any roll for smoking which:

a. Is made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient;

b. Is not a cigarette as defined in section 453A.1, subsection 3; and

c. Either weighs not more than three pounds per thousand, irrespective of retail price, or weighs more than three pounds per thousand and has a retail price of not more than two and one-half cents per little cigar. For purposes of this subsection, the retail price is the ordinary retail price in this state, not including retail sales tax, use tax, or the tax on little cigars imposed by section 453A.43.

6. *“Manufacturer”* means a person who manufactures and sells tobacco products.

7. *“Person”* means any individual, firm, association, partnership, joint stock company, joint adventure, corporation, trustee, agency, or receiver, or any legal representative of any of the foregoing.

8. *“Place of business”* means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

9. *“Retail outlet”* means each place of business from which tobacco products are sold to consumers.

10. *“Retailer”* means any person engaged in the business of selling tobacco products to ultimate consumers.

11. *“Sale”* means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this division, or for any other purposes whatsoever.

12. *“Storage”* means any keeping or retention of tobacco products for use or consumption in this state.

13. *“Subjobber”* means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

14. *“Tobacco products”* means cigars; little cigars as defined herein; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other

chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but shall not include cigarettes as defined in section 453A.1, subsection 3.

15. “Use” means the exercise of any right or

power incidental to the ownership of tobacco products.

16. “Wholesale sales price” means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 453B

### EXCISE TAX ON UNLAWFUL DEALING IN CERTAIN SUBSTANCES

#### 453B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “Controlled substance” means controlled substance as defined in section 124.101.

2. “Counterfeit substance” means a counterfeit substance as defined in section 124.101.

3. “Dealer” means any person who ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces in this state any of the following:

a. Seven or more grams of a taxable substance other than marijuana, but including a taxable substance that is a mixture of marijuana and other taxable substances.

b. Forty-two and one-half grams or more of processed marijuana or of a substance consisting of or containing marijuana.

c. One or more unprocessed marijuana plants.

d. Ten or more dosage units of a taxable substance which is not sold by weight.

However, a person who lawfully ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces a taxable substance in this state is not considered a dealer.

4. “Department” means the department of revenue.

5. “Director” means the director of revenue.

6. “Dosage unit” means the unit of measurement in which a substance is dispensed to the ultimate user. Dosage unit includes, but is not limited to, one pill, one capsule, or one microdot.

7. “Marijuana” means marijuana as defined in section 124.101.

8. “Processed marijuana” means all marijuana except unprocessed marijuana plants.

9. “Simulated controlled substance” means a simulated controlled substance as defined in section 124.101.

10. “Taxable substance” means a controlled substance, a counterfeit substance, a simulated controlled substance, or marijuana, or a mixture of materials that contains a controlled substance, counterfeit substance, simulated controlled substance, or marijuana.

11. “Unprocessed marijuana plant” means any cannabis plant at any level of growth, whether wet, dry, harvested, or growing.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 453C

### TOBACCO PRODUCT MANUFACTURERS — FINANCIAL OBLIGATIONS

#### 453C.1 Definitions.

1. “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in exhibit “C” to the master settlement agreement.

2. “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns”, “is owned”, and “ownership” mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term “person” means an individual, partnership,

committee, association, corporation, or any other organization or group of persons.

3. “Allocable share” means allocable share as defined in the master settlement agreement.

4. “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

b. Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging

and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

c. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph "a" of this definition.

The term "*cigarette*" includes "roll-your-own" tobacco, meaning tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "*cigarette*", 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "*cigarette*".

5. "*Master settlement agreement*" means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

6. "*Qualified escrow fund*" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with section 453C.2, subsection 2, paragraph "b".

7. "*Released claims*" means released claims as that term is defined in the master settlement agreement.

8. "*Releasing parties*" means releasing parties as that term is defined in the master settlement agreement.

9. "*Tobacco product manufacturer*" means an entity that on or after May 20, 1999, directly and not exclusively through any affiliate does any of the following:

a. Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States).

b. Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be

sold in the United States.

c. Becomes a successor of an entity described in paragraph "a" or "b".

The term "*tobacco product manufacturer*" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs "a" through "c".

10. "*Units sold*" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or roll-your-own tobacco containers. The department of revenue shall adopt rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

2003 Acts, ch 145, §286; 2003 Acts, ch 179, §131, 159  
Terminology change applied  
Subsection 10 amended

#### 453C.2 Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, on or after May 20, 1999, shall do one of the following:

1. Become a participating manufacturer as that term is defined in section II(jj) of the master settlement agreement and generally perform its financial obligations under the master settlement agreement.

2. a. Place into a qualified escrow fund by April 15 of the year following the year in question, the following amounts, as such amounts are adjusted for inflation:

(1) For 1999: \$.0094241 per unit sold on or after May 20, 1999.

(2) For 2000: \$.0104712 per unit sold.

(3) For each of 2001 and 2002: \$.0136125 per unit sold.

(4) For each of 2003 through 2006: \$.0167539 per unit sold.

(5) For 2007 and each year thereafter: \$.0188482 per unit sold.

b. A tobacco product manufacturer that places funds into escrow pursuant to paragraph "a" shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under any of the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow, under this subparagraph (1), (a) in the order in which they were placed into escrow and (b) only to the extent and at the time necessary to make payments required under such judgment or settlement.

(2) To the extent that a tobacco product manu-

facturer establishes that the amount the manufacturer was required to place into escrow on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had such manufacturer been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer.

(3) To the extent not released from escrow under subparagraph (1) or (2), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

c. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the attorney general that the manufacturer is in compliance with this subsection. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that is not a participating manufacturer under the master settlement agreement and fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this subsection shall be subject to all of the following:

(1) Be required within fifteen days to place

such funds into escrow as shall bring the manufacturer into compliance with this subsection. The court, upon a finding of a violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this subsection. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow.

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

d. Each failure to make an annual deposit required under this subsection shall constitute a separate violation.

2003 Acts, ch 179, §132, 159  
Subsection 2, paragraph b, subparagraph (2) amended

## CHAPTER 453D

### TOBACCO PRODUCT MANUFACTURERS — ENFORCEMENT OF FINANCIAL OBLIGATIONS

#### 453D.1 Findings and purpose.

The general assembly finds that violations of chapter 453C threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state, and the public health and that establishing procedural enforcement enhancements will aid in the enforcement of chapter 453C and thereby safeguard the master settlement agreement, the fiscal soundness of the state, and the public health.

2003 Acts, ch 97, §1, 13  
NEW section

#### 453D.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Brand family*” means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to “menthol”, “lights”, “kings”, and “100s”, and including any brand name (alone or in conjunction

with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

2. “*Cigarette*” means cigarette as defined in section 453C.1.

3. “*Department*” means the department of revenue.

4. “*Director*” means the director of revenue.

5. “*Distributor*” means a person, notwithstanding established residency or location, who purchases non-tax-paid cigarettes and stores, sells, or otherwise disposes of the cigarettes.

6. “*Master settlement agreement*” means master settlement agreement as defined in section 453C.1.

7. “*Nonparticipating manufacturer*” means any tobacco product manufacturer that is not a participating manufacturer.

8. “*Participating manufacturer*” means participating manufacturer as defined in section II(jj) of

the master settlement agreement and all amendments to the master settlement agreement.

9. “*Qualified escrow fund*” means qualified escrow fund as defined in section 453C.1.

10. “*Stamping agent*” means a person authorized to affix tax stamps to packages or other containers of cigarettes pursuant to chapter 453A or any person that is required to pay the tax imposed pursuant to chapter 453A on cigarettes.

11. “*Tobacco product manufacturer*” means tobacco product manufacturer as defined in section 453C.1.

12. “*Units sold*” means units sold as defined in section 453C.1.

2003 Acts, ch 97, §2, 13; 2003 Acts, ch 145, §286  
NEW section  
Terminology change applied

### 453D.3 Certifications, directory, tax stamps.

1. *Certification.* A tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a stamping agent, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form and in the manner prescribed by the attorney general, a certification to the director and the attorney general, no later than April 30 of each year, certifying under penalty of perjury that, as of the date of the certification, the tobacco product manufacturer is either a participating manufacturer or is in full compliance with chapter 453C, including all quarterly installment payments required by rule.

a. A participating manufacturer shall include in the participating manufacturer’s certification a list of the participating manufacturer’s brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of the participating manufacturer’s brand families by executing and delivering a supplemental certification to the attorney general and the director.

b. A nonparticipating manufacturer shall include in its certification all of the following:

(1) A list of all of the nonparticipating manufacturer’s brand families and the number of units sold for each brand family that was sold in the state during the preceding calendar year.

(2) A list of all of the nonparticipating manufacturer’s brand families that have been sold in the state at any time during the current calendar year.

(3) An indication, by an asterisk, of any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification.

(4) Identification by name and address of any other manufacturer of such brand families in the preceding or current calendar year.

The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of the nonparticipating

manufacturer’s brand families by executing and delivering a supplemental certification to the attorney general and the director.

c. A nonparticipating manufacturer shall also certify all of the following:

(1) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice as required in section 453D.4.

(2) That the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund and has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund.

(3) That the nonparticipating manufacturer is in full compliance with chapter 453C and this chapter and any rules adopted pursuant to chapter 453C or this chapter.

(4) All of the following:

(a) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required pursuant to chapter 453C and all rules adopted pursuant to chapter 453C.

(b) The account number of the qualified escrow fund and any subaccount number for Iowa.

(c) The amount the nonparticipating manufacturer deposited in the qualified escrow fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification deemed necessary by the attorney general to confirm this information.

(d) The amount and date of any withdrawal or transfer made at any time by the nonparticipating manufacturer from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer made escrow payments at any time pursuant to chapter 453C and any rules adopted pursuant to chapter 453C.

d. A tobacco product manufacturer shall not include a brand family in the tobacco product manufacturer’s certification unless one of the following applies, as applicable:

(1) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be the participating manufacturer’s cigarettes for purposes of calculating the participating manufacturer’s payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement.

(2) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be the nonparticipating manufacturer’s cigarettes for the purposes of chapter 453C.

This section shall not be construed as limiting or otherwise affecting the state’s right to maintain

that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of chapter 453C.

*e.* Tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for certification for a period of five years, unless otherwise required by law to maintain invoices and documentation for a greater period of time.

*2. Directory of cigarettes approved for stamping and sale.* The director shall develop and publish on the department's website a directory listing all tobacco product manufacturers that have provided current and accurate certification conforming to the requirements of subsection 1 and all brand families that are listed in the certification, with the following exceptions:

*a.* The director shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with subsection 1, paragraphs "b" and "c", unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

*b.* A tobacco product manufacturer and a brand family shall not be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that either of the following applies:

(1) Any escrow payment required pursuant to chapter 453C for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general.

(2) Any outstanding final judgment, including interest on the judgment, for a violation of chapter 453C has not been fully satisfied for the brand family or the nonparticipating manufacturer.

*c.* The director shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter.

*d.* Stamping agents and distributors shall provide and update as necessary an electronic mail address to the director for the purpose of receiving any notifications as may be required by this chapter.

*3. Prohibition against stamping, sale, or import of cigarettes not included in the directory.* It shall be unlawful for any person to do any of the following:

*a.* Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory.

*b.* Sell, offer, or possess for sale in this state, or import for personal consumption in this state, cig-

arettes of a tobacco product manufacturer or brand family not included in the directory.

2003 Acts, ch 97, §3, 13

Certifications by tobacco product manufacturers under subsection 1 due forty-five days after May 1, 2003; 2003 Acts, ch 97, §10

Development, and publication on department of revenue website, of directory listing of all tobacco product manufacturers with current and accurate certifications is required no later than ninety days after May 1, 2003; 2003 Acts, ch 97, §13

NEW section

#### 453D.4 Agent for service of process.

1. A nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having the nonparticipating manufacturer's brand family included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for service of process on whom all process, and any action or proceeding against the nonparticipating manufacturer concerning or arising out of the enforcement of this chapter or chapter 453C, may be served in any manner authorized by law. The service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of the agent to, and to the satisfaction of, the director and the attorney general.

2. The nonparticipating manufacturer shall provide notice to the director and the attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent at least five calendar days prior to the termination of the existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the director and the attorney general of the termination within five calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

3. A nonparticipating manufacturer whose products are sold in this state, who has not appointed or designated an agent as required, shall be deemed to have appointed the secretary of state as agent and may be proceeded against in the courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory.

2003 Acts, ch 97, §4, 13

NEW section

#### 453D.5 Reporting of information — escrow installments.

1. No later than twenty calendar days after the end of each calendar quarter, and more frequently if so directed by the director, each stamp-

ing agent and distributor shall submit information as the director requires to facilitate compliance with this chapter, including but not limited to a list by brand family of the total number of cigarettes, or, in the case of roll-your-own tobacco, the equivalent stick count, for which the stamping agent or distributor affixed stamps during the previous calendar quarter or otherwise paid the tax due for the cigarettes. The stamping agent and distributor shall maintain, and make available to the director, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the director for a period of five years. Violations of this subsection are subject to civil penalties as established in section 453A.31, subsection 2.

2. The director may disclose to the attorney general any information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing this chapter. The director and attorney general shall share with each other the information received under this chapter, and may share the information with other federal, state, or local agencies only for purposes of enforcement of this chapter, chapter 453C, or corresponding laws of other states.

3. The attorney general may require at any time from a nonparticipating manufacturer proof from the financial institution in which the nonparticipatory manufacturer has established a qualified escrow fund for the purpose of compliance with chapter 453C, of the amount of money in the qualified escrow fund, exclusive of interest, the amount and date of each deposit into the qualified escrow fund, and the amount and date of each withdrawal from the qualified escrow fund.

4. In addition to the information required to be submitted pursuant to chapter 453C or this chapter, the director or the attorney general may require a stamping agent, distributor, or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, as necessary to enable the attorney general to determine compliance by the tobacco product manufacturer with this chapter.

5. To promote compliance with this chapter, the attorney general may adopt rules requiring a tobacco product manufacturer subject to the requirements of section 453D.3, subsection 1, paragraph "b", to make the escrow deposits required in quarterly installments during the year in which the sales covered by the deposits are made. The director or the attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

2003 Acts, ch 97, §5, 13

First report of stamping agents and distributors under subsection 1 is due thirty days after May 1, 2003; 2003 Acts, ch 97, §10

NEW section

#### 453D.6 Penalties and other remedies.

1. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that any person has violated section 453D.3, subsection 3, or any rule adopted pursuant to that subsection, the director may revoke or suspend the permit or license of any stamping agent or distributor in the manner provided in chapter 453A. Each stamp affixed and each sale or offer to sell cigarettes in violation of section 453D.3, subsection 3, shall constitute a separate violation. For each violation, the director may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of section 453D.3, subsection 3, or any rules adopted pursuant to section 453D.3, subsection 3. A penalty shall be imposed in the manner provided in chapter 453A.

2. Cigarettes that have been sold, offered for sale, or possessed for sale in this state, or imported for personal consumption in this state in violation of section 453D.3, subsection 3, shall be deemed contraband under section 453A.32 and the cigarettes shall be subject to seizure and forfeiture as provided in that section, and all cigarettes so seized and forfeited shall be destroyed and not resold.

3. The attorney general, on behalf of the director, may seek an injunction to restrain a threatened or actual violation of section 453D.3, subsection 3, or section 453D.5, subsection 1 or 4, by a stamping agent or distributor and to compel the stamping agent or distributor to comply with these sections. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

4. It shall be unlawful for a person to sell or distribute cigarettes or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of section 453D.3, subsection 3. A violation of this subsection is a serious misdemeanor.

2003 Acts, ch 97, §6, 13

NEW section

#### 453D.7 Miscellaneous provisions.

1. A determination of the attorney general not to include or to remove from the directory a brand family or tobacco product manufacturer shall be subject to review in a manner prescribed in rules adopted by the director.

2. A person shall not be issued a permit or license or be granted a renewal of a permit or license to act as a stamping agent or distributor unless the person has certified in writing, under penalty of perjury, that the person will comply fully with this chapter.

3. The director and the attorney general shall

adopt rules as necessary to effect the purposes of this chapter.

4. In any action brought by the state to enforce this chapter, the state shall be entitled to recover the costs of the investigation, expert witness fees, costs of the action, and reasonable attorney fees.

5. If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the treasurer of state.

6. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative relative to each other and relative to any other remedies or penalties available under any other law of this state.

2003 Acts, ch 97, §7, 13  
NEW section

#### 453D.8 Standing appropriation.

There is appropriated from the general fund of the state to the department of revenue each fiscal

year beginning July 1, 2004, and thereafter, the sum of twenty-five thousand dollars for enforcement of this chapter.

2003 Acts, ch 97, §8, 13; 2003 Acts, ch 145, §286  
NEW section  
Terminology change applied

#### 453D.9 Construction and severability.

1. If a court of competent jurisdiction finds that the provisions of this chapter and of chapter 453C conflict and cannot be harmonized, the provisions of chapter 453C shall prevail.

2. If any portion of this chapter causes chapter 453C to no longer constitute a qualifying or model statute, as defined in the master settlement agreement, that portion of this chapter shall be void.

3. If any portion of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, the determination shall not affect the validity of the remaining provisions of this chapter or any part of this chapter.

2003 Acts, ch 97, §9, 13  
NEW section

## CHAPTER 455A

### DEPARTMENT OF NATURAL RESOURCES

#### 455A.4 General powers and duties of the director.

1. Except as otherwise provided by law and subject to rules adopted by the natural resource commission and the environmental protection commission, the director shall:

*a.* Plan, direct, coordinate, and execute the functions vested in the department.

*b.* Provide overall supervision, direction, and coordination of functions to be administered by the administrators under chapters 321G, 455B, 455C, 456, 456A, 456B, 457A, 458A, 459, subchapters I, II, III, IV, and VI,\* chapters 461A, 462A, 462B, 464A, 465C, 473, 481A, 481B, 483A, 484A, and 484B.

*c.* Annually compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department and each program, subprogram, and activity in the department in accordance with section 8.23.

*d.* Submit a biennial or an annual report to the governor and the general assembly, in accordance with chapter 7A.

*e.* Employ personnel as necessary to carry out the functions vested in the department consistent with chapter 8A, subchapter IV, unless the positions are exempt from that subchapter.

*f.* Devote full time to the duties of the director's office.

*g.* Not be a candidate for nor hold any other public office or trust, nor be a member of a political committee.

*h.* Maintain an office at the state capitol com-

plex, which is open at all reasonable times for the conduct of public business.

*i.* Adopt rules in accordance with chapter 17A as necessary or desirable for the organization or reorganization of the department.

*j.* Submit a report to the natural resource commission before January 15, 1992, and every five years thereafter, which shall include but not be limited to information on the following topics:

(1) The classification of the state's parks, recreation areas, and preserves and recommendations for their reclassification based upon present and future use.

(2) Methods for maintaining the diversity of animal and plant life in state parks, recreation areas, and preserves.

(3) Options to achieve controlled deer hunting in order to prevent overpopulation of deer.

(4) Prevention of economic damage to private property which is located adjacent to state parks, recreation areas, and preserves.

The portion of the report dealing with preserves shall be prepared in conjunction with the state advisory board for preserves. A copy of the report shall be made available to members of the general assembly by sending a copy of the report to the chief clerk of the house of representatives, the secretary of the senate, and the director of each of the caucus or research staffs of the general assembly.

2. All powers and duties vested in the director may be delegated by the director to an employee of the department, but the director retains the responsibility for an employee's acts within the

scope of the delegation.

3. The director and other officers and employees of the department are entitled to receive, in addition to salary, their actual and necessary travel and related expenses incurred in the performance of official business.

4. The director shall obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state.

5. The department may accept payment of any fees, interest, penalties, subscriptions, or other

payments due or collected by the department, or any portion of such payments, by credit card. The department may adjust the amount of the payment to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

2003 Acts, ch 145, §262

\*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to directive in 2002 Acts, ch 1137

Subsection 1, paragraph e amended

## CHAPTER 455B

### JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

#### **455B.105 Powers and duties of the commission.**

The commission shall:

1. Establish policy for the implementation of programs under its jurisdiction. The commission shall appoint advisory committees to advise the commission and the director in carrying out their respective powers and duties.

2. Advise, consult, and co-operate with other agencies of the state, political subdivisions, and any other public or private agency to promote the orderly, efficient, and effective accomplishment of its responsibilities.

3. Adopt, modify, or repeal rules necessary to implement this chapter and chapter 459, and the rules deemed necessary for the effective administration of the department. When the commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the commission shall identify in its notice of intended action or adopted rule preamble each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirement. In addition, the commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. It is the intent of the general assembly that the commission exercise strict oversight of the operations of the department. The rules shall include departmental policy relating to the disclosure of information on a violation or alleged violation of the rules, standards, permits or orders issued by the department and keeping of confidential information obtained by the department in the administration and enforcement of this chapter and chapter 459. Rules adopted by the executive committee before January 1, 1981, shall remain effective until modified or rescinded by action of the commission.

4. Issue orders and directives necessary to insure integration and coordination of the programs

administered by the department.

5. Make a concise annual report to the governor and the general assembly, which report shall contain information relating to the accomplishments and status of the programs administered by the department and include recommendations for legislative action which may be required to protect or enhance the environment or to modernize the operation of the department or any of the programs or services assigned to the department and recommendations for the transfer of powers and duties of the department as deemed advisable by the commission. The annual report shall conform to the provisions of section 7A.3.

6. Approve all contracts and agreements under this chapter and chapter 459, subchapters I, II, III, IV, and VI, between the department and other public or private persons or agencies.

7. Obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state.

8. Hold public hearings, except when the evidence to be received is confidential pursuant to this chapter, chapter 22, or chapter 459, subchapters I, II, III, IV, and VI, necessary to carry out its powers and duties. The commission may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as provided in civil actions.

9. Upon request of at least four members of the commission before adopting or modifying a rule, the director shall prepare and publish with the notice required under section 17A.4, subsection 1, paragraph "a", a comprehensive estimate of the economic impact of the proposed rule or modification.

10. Appoint a water coordinator who shall coordinate requests from the public for information or assistance relating to the administration of water resources laws and programs and the resolution of water-related problems.

11. *a.* Adopt, by rule, procedures and forms necessary to implement the provisions of this chapter and chapter 459 relating to permits, conditional permits, and general permits. The commission may also adopt, by rule, a schedule of fees for permit and conditional permit applications and a schedule of fees which may be periodically assessed for administration of permits and conditional permits. In determining the fee schedules, the commission shall consider:

(1) The state's reasonable cost of reviewing applications, issuing permits and conditional permits, and checking compliance with the terms of the permits.

(2) The relative benefits to the applicant and to the public of permit and conditional permit review, issuance, and monitoring compliance.

It is the intention of the legislature that permit fees shall not cover any costs connected with correcting violation of the terms of any permit and shall not impose unreasonable costs on any municipality.

(3) The typical costs of the particular types of projects or activities for which permits or conditional permits are required, provided that in no circumstances shall fees be in excess of the actual costs to the department.

*b.* Except as otherwise provided in this chapter and chapter 459, fees collected by the department under this subsection shall be remitted to the treasurer of state and credited to the general fund of the state.

2003 Acts, ch 44, §65  
Subsection 3 amended

#### **455B.107 Warrants by director of department of administrative services.**

The director of the department of administrative services shall draw warrants on the treasurer of state for all disbursements authorized by the provisions of this chapter and chapter 459, subchapters I, II, III, IV, and VI,\* upon itemized and verified vouchers bearing the approval of the director of the department of natural resources.

2003 Acts, ch 145, §286

\*Chapter 459, subchapters I, II, III, IV, and VI, transferred from chapter 455B and subchapter V transferred from former chapter 455J in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

Terminology change applied

#### **455B.108 Office facilities.**

The department of administrative services shall provide the department with appropriate office facilities.

2003 Acts, ch 145, §286

Terminology change applied

#### **455B.171 Definitions.**

When used in this part 1 of division III, unless the context otherwise requires:

1. "*Abandoned well*" means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of ac-

cessing groundwater is unsafe or impracticable.

2. "*Construction*" of a water well means the physical act or process of making the water well including, but not limited to, siting, excavation, construction, and the installation of equipment and materials necessary to maintain and operate the well.

3. "*Contractor*" means a person engaged in the business of well construction or reconstruction or other well services.

4. "*Credible data*" means scientifically valid chemical, physical, or biological monitoring data collected under a scientifically accepted sampling and analysis plan, including quality control and quality assurance procedures. Data dated more than five years before the department's date of listing or other determination under section 455B.194, subsection 1, shall be presumed not to be credible data unless the department identifies compelling reasons as to why the data is credible.

5. "*Disposal system*" means a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge. "*Disposal system*" includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge.

6. "*Effluent standard*" means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological, and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard, or other limitation.

7. "*Federal Water Pollution Control Act*" means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as published in 33 U.S.C. § 1251 – 1376, as amended through December 31, 1985.

8. "*Historical data*" means data collected more than five years before the department's date of listing or other determination under section 455B.194, subsection 1.

9. "*Industrial waste*" means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business or from the development of any natural resource.

10. "*Manure*" means the same as defined in section 459.102.

11. "*Manure sludge*" means the solid or semi-solid residue produced during the treatment of manure in an anaerobic lagoon.

12. "*Maximum contaminant level*" means the maximum permissible level of any physical, chemical, biological, or radiological substance in water which is delivered to any user of a public water supply system.

13. "*Naturally occurring condition*" means

any condition affecting water quality which is not caused by human influence on the environment including, but not limited to, soils, geology, hydrology, climate, wildlife influence on the environment, and water flow with specific consideration given to seasonal and other natural variations.

14. “*New source*” means any building, structure, facility, or installation, from which there is or may be the discharge of a pollutant, the construction of which is commenced after the publication of proposed federal rules prescribing a standard of performance which will be applicable to such source, if such standard is promulgated.

15. “*Other waste*” means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals, and all other wastes which are not sewage or industrial waste.

16. “*Person*” means any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation.

For the purpose of imposing liability for violation of a section of this part, or a rule or regulation adopted by the department of natural resources under this part, “*person*” does not include a person who holds indicia of ownership in contaminated property from which prohibited discharges, deposits, or releases of pollutants into any water of the state have been or are evidenced, if the person has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, with respect to the contaminated property, regardless of whether the department has determined that the contaminated property constitutes a hazardous condition site.

17. “*Point source*” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

18. “*Pollutant*” means sewage, industrial waste, or other waste.

19. “*Private sewage disposal system*” means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than sixteen individuals on a continuing basis.

20. “*Private water supply*” means any water supply for human consumption which has less than fifteen service connections and regularly serves less than twenty-five individuals.

21. “*Production capacity*” means the amount of potable water which can be supplied to the distribution system in a twenty-four-hour period.

22. “*Public water supply system*” means a system for the provision to the public of piped water

for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. The term includes any source of water and any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

23. “*Reconstruction*” of a water well means replacement or removal of all or a portion of the casing of the water well.

24. “*Schedule of compliance*” means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any effluent standard, water quality standard, or any other requirement of this part of this division or any rule promulgated pursuant thereto.

25. “*Section 303(d) list*” means any list required under 33 U.S.C. § 1313(d).

26. “*Section 305(b) report*” means any report required under 33 U.S.C. § 1315(b).

27. “*Semi-public sewage disposal system*” means a system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer district, or a designated and approved management agency under section 1288 of the federal Water Pollution Control Act (33 U.S.C. § 1288).

28. “*Septage*” means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or from a holding tank, when the system is cleaned or maintained.

29. “*Sewage*” means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such groundwater infiltration and surface water as may be present.

30. “*Sewage sludge*” means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. “*Sewage sludge*” includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum septage, portable toilet pumpings, type III marine device pumpings as defined in 33 C.F.R. part 159, and sewage sludge products. “*Sewage sludge*” does not include grit, screenings, or ash generated during the incineration of sewage sludge.

31. “*Sewer extension*” means pipelines or conduits constituting main sewers, lateral sewers, or trunk sewers used for conducting pollutants to a larger interceptor sewer or to a point of ultimate disposal.

32. “*Sewer system*” means pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other

constructions, devices, and appliances appurtenant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state. To the extent that they are not subject to section 402 of the federal Water Pollution Control Act, ditches, pipes, and drains that serve only to collect, channel, direct, and convey nonpoint runoff from precipitation are not considered as sewer systems for the purposes of this part of this division.

33. “*Total maximum daily load*” means the same as in the federal Water Pollution Control Act.

34. “*Treatment works*” means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes.

35. “*Viable*” means a disposal system or a public water supply system which is self-sufficient and has the financial, managerial, and technical capability to reliably meet standards of performance on a long-term basis, as required by state and federal law, including the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

36. “*Water of the state*” means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

37. “*Water pollution*” means the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life.

38. “*Water supply distribution system extension*” means any extension to the pipelines or conduits which carry water directly from the treatment facility, source or storage facility to the consumer’s service connection.

39. “*Water well*” means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. “*Water well*” does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

2003 Acts, ch 44, §66  
Subsection 15 stricken and former subsections 16 – 40 renumbered as  
15 – 39

#### **455B.183 Written permits required.**

1. It is unlawful to carry on any of the following activities without first securing a written permit from the director, or from a city or county public works department if the public works department reviews the activity under this section, as required by the department:

a. The construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto except those sewer extensions and water supply distribution system extensions that are subject to review and approval by a city or county public works department pursuant to this section, the use or disposal of sewage sludge, and private sewage disposal systems. Unless federal law or regulation requires the review and approval of plans and specifications, a permit shall be issued for the construction, installation, or modification of a public water supply system or part of a system if a qualified, registered engineer certifies to the department that the plans for the system or part of the system meet the requirements of state and federal law or regulations. The permit shall state that approval is based only upon the engineer’s certification that the system’s design meets the requirements of all applicable state and federal laws and regulations and the review of the department shall be advisory.

b. The construction or use of any new point source for the discharge of any pollutant into any water of the state.

c. The operation of any waste disposal system or public water supply system or any part of or extension or addition to the system. This provision does not apply to a pretreatment system, the effluent of which is to be discharged directly to another disposal system for final treatment and disposal; a semipublic sewage disposal system, the construction of which has been approved by the department and which does not discharge into water of the state; or a private sewage disposal system which does not discharge into a water of the state. Sludge from a semipublic or private sewage disposal system shall be disposed of in accordance with the rules adopted by the department pursuant to chapter 17A. The exemption of this paragraph shall not apply to any industrial waste discharges.

2. Upon adoption of standards by the commission pursuant to section 455B.173, subsections 5 to 8, plans and specifications for sewer extensions and water supply distribution system extensions covered by this section shall be submitted to the city or county public works department for approval if the local public works department employs a qualified, registered engineer who reviews the plans and specifications using the specific state standards known as the Iowa Standards for Sewer Systems and the Iowa Standards for Water

Supply Distribution Systems that have been formulated and adopted by the department pursuant to section 455B.173, subsections 5 to 8. The local agency shall issue a written permit to construct if all of the following apply:

*a.* The submitted plans and specifications are in substantial compliance with departmental rules and the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems.

*b.* The extensions primarily serve residential consumers and will not result in an increase greater than five percent of the capacity of the treatment works or serve more than two hundred fifty dwelling units or, in the case of an extension to a water supply distribution system, the extension will have a capacity of less than five percent of the system or will serve fewer than two hundred fifty dwelling units.

*c.* The proposed sewer extension will not exceed the capacity of any treatment works which received a state or federal monetary grant after 1972.

*d.* The proposed water supply distribution system extension will not exceed the production capacity of any public water supply system constructed after 1972.

3. After issuing a permit, the city or county public works department shall notify the director of such issuance by forwarding a copy of the permit to the director. In addition, the local agency shall submit quarterly reports to the director including such information as capacity of local treatment plants and production capacity of public water supply systems as well as other necessary information requested by the director for the purpose of implementing this chapter.

4. Plans and specifications for all other waste disposal systems and public water supply systems, including sewer extensions and water supply distribution system extensions not reviewed by a city or county public works department under this section, shall be submitted to the department before a written permit may be issued. Plans and specifications for public water supply systems and water supply distribution system extensions must be certified by a registered engineer as provided in subsection 1, paragraph "a". The construction of any such waste disposal system or public water supply system shall be in accordance with standards formulated and adopted by the department pursuant to section 455B.173, subsections 5 to 8. If it is necessary or desirable to make material changes in the plans or specifications, revised plans or specifications together with reasons for the proposed changes must be submitted to the department for a supplemental written permit. The revised plans and specifications for a public water supply system must be certified by a registered engineer as provided in subsection 1, paragraph "a".

5. Prior to the adoption of statewide standards, the department may delegate the authority

to review plans and specifications to those governmental subdivisions if in addition to compliance with subsection 1, paragraph "c", the governmental subdivisions agree to comply with all state and federal regulations and submit plans for the review of plans and specifications including a complete set of local standard specifications for such improvements.

6. The director may suspend or revoke delegation of review and permit authority after notice and hearing as set forth in chapter 17A if the director determines that a city or county public works department has approved extensions which do not comply with design criteria, which exceed the capacity of waste treatment plants or the production capacity of public water supply systems or which otherwise violate state or federal requirements.

7. The department shall exempt any public water supply system from any requirement respecting a maximum contaminant level or any treatment technique requirement of an applicable national drinking water regulation if these regulations apply to contaminants which the department determines are harmless or beneficial to the health of consumers and if the owner of a public water supply system determines that funds are not reasonably available to provide for controlling amounts of those contaminants which are harmless or beneficial to the health of consumers.

2003 Acts, ch 44, §67  
Section amended

#### **455B.183A Water quality protection fund.**

1. A water quality protection fund is created in the state treasury under the control of the department. The fund consists of moneys appropriated to the fund by the general assembly, moneys deposited into the fund from fees described in subsection 2, moneys deposited into the fund from fees collected pursuant to sections 455B.187 and 455B.190A, and other moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the fund. The fund is divided into three accounts, including the administration account, the public water supply system account, and the private water supply system account. Moneys in the administration account are appropriated to the department for purposes of carrying out the provisions of this division, which relate to the administration, regulation, and enforcement of the federal Safe Drinking Water Act. Moneys in the public water supply system account are appropriated to the department to support the program to assist supply systems, as provided in section 455B.183B. Moneys in the private water supply system account are appropriated to the department for the purpose of supporting the programs established to protect private drinking water supplies as provided in sections 455B.187, 455B.188, 455B.190, and 455B.190A.

2. The commission shall adopt fees as required

pursuant to section 455B.105 for permits required for public water supply systems as provided in sections 455B.174 and 455B.183. Fees paid pursuant to this section shall not be subject to the sales or services tax. The fees shall be for each of the following:

a. The construction, installation, or modification of a public water supply system. The amount of the fees may be based on the type of system being constructed, installed, or modified.

b. The operation of a public water supply system, including any part of the system. The commission shall adopt a fee schedule which shall be based on the total number of persons served by public water supply systems in this state. However, a public water supply system shall be assessed a fee of at least twenty-five dollars. A public water supply system not owned or operated by a community and serving a transient population shall be assessed a fee of twenty-five dollars. The commission shall calculate all fees in the schedule to produce total revenues equaling three hundred fifty thousand dollars for each fiscal year, commencing with the fiscal year beginning July 1, 1995, and ending June 30, 1996. For each fiscal year, one-half of the fees shall be deposited into the administration account and one-half of the fees shall be deposited into the public water supply system account. By May 1 of each year, the department shall estimate the total revenue expected to be collected from the overpayment of fees, which are all fees in excess of the amount of the total revenues which are expected to be collected under the current fee schedule, and the total revenue expected to be collected from the payment of fees during the next fiscal year. The commission shall adjust the fees if the estimate exceeds the amount of revenue required to be deposited in the fund pursuant to this paragraph.

3. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants by the director of the department of administrative services, drawn upon the written requisition of the department.

4. Section 8.33 does not apply to moneys in the fund. Moneys earned as income, including interest from the fund, shall remain in the fund until expended.

5. On or before November 15 of each fiscal year, the department shall transmit to the department of management and the legislative services agency information regarding the fund and accounts, including all of the following:

a. The balance of unobligated and unencumbered moneys in each account as of November 1.

b. A summary of revenue deposited in and expenditures from each account during the current fiscal year.

c. Estimates of revenues expected to be deposited into the public water supply system account during the current fiscal year, and an estimate of the expected balance of unobligated and unen-

cumbered moneys in the account on June 30 of the current fiscal year.

2003 Acts, ch 30, §1; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286  
Terminology changes applied  
Subsection 1 amended

**455B.187 Water well construction.**

A contractor shall not engage in well construction or reconstruction without first being certified as required in this part and department rules adopted pursuant to this part. Water wells shall not be constructed, reconstructed, or abandoned by a person except as provided in this part or rules adopted pursuant to this part. Within thirty days after construction or reconstruction of a well, a contractor shall provide well information required by rule to the department and the Iowa geological survey.

A landowner or the landowner's agent shall not drill for or construct a new water well without first obtaining a permit for this activity from the department. The department shall not issue a permit to any person for this activity unless the person first registers with the department all wells, including abandoned wells, on the property. The department may delegate the authority to issue a permit to a county board of supervisors or the board's designee. In the event of such delegation, the department shall retain concurrent authority. The commission shall adopt rules pursuant to chapter 17A to implement this paragraph.

The director may charge a fee for permits issued pursuant to this section. All fees collected pursuant to this section shall be deposited into the private water supply system account within the water quality protection fund created in section 455B.183A.

Notwithstanding the provisions of this section, a county board of supervisors or the board's designee may grant an exemption from the permit requirements to a landowner or the landowner's agent if an emergency drilling is necessary to meet an immediate need for water. The exemption shall be effective immediately upon approval of the county board of supervisors or the board's designee. The board of supervisors or the board's designee shall notify the director within thirty days of the granting of an exemption.

In the case of property owned by a state agency, a person shall not drill for or construct a new water well without first registering with the department the existence of any abandoned wells on the property. The department shall develop a prioritized closure program and time frame for the completion of the program, and shall adopt rules to implement the program.

2003 Acts, ch 30, §2; 2003 Acts, ch 44, §68  
Unnumbered paragraph 1 amended  
NEW unnumbered paragraph 3

**455B.190A Well contractor certification program.**

1. As used in this section:

a. "Certified well contractor" means a well con-

tractor who has successfully passed an examination prescribed by the department to determine the applicant's qualifications to perform well drilling or pump services or both.

b. "Examination" means an examination for well contractors which includes, but is not limited to, relevant aspects of Iowa groundwater law, well construction, well maintenance, pump services, and well abandonment practices which protect groundwater and water supplies.

c. "Groundwater" means groundwater as defined in section 455E.2.

d. "Pump services" means the installation, repair, and maintenance of water systems.

e. "Water systems" means any part of the mechanical portion of a water well that delivers water from the well to a valve that separates the well from the plumbing system. "Water systems" includes the pump, drop pipe to the well, electrical wire from the pump to the electrical panel, piping from the well to the pressure tank, pitless unit or adaptor, and all related miscellaneous fittings necessary to operate the well pump. "Water systems" does not include any outside piping to other buildings, and does not include the piping that carries the water in the remainder of the distribution system.

f. "Water well" or "well" means water well as defined in section 455B.171.

g. "Well contractor" means contractor as defined pursuant to section 455B.171, subsection 3.

h. "Well contractors' council" means the council established in subsection 3.

i. "Well services" means new well construction, well reconstruction, installation of pitless equipment, pump services, or well plugging.

2. The department shall establish a well contractor certification program which shall include all of the following provisions:

a. Specification of certification requirements, including minimum work experience levels, successful completion of an examination, and continuing education requirements.

b. A certified well contractor shall be present at the well site and in direct charge of the services whenever well services are provided.

c. A person shall not act as a well contractor on or after July 1, 1993, unless the person is certified by the department pursuant to this section.

d. Violation of the rules regarding the provision of well services are grounds for suspension or revocation of certification.

e. Provisional certification may be obtained by an applicant in instances of shortages of certified personnel if all of the following conditions are met:

(1) The applicant provides documentation of at least one year of work experience in well services performed under the direct supervision of a certified well contractor.

(2) The applicant successfully completes the examination.

(3) A certified well contractor who employs an

applicant for well contractor certification cosigns the application for provisional certification. An employer who cosigns an application for provisional certification is jointly liable for a violation of the rules regarding well services by the provisionally certified well contractor and the violation is grounds for the suspension or revocation of certification of the certified well contractor and the provisionally certified well contractor.

f. The department shall develop continuing education requirements for certification of a well contractor in consultation with the well contractors' council.

g. The examination shall be developed by the department in consultation with the well contractors' council to determine the applicant's qualifications to perform well drilling or pump services or both. The examination shall be updated as necessary to reflect current groundwater law and well construction, maintenance, pump services, and abandonment practices. The examination shall be administered by the department or by a person designated by the department.

h. The department may provide for multiyear certification of well contractors.

3. a. The department shall establish a well contractors' council.

b. The membership of the council shall consist of the following members:

(1) Two well drilling contractors.

(2) Two pump installation contractors.

(3) One citizen member of the Iowa groundwater association or its successor.

(4) One citizen member of the Iowa environmental health association or its successor.

(5) The director of public health or the director's designee.

(6) The state geologist or the state geologist's designee.

(7) The director of the state hygienic laboratory or the director's designee.

c. The council shall advise and assist the department in doing all of the following:

(1) The development, review, and revision of the department's rules to implement this section.

(2) The development, updating, and revision of the examination for well contractor certification.

(3) The establishment, review, and revision of the continuing education requirements for certification.

(4) The production and publication of the consumer information pamphlet.

d. The council shall meet as often as necessary to perform the council's duties. The department shall provide the council with staff assistance.

4. The department shall develop, in consultation with the well contractors' council, a consumer information pamphlet regarding well construction, well maintenance, well plugging, pump services, and Iowa groundwater laws. The department and the council shall review and revise the

consumer information pamphlet as necessary. The consumer information pamphlet shall be supplied to well contractors, at cost, and well contractors shall supply one copy at no cost to potential customers prior to initiation of well services.

5. The department shall establish by rule and collect, in consultation with the well contractors' council, the following fees to be used to implement and administer the provisions of this section:

*a.* An annual certification fee to be paid by certified well contractors. The initial annual certification fee is one hundred fifty dollars. The fee may be increased by rule, as necessary, to reflect the costs of administration of the program. The department may establish a fee for multiyear certification.

*b.* The department may also charge and collect fees for testing, the provision of continuing education, and other fees related to and based on the actual costs of the well contractor certification program.

*c.* All fees collected pursuant to this subsection shall be deposited into the private water supply system account within the water quality protection fund created in section 455B.183A.

6. Rules adopted by the commission shall be developed in consultation with the council. If a majority of the council does not endorse the rules adopted by the commission, notice shall be sent to the administrative rules review committee indicating the council's position.

7. A well contractor who is engaged in performing pump services on or prior to June 30, 2004, and who registers as a pump installer with the department by June 30, 2004, shall be deemed to have met the certification requirements of this section without examination. Beginning July 1, 2004, a pump installer seeking an initial well contractor certification shall meet the requirements for certification established in this section.

2003 Acts, ch 30, §3  
Subsection 5, NEW paragraph c

#### **455B.246 Review of contracts by attorney general.**

All contracts entered into pursuant to this part 3 of division III shall be subject to approval of the attorney general as to form. All payments by the state pursuant to such contracts shall be made after review and by warrant of the director of the department of administrative services to the credit of the municipality and shall be used for the payment of costs of construction of an eligible project. However, if such costs have been paid by the municipality, then such payment may be used by the municipality for:

1. The payment of outstanding bonds or obligations incurred for any such eligible project.

2. Any improvement or extension of an eligible project.

3. Any other lawful municipal purpose determined to be necessary, reasonable, and in the in-

terest of the public welfare.

2003 Acts, ch 145, §286  
Terminology change applied

#### **455B.266 Priority allocation.**

1. After any event described in paragraphs "a" through "d" of this subsection has occurred, the department shall investigate and, if appropriate, may implement the priority allocation plan provided in subsection 2. The department shall require existing permittees to implement appropriate emergency conservation measures. The pertinent public notice and hearing requirements of subsection 4 of this section and sections 455B.271 and 455B.278 shall apply to the implementation of the plan.

*a.* Receipt of a petition by twenty-five affected persons or a governmental subdivision requesting that the priority allocation plan be implemented due to a substantial local water shortage.

*b.* Receipt of information from a state or federal natural resource, research or climatological agency indicating that a drought of local or state magnitude is imminent.

*c.* Issuance by the governor of a proclamation of a disaster emergency due to a drought or other event affecting water resources of the state.

*d.* Determination by the department in conjunction with the homeland security and emergency management division of the department of public defense of a local crisis which affects availability of water.

2. Notwithstanding a person's possession of a permit or the person's use of water being a non-regulated use, the department may suspend or restrict usage of water by category of use on a local or statewide basis in the following order:

*a.* Water conveyed across state boundaries.

*b.* Uses of water primarily for recreational or aesthetic purposes.

*c.* Uses of water for the irrigation of hay, corn, soybeans, oats, grain sorghum or wheat.

*d.* Uses of water for the irrigation of crops other than hay, corn, soybeans, oats, grain sorghum or wheat.

*e.* Uses of water for manufacturing or other industrial processes.

*f.* Uses of water for generation of electrical power for public consumption.

*g.* Uses of water for livestock production.

*h.* Uses of water for human consumption and sanitation supplied by rural water districts, municipal water systems, or other public water supplies as defined in section 455B.171.

*i.* Uses of water for human consumption and sanitation supplied by a private water supply as defined in section 455B.171.

3. Unless the governor has issued a proclamation described in subsection 1, paragraph "c", the department shall not impose a suspension of water use or a further restriction, other than conservation, on the uses of water provided in subsec-

tion 2, paragraphs “g” through “i” or on users of water pursuant to a contract with the state as provided in section 455B.263, subsections 5 and 6. If a contract with the state as provided in section 455B.263, subsections 5 and 6 was in effect prior to March 5, 1985, the department shall not impose a suspension of water use or a further restriction, other than conservation, on the users of water pursuant to that contract.

4. Suspension or restrictions of water usage applicable to otherwise nonregulated water users shall be by emergency order of the director which the department shall cause to be published in local newspapers of general circulation and broadcast by local media. The emergency order shall state an effective date of the suspension or restriction and shall be immediately effective on such date unless stayed, modified or vacated at a hearing before the commission or by a court.

2003 Acts, ch 179, §157  
Terminology change applied

#### **455B.385 State hazardous condition contingency plan.**

All public agencies, as defined in chapter 28E, shall cooperate in the development and implementation of a state hazardous condition contingency plan. The plan shall detail the manner in which public agencies shall participate in the response to a hazardous condition. The director may enter into agreements, with approval of the commission, with any state agency or unit of local government or with the federal government, as necessary to develop and implement the plan. The plan shall be coordinated with the homeland security and emergency management division of the department of public defense and any joint emergency management agencies established pursuant to chapter 29C.

2003 Acts, ch 179, §157  
Terminology change applied

#### **455B.455 Surcharge imposed.**

A land burial surcharge tax of two percent is imposed on the fee for land burial of a hazardous waste. The owner of the land burial facility shall remit the tax collected to the director of revenue after consultation with the director according to rules that the director shall adopt. The director shall forward a copy of the site license to the director of revenue which shall be the appropriate license for the collection of the land burial surcharge tax and shall be subject to suspension or revocation if the site license holder fails to collect or remit the tax collected under this section. The provisions of sections 422.25, subsection 4, 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, and 422.70 to 422.75, consistent with the provisions of this part 6 of division IV, shall apply with respect to the taxes authorized under this part, in the same manner and with the same effect as if the land burial surcharge tax

were retail sales taxes within the meaning of those statutes. Notwithstanding the provisions of this paragraph, the director shall provide for only quarterly filing of returns as prescribed in section 422.51. Taxes collected by the director of revenue under this section shall be deposited in the general fund of the state.

2003 Acts, ch 145, §286  
For future amendment to this section effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §197, 205  
Terminology change applied

#### **455B.484 Duties of the department.**

The department shall:

1. Recommend to the commission the adoption of rules necessary to implement this part.

2. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for deposit into the waste management assistance trust fund to be used for programs relating to the duties of the department under this part.

3. Administer and coordinate the waste management assistance trust fund created under this part.

4. Enter into contracts and agreements, with the approval of the commission for contracts in excess of twenty-five thousand dollars, with local units of government, other state agencies, governments of other states, governmental agencies of the United States, other public and private contractors, and other persons as may be necessary or beneficial in carrying out its duties under this part.

5. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts or public-private compacts relating to the ownership, operation, management, or funding of a facility. Any agreement is subject to the approval of the commission.

6. Review, propose, and recommend legislation relating to the proper and safe management of waste.

7. Establish a central repository and information clearinghouse within the state for the collection and dissemination of data and information pertaining to the proper and safe management of waste.

8. Develop, sponsor, and assist in the implementation of public education and information programs on proper and safe management of waste in cooperation with other public and private agencies as deemed appropriate.

9. Include in the annual report to the governor and the general assembly required by section 455A.4, subsection 1, paragraph “d”, information outlining the activities of the department in carrying out programs and responsibilities under this part, and identifying trends and developments in the management of waste. The report shall also include specific recommendations for attaining the goals for waste minimization and capacity as-

surance requirements.

10. Solicit proposals from public and private agencies to conduct hazardous waste research, and to develop and implement storage, treatment, and other hazardous waste management practices including but not limited to source reduction, recycling, compaction, incineration, fuel recovery, and other alternatives to land disposal of hazardous waste. In the acceptance of a proposal, preference shall be given to Iowa agencies pursuant to chapter 73.

11. Develop and implement programs, in cooperation with the small business assistance center at the university of northern Iowa, which result in widespread adoption of waste minimization programs by hazardous waste generators. The department shall conduct educational and informational programs. The small business assistance center shall provide direct waste minimization technical assistance to small quantity hazardous waste generators. These programs may include, but are not limited to, source reduction, recycling, fuel recovery, incineration, compaction, and other alternatives to land disposal. The preference for program development and implementation shall be for programs which result in the generation of less waste, followed by a preference for programs which reuse the waste generated in a beneficial manner.

2003 Acts, ch 108, §75  
Iowa waste reduction center; see also §268.4  
Subsections 2 and 3 amended

#### **455B.488 Household hazardous waste collection and disposition.**

The department shall develop, sponsor, and assist in conducting local, regional, or statewide programs for the receipt or collection and proper management of hazardous wastes from households and farms. In conducting such events the department may establish limits on the types and amounts of wastes that will be collected, and may establish a fee system for acceptance of wastes in quantities exceeding the limits established pursuant to this section.

2003 Acts, ch 108, §76  
Section amended

#### **455B.518 Toxics pollution prevention plans.**

1. A toxics user required to report under section 313 of EPCRA, 42 U.S.C. § 11023, or a large quantity generator, as defined pursuant to the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., shall be encouraged to develop a facility-wide multimedia toxics pollution prevention plan, as described pursuant to this section.

2. The department shall adopt criteria for the information required in a multimedia toxics pollution prevention plan. To the extent possible, the plans shall coordinate reporting requirements in order to minimize unnecessary duplication. The plans shall include, but are not limited to, all of the following:

*a.* A policy statement which articulates upper management and corporate support for the toxics pollution prevention plan and its implementation.

*b.* The identification and quantities of toxic substances used and released by groups of related production processes or by processes used in producing an identifiable product.

*c.* An assessment of the applicability of the approaches designated as toxics pollution prevention techniques including the following: input substitution; production reformulation; production process redesign or modification; production process modernization; improved operation and maintenance of existing production process equipment and methods; and recycling, reuse, or extended use of toxic substances, to the toxics users' production processes as identified in paragraph "b".

*d.* A description of current and previous techniques used to reduce or eliminate toxics used or released.

*e.* An economic analysis of the proposed toxics pollution prevention plan. The economic analysis shall also include an evaluation of the impact upon the toxics user's existing labor force by division or department, and the projected impact upon future expansion of the toxics user's labor force.

*f.* A clear statement listing specific reduction objectives.

*g.* A method for employees of a toxics user to provide input and to be involved in the development of the plans. If the employees are represented by a labor union, organization, or association, a representative of the union, organization, or association shall be included in the development of the plans.

3. The plans developed under this section shall not promote the use of pollution control or waste management approaches that address waste or pollution after the creation of the waste or pollution.

4. A toxics pollution prevention plan developed under this section shall be reviewed by the department for completeness, adequacy, and accuracy.

5. A toxics user shall maintain a copy of the plan on the premises, and shall submit a summary of the plan to the department.

2003 Acts, ch 108, §77  
Subsection 4 amended

## CHAPTER 455D

### WASTE VOLUME REDUCTION AND RECYCLING

#### 455D.6 Duties of the director.

The director shall:

1. Unless otherwise specified in this chapter, recommend rules to the commission which are necessary to implement this chapter. Initial recommendations shall be made to the commission no later than July 1, 1991.

2. Seek, receive, and accept funds in the form of appropriations, grants, awards, wills, bequests, endowments, and gifts for deposit in the waste reduction and recycling trust fund to be used for programs relating to the duties of the department under this chapter.

3. Administer and coordinate the waste volume reduction and recycling fund created under section 455D.15.

4. Enter into contracts and agreements, with the approval of the commission, for contracts in excess of twenty-five thousand dollars, with local units of government, other state agencies, governments of other states, governmental agencies of the United States, other public and private contractors, and other persons as may be necessary or beneficial in carrying out the department's duties under this chapter.

5. Submit a report to the general assembly on or before July 1, 1990, that characterizes the solid waste stream in Iowa and that contains a strategy for managing each major component of the waste stream. The strategy shall describe the actions necessary to assure that each segment of the waste stream is managed according to the highest appropriate priority of the waste management hierarchy.

6. Develop a strategy and recommend to the commission the adoption of rules necessary to implement a strategy for white goods and waste oil by January 1, 1990.

7. Develop a strategy and recommend to the commission the adoption of rules necessary to implement by January 1, 2004, a strategy for the recycling of electronic goods and the disassembling and removing of toxic parts from electronic goods.

8. Provide financial assistance through expenditure of the waste volume reduction and recycling fund to public and private entities to promote and enable the development and implementation of markets and industries in Iowa that will support and complement the state's waste reduction and recycling programs.

9. Study the technology available for the reclamation and recycling of refrigerant, including the findings of nationwide industry surveys, and make recommendations concerning whether or not all persons providing refrigerator or air conditioner repair services should own or have access to

refrigerant reclamation or recycling machinery.

10. Identify products made from recycled or recovered materials and provide a list of these products to the department of administrative services and to all other state agencies to assist in the development and review of procurement specifications. The director shall also develop, in cooperation with the director of the department of administrative services, a program to promote the procurement of listed products and seek information from state agencies using products containing recycled or recovered materials to evaluate their performance. The program shall also provide that the director seek information from suppliers regarding product performance and recovered material content of products offered for sale. Based on the above evaluation, and information regarding the recyclability of the components of products and their longevity, and, where applicable, the energy efficiency of such products, the department shall publish information on recommended products for procurement. This information shall be provided to all state agencies as well as city and county purchasing agencies.

2003 Acts, ch 145, §286  
Terminology change applied

#### 455D.111 Registration of waste tire haulers — bond — penalty.

1. For the purposes of this section, "waste tire hauler" means a person who transports for hire more than forty waste tires in a single load for commercial purposes.

2. A waste tire hauler shall register with, and obtain a certificate of registration from, the department before hauling waste tires in this state. Requirements for registration of a waste tire hauler shall include a provision that waste tire haulers shall pay all amounts due to any individual or group of individuals when due for damages caused by improper disposal of waste tires by the waste tire hauler or the waste tire hauler's employee while acting within the scope of employment. The waste tire hauler may apply for a certificate of registration by submitting the forms provided for that purpose and shall provide the name of the applicant and the address of the applicant's principal place of business and any additional information as deemed appropriate by the department.

3. A certificate of registration issued under this section is valid for one year from the date of issuance. A registered waste tire hauler may renew the certificate by filing a renewal application in the form prescribed by the department, accompanied by any applicable renewal fee.

4. A certificate of registration shall at all times

be carried and displayed in the vehicle used for transportation of waste tires and shall be shown to a representative of the department of natural resources or the state department of transportation, upon request. The state department of transportation may inspect vehicles used for the transportation of waste tires and request that the certificate of registration of the waste tire hauler be shown.

5. The department shall establish a reasonable registration fee sufficient to offset expenses incurred in the administration of this section.

6. The department shall require that a waste tire hauler have on file with the department before the issuance or renewal of a registration certificate, a surety bond executed by a surety company authorized to do business in this state in the sum of a minimum of ten thousand dollars, which bond shall be continuous in nature until canceled by the surety. A surety shall provide at least thirty days' notice in writing to the waste tire hauler and to the department indicating the surety's intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the

citizens of this state and shall be conditioned upon the waste tire hauler's willingness to comply with this section. The surety's liability under this subsection is limited to the amount of the bond or the amount of the damages or moneys due, whichever is less. However, this subsection does not limit the amount of damages recoverable from a waste tire hauler to the amount of the surety bond. The bond shall be made in a form prescribed by the commissioner of insurance and written by a company authorized by the commissioner of insurance to do business in this state.

7. The department shall adopt rules including imposition of civil penalties necessary for the implementation and administration of this section.

8. A person who knowingly and willfully violates a provision of this section is subject to a civil penalty in an amount not to exceed ten thousand dollars. Moneys collected from the penalties imposed shall be deposited in the waste volume reduction and recycling fund established pursuant to section 455D.15.

2003 Acts, ch 44, §69  
Subsection 4 amended

## CHAPTER 455E

### GROUNDWATER PROTECTION

#### **455E.11 Groundwater protection fund established — appropriations.**

1. A groundwater protection fund is created in the state treasury. Moneys received from sources designated for purposes related to groundwater monitoring and groundwater quality standards shall be deposited in the fund. Notwithstanding section 8.33, any unexpended balances in the groundwater protection fund and in any of the accounts within the groundwater protection fund at the end of each fiscal year shall be retained in the fund and the respective accounts within the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the groundwater protection fund or in any of the accounts within the groundwater protection fund shall be credited to the groundwater protection fund or the respective accounts within the groundwater protection fund. The fund may be used for the purposes established for each account within the fund.

The director shall include in the departmental budget prepared pursuant to section 455A.4, subsection 1, paragraph "c", a proposal for the use of groundwater protection fund moneys, and a report of the uses of the groundwater protection fund moneys appropriated in the previous fiscal year.

The secretary of agriculture shall submit the report on a biennial basis to the governor in the same manner as provided in section 7A.3. The report shall include a proposal for the use of groundwater

protection fund moneys, and uses of the groundwater protection fund moneys appropriated in the two previous fiscal years.

2. The following accounts are created within the groundwater protection fund:

a. A solid waste account. Moneys received from the tonnage fee imposed under section 455B.310 and from other sources designated for environmental protection purposes in relation to sanitary disposal projects shall be deposited in the solid waste account. Moneys shall be allocated as follows:

(1) After the one dollar and fifty-five cents is allocated pursuant to subparagraph (2), the remaining moneys from the tonnage fee shall be used for funding alternatives to landfills and shall be allocated as follows:

(a) Fifty thousand dollars to the department to implement the special waste authorization program.

(b) One hundred sixty-five thousand dollars to the department to be used for the by-products and waste search service at the university of northern Iowa.

(c) The remaining funds shall be used by the department to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs.

(2) One dollar and fifty-five cents shall be used as follows:

(a) Forty-eight percent to the department to be

used for the following purposes:

(i) Eight thousand dollars shall be transferred to the Iowa department of public health for departmental duties required under section 135.11, subsections 21 and 22, and section 139A.21.

(ii) The administration and enforcement of a groundwater monitoring program and other required programs relating to solid waste management.

(iii) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301.

(iv) The waste management assistance program of the department.

(b) Sixteen percent to the university of northern Iowa to develop and maintain the Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances.

(c) Six and one-half percent for the department to establish a program to provide competitive grants to regional coordinating councils for projects in regional economic development centers related to a by-products and waste exchange system. Grantees under this program shall coordinate activities with other available state or multi-state waste exchanges, including but not limited to the by-products and waste search service at the university of northern Iowa. The department shall consult with the Iowa department of economic development and the waste reduction center at the university of northern Iowa in establishing criteria for and the awarding of grants under this program. The department shall expend not more than thirty thousand dollars of the moneys appropriated under this subparagraph subdivision to contract with the by-products and waste search service at the university of northern Iowa to provide training and other technical services to grantees under the program. If regional economic development centers cease to exist, the department shall transfer existing contracts to one or more community colleges or councils of governments and shall revise the criteria and rules for this program to allow community colleges or councils of governments to be applicants for competitive grants.

(d) Nine and one-half percent to the department to establish permanent household hazardous waste collection sites so that both urban and rural populations are served and so that collection services are available to the public on a regular basis.

(e) Three percent to the department for payment of transportation costs related to household hazardous waste collection programs.

(f) Eight and one-half percent to the department to provide additional toxic cleanup days or other efforts of the department to support permanent household hazardous material collection systems and special events for household hazardous material collection, and for the natural resource geographic information system required under

section 455E.8, subsection 6. Departmental rules adopted for implementation of toxic cleanup days shall provide sufficient flexibility to respond to the household hazardous material collection needs of both small and large communities. Repayment moneys from the Iowa business loan program for waste reduction and recycling pursuant to section 455B.310, subsection 2, paragraph "b", Code 1993, and discontinued pursuant to 1993 Iowa Acts, chapter 176, section 45, shall be placed into this account to support household hazardous materials programs of the department.

(g) Three percent for the Iowa department of economic development to establish, in cooperation with the department of natural resources, a marketing initiative to assist Iowa businesses producing recycling or reclamation equipment or services, recyclable products, or products from recycled materials to expand into national markets. Efforts shall include the reuse and recycling of sawdust.

(h) Five and one-half percent to the department for the provision of assistance to public and private entities in developing and implementing waste reduction and minimization programs for Iowa industries.

b. An agriculture management account. Moneys collected from the groundwater protection fee levied pursuant to section 200.8, subsection 4, the portion of the fees collected pursuant to sections 206.8, subsection 2, and 206.12, subsection 3, and other moneys designated for the purpose of agriculture management shall be deposited in the agriculture management account. The agriculture management account shall be used for the following purposes:

(1) Nine thousand dollars of the account is appropriated to the Iowa department of public health for carrying out the departmental duties under section 135.11, subsections 21 and 22, and section 139A.21.

(2) Two hundred thousand dollars of the moneys deposited in the agriculture management account is appropriated to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the demonstration projects regarding agriculture drainage wells and sinkholes. Any remaining balance of the appropriation made for the purpose of funding such demonstration projects for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8.33, but shall remain available for the purpose of funding such demonstration projects during the fiscal period beginning July 1, 1988, and ending June 30, 1990.

(3) Of the remaining moneys in the account:

(a) Thirty-five percent is appropriated annually for the Leopold center for sustainable agriculture at Iowa state university of science and technology.

(b) Two percent is appropriated annually to

the department and, except for administrative expenses, is transferred to the Iowa department of public health for the purpose of administering grants to counties and conducting oversight of county-based programs for the testing of private rural water supply wells, private rural water supply well sealing, and the proper closure of private rural abandoned wells and cisterns. Not more than thirty-five percent of the moneys is appropriated annually for grants to counties for the purpose of conducting programs of private rural water supply testing, private rural water supply well sealing, the proper closure of private rural abandoned wells and cisterns, or any combination thereof. An amount agreed to by the department of natural resources and the Iowa department of public health shall be retained by the department of natural resources for administrative expenses.

A county applying for grants under this subparagraph subdivision shall submit only one application. To be eligible for a grant, a county must have adopted standards for private water supply and private disposal facilities at least as stringent as the standards adopted by the commission. During each fiscal year, the amount granted each eligible applicant shall be the total funds available divided by the number of eligible counties applying. Upon receipt of the grant, the county may apply the funds to any one or more of the above three programs.

Not more than six percent of the moneys is appropriated annually to the state hygienic laboratory to assist in well testing. For purposes of this subparagraph subdivision, "cistern" means an artificial reservoir constructed underground for the purpose of storing rainwater.

(c) The department shall allocate a sum not to exceed seventy-nine thousand dollars of the moneys appropriated for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the preparation of a detailed report and plan for the establishment on July 1, 1988, of the center for health effects of environmental contamination. The plan for establishing the center shall be presented to the general assembly on or before January 15, 1988. The report shall include the assemblage of all existing data relating to Iowa drinking water supplies, including characteristics of source, treatment, presence of contaminants, precise location, and usage patterns to facilitate data retrieval and use in research; and detailed organizational plans, research objectives, and budget projections for the anticipated functions of the center in subsequent years. The department may allocate annually a sum not to exceed nine percent of the moneys of the account to the center, beginning July 1, 1988.

(d) Thirteen percent of the moneys is appropriated annually to the department of agriculture and land stewardship for financial incentive programs related to agricultural drainage wells and sinkholes, for studies and administrative costs re-

lating to sinkholes and agricultural drainage wells programs. Of the moneys allocated for financial incentive programs, the department may reimburse landowners for engineering costs associated with voluntarily closing agricultural drainage wells. The financial incentives allocated for voluntary closing of agricultural drainage wells shall be provided on a cost-share basis which shall not exceed fifty percent of the estimated cost or fifty percent of the actual cost, whichever is less. Engineering costs do not include construction costs, including costs associated with earth moving.

c. A household hazardous waste account. The moneys collected pursuant to section 455F.7 and moneys collected pursuant to section 29C.8A which are designated for deposit, shall be deposited in the household hazardous waste account. Two thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 21 and 22, and section 139A.21. The remainder of the account shall be used to fund toxic clean-up days and the efforts of the department to support a collection system for household hazardous materials, including public education programs, training, and consultation of local governments in the establishment and operation of permanent collection systems, and the management of collection sites, education programs, and other activities pursuant to chapter 455F, including the administration of the household hazardous materials permit program by the department of revenue.

The department shall submit to the general assembly, annually on or before January 1, an itemized report which includes but is not limited to the total amount of moneys collected and the sources of the moneys collected, the amount of moneys expended for administration of the programs funded within the account, and an itemization of any other expenditures made within the previous fiscal year.

d. A storage tank management account. All fees collected pursuant to section 455B.473, subsection 5, and section 455B.479, shall be deposited in the storage tank management account, except those moneys deposited into the Iowa comprehensive petroleum underground storage tank fund pursuant to section 455B.479. Funds shall be expended for the following purposes:

(1) One thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 21 and 22, and section 139A.21.

(2) Twenty-three percent of the proceeds of the fees imposed pursuant to section 455B.473, subsection 5, and section 455B.479 shall be deposited in the account annually, up to a maximum of three hundred fifty thousand dollars. If twenty-three percent of the proceeds exceeds three hundred fifty thousand dollars, the excess shall be depos-

ited into the fund created in section 455G.3. Three hundred fifty thousand dollars is appropriated from the storage tank management account to the department of natural resources for the administration of a state storage tank program pursuant to chapter 455B, division IV, part 8, and for programs which reduce the potential for harm to the environment and the public health from storage tanks.

(3) The remaining funds in the account are appropriated annually to the Iowa comprehensive petroleum underground storage tank fund.

e. An oil overcharge account. The oil overcharge moneys distributed by the United States department of energy, and approved for the energy related components of the groundwater protection strategy available through the energy conservation trust created in section 473.11, shall be deposited in the oil overcharge account as appropriated by the general assembly. The oil overcharge account shall be used for the following purposes:

(1) The following amounts are appropriated to the department of natural resources to implement its responsibilities pursuant to section 455E.8:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, eight hundred sixty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, six hundred fifty thousand dollars is appropriated.

(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, six hundred thousand dollars is appropriated.

(d) For the fiscal year beginning July 1, 1990 and ending June 30, 1991, five hundred thousand dollars is appropriated.

(e) For the fiscal year beginning July 1, 1991 and ending June 30, 1992, five hundred thousand dollars is appropriated.

(2) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, five hundred sixty thousand dollars is appropriated to the department of natural resources for assessing rural, private water supply quality.

(3) For the fiscal period beginning July 1, 1987 and ending June 30, 1989, one hundred thousand dollars is appropriated annually to the department of natural resources for the administration of a groundwater monitoring program at sanitary landfills.

(4) The following amounts are appropriated to the Iowa state water resources research institute to provide competitive grants to colleges, universities, and private institutions within the state for the development of research and education programs regarding alternative disposal methods and groundwater protection:

(a) For the fiscal year beginning July 1, 1987

and ending June 30, 1988, one hundred twenty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, one hundred thousand dollars is appropriated.

(c) For the fiscal year beginning July 1, 1989 and ending June 30, 1990, one hundred thousand dollars is appropriated.

(5) The following amounts are appropriated to the department of natural resources to develop and implement demonstration projects for landfill alternatives to solid waste disposal, including recycling programs:

(a) For the fiscal year beginning July 1, 1987 and ending June 30, 1988, seven hundred sixty thousand dollars is appropriated.

(b) For the fiscal year beginning July 1, 1988 and ending June 30, 1989, eight hundred fifty thousand dollars is appropriated.

(6) For the fiscal period beginning July 1, 1987 and ending June 30, 1988, eight hundred thousand dollars is appropriated to the Leopold center for sustainable agriculture.

(7) Seven million five hundred thousand dollars is appropriated to the agriculture energy management fund created under chapter 161B for the fiscal period beginning July 1, 1987 and ending June 30, 1992, to develop nonregulatory programs to implement integrated farm management of farm chemicals for environmental protection, energy conservation, and farm profitability; interactive public and farmer education; and applied studies on best management practices and best appropriate technology for chemical use efficiency and reduction.

(8) The following amounts are appropriated to the department of natural resources to continue the Big Spring demonstration project in Clayton county.

(a) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, seven hundred thousand dollars is appropriated annually.

(b) For the fiscal period beginning July 1, 1990 and ending June 30, 1992, five hundred thousand dollars is appropriated annually.

(9) For the fiscal period beginning July 1, 1987 and ending June 30, 1990, one hundred thousand dollars is appropriated annually to the department of agriculture and land stewardship to implement a targeted education program on best management practices and technologies for the mitigation of groundwater contamination from or closure of agricultural drainage wells, abandoned wells, and sinkholes.

2003 Acts, ch 145, §286

See Iowa Acts for special provisions relating to appropriations in a given year

Terminology change applied

## CHAPTER 455F

### HOUSEHOLD HAZARDOUS WASTE

#### **455F.7 Household hazardous materials permit.**

1. A retailer offering for sale or selling a household hazardous material shall have a valid permit for each place of business owned or operated by the retailer for this activity. All permits provided for in this division shall expire on June 30 of each year. Every retailer shall submit an annual application by July 1 of each year and a fee of twenty-five dollars to the department of revenue for a permit upon a form prescribed by the director of revenue. Permits are nonrefundable, are based upon an annual operating period, and are not prorated. A person in violation of this section shall be subject to permit revocation upon notice and hearing. The department shall remit the fees collected to the household hazardous waste account of the groundwater protection fund. A person distributing general use pesticides labeled for agricultural or lawn and garden use with gross annual pesticide sales of less than ten thousand dollars is subject to the requirements and fee payment prescribed by this section.

2. A manufacturer or distributor of household hazardous materials, which authorizes retailers as independent contractors to sell the products of the manufacturer or distributor on a person-to-person basis primarily in the customer's home, may obtain a single household hazardous materials permit on behalf of its authorized retailers in the state, in lieu of individual permits for each retailer, and pay a fee of twenty-five dollars. Howev-

er, a manufacturer or distributor which has gross retail sales of three million dollars or more in the state shall pay an additional permit fee of one hundred dollars for each subsequent increment of three million dollars of gross retail sales in the state, up to a maximum permit fee of three thousand dollars.

2003 Acts, ch 145, §286  
Terminology change applied

#### **455F.8B Local government education programs.**

A recipient of a household hazardous waste reduction and collection program grant shall do all of the following:

1. Identify a regional or local agency to coordinate a public education effort, and provide for staff to implement the education program.

2. Establish a community education effort to be integrated within the existing educational system regarding household hazardous waste reduction and recycling.

3. Develop a plan for the recycling of hazardous substances not minimized by the public. The plan shall optimize resource use while minimizing waste and shall include a formal arrangement for the exchange of materials at no cost to the participants and an arrangement for the acceptance by the department of administrative services or the local or regional government agency of hazardous materials useful in its operations.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 455G

### COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND

#### **455G.3 Establishment of Iowa comprehensive petroleum underground storage tank fund.**

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under this section, section 423.24, subsection 1, paragraph "a", and sections 455G.8, 455G.9, and 455G.11, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board

as provided in this chapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this chapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund at the direction of the board and subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the fund con-

sistent with the purposes of the programs set out in this chapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this chapter.

2. The board shall assist Iowa's owners and operators of petroleum underground storage tanks in complying with federal environmental protection agency technical and financial responsibility regulations by establishment of the Iowa comprehensive petroleum underground storage tank fund. The authority may issue its bonds, or series of bonds, to assist the board, as provided in this chapter.

3. The purposes of this chapter shall include but are not limited to any of the following:

a. To establish a remedial account to fund corrective action for petroleum releases as provided by section 455G.9.

b. To establish a loan guarantee account, as provided by and to the extent permitted by section 455G.10.

c. To establish an insurance fund for insurable underground storage tank risks within the state as provided by section 455G.11.

d. To establish a marketability fund for the purposes as stated in section 455G.21.

4. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account or fund under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

5. For purposes of payment of refunds of the environmental protection charge under section 424.15 by the department of revenue, the treasurer of state shall allocate to the department of administrative services the total amount budgeted by the fund's board for environmental protection charge refunds. Any unused funds shall be remitted to the treasurer of state.

2003 Acts, ch 145, §263

For temporary exceptions, changes, or other noncodified enactments modifying these statutory provisions, see annual Acts of the general assembly.

For future amendment to subsection 1 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §198, 205  
Subsection 5 amended

#### 455G.4 Governing board.

1. *Members of the board.* The Iowa comprehensive petroleum underground storage tank fund board is established consisting of the following members:

a. The director of the department of natural resources, or the director's designee.

b. The treasurer of state, or the treasurer's designee.

c. The commissioner of insurance, or the commissioner's designee.

d. Two public members appointed by the governor and confirmed by the senate to staggered four-year terms, except that of the first members appointed, one public member shall be appointed for a term of two years and one for a term of four years. A public member shall have experience, knowledge, and expertise of the subject matter embraced within this chapter. Two public members shall be appointed with experience in either, or both, financial markets or insurance.

e. Two owners or operators appointed by the governor. One of the owners or operators appointed pursuant to this paragraph shall have been a petroleum systems insured through the underground storage tank insurance fund or a successor to the underground storage tank insurance fund and shall have been an insured through the insurance account of the comprehensive petroleum underground storage tank fund on or before October 26, 1990. One of the owners or operators appointed pursuant to this paragraph shall be self-insured.

f. The director of the legislative services agency, or the director's designee. The director under this paragraph shall not participate as a voting member of the board.

A public member appointed pursuant to paragraph "d" shall not have a conflict of interest. For purposes of this section a "conflict of interest" means an affiliation, within the twelve months before the member's appointment, with the regulated tank community, or with a person or property and casualty insurer offering competitive insurance or other means of financial assurance or which previously offered environmental hazard insurance for a member of the regulated tank community.

The filling of positions reserved for public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board or made available to the fund. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The members shall elect a voting chairperson of the board from among the members of the board.

2. *Department cooperation with board.* The director of the department of natural resources shall cooperate with the board in the implementation of this part so as to minimize unnecessary duplication of effort, reporting, or paperwork and maximize environmental protection.

3. *Rules and emergency rules.*

a. The board shall adopt rules regarding its practice and procedures, develop underwriting standards, establish premiums for insurance fund coverage and risk factors, procedures for investigating and settling claims made against the fund, determine appropriate deductibles or retentions in coverages or benefits offered, and otherwise implement and administer this chapter.

b. The board may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph “b”, to implement this subsection for one year after May 5, 1989.

c. Rules necessary for the implementation and collection of the environmental protection charge shall be adopted on or before June 1, 1989.

d. Rules necessary for the implementation and collection of insurance fund premiums shall be adopted prior to offering insurance to an owner or operator of a petroleum underground storage tank or other person.

e. Rules related to the establishment of the insurance fund and the terms and conditions of coverage shall be adopted as soon as practicable to permit owners and operators to meet their applicable compliance date with federal financial responsibility regulations.

f. Rules to facilitate and encourage the use of community remediation whenever possible shall be adopted.

g. The board shall adopt rules relating to appeal procedures which shall require the administrator to deliver notice of appeal to the affected parties within fifteen days of receipt of notice, require that the hearing be held within one hundred eighty days of the filing of the petition unless good cause is shown for the delay, and require that a final decision be issued no later than one hundred twenty days following the close of the hearing. The time restrictions in this paragraph may be waived by mutual agreement of the parties.

4. *Public bid.* All contracts entered into by the board, including contracts relating to community remediation, shall be awarded on a competitive basis to the maximum extent practical. In those situations where it is determined that public bidding is not practical, the basis for the determination of impracticability shall be documented by the board or its designee. This subsection applies only to contracts entered into on or after July 1, 1992.

5. *Contract approval.*

a. The board shall approve any contract entered into pursuant to this chapter if the cost of the contract exceeds seventy-five thousand dollars.

b. A listing of all contracts entered into pursuant to this chapter shall be presented at each board meeting and shall be made available to the public. The listing shall state the interested parties to the contract, the amount of the contract, and the subject matter of the contract.

c. The board shall be required to review and approve or disapprove the administrator’s failure to approve a contract under section 455G.12A. Review by the board shall not be required for cancellation or replacement of a contract for a site included in a community remediation project or when an emergency situation exists.

6. *Reporting.* Beginning July 2003, the board shall submit a written report quarterly to the legislative council, the chairperson and ranking member of the committee on natural resources and environment in the senate, and the chairperson and ranking member of the committee on environmental protection in the house of representatives regarding changes in the status of the program including, but not limited to, the number of open claims by claim type; the number of new claims submitted and the eligibility status of each claim; a summary of the risk classification of open claims; the status of all claims at high-risk sites including the number of corrective action design reports submitted, approved, and implemented during the reporting period; total moneys reserved on open claims and total moneys paid on open claims; and a summary of budgets approved and invoices paid for high-risk site activities including a breakdown by corrective action design report, construction and equipment, implementation, operation and maintenance, monitoring, over excavation, free product recovery, site reclassification, reporting and other expenses, or a similar breakdown. In each report submitted by the board, the board shall include an estimated timeline to complete corrective action at all currently eligible high-risk sites where a corrective action design report has been submitted by a claimant and approved during the reporting period. The timeline shall include the projected year when a no further action designation will be obtained based upon the corrective action activities approved or anticipated at each claimant site. The timeline shall be broken down in annual increments with the number or percentage of sites projected to be completed for each time period. The report shall identify and report steps taken to expedite corrective action and eliminate the state’s liability for open claims.

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 110, §2 – 4

Terminology change applied

Subsection 1, NEW paragraph e and former paragraph e redesignated as f

Subsection 1, unnumbered paragraph 2 amended

NEW subsection 6

**455G.5 Independent contractors to be retained by board.**

The board shall administer the fund. A contract

entered into on or after July 1, 1992, to retain a person to act as the administrator of the fund shall be subject to public bid. All other contracts to retain a person under this section shall be in compliance with the public bidding requirements of section 455G.4, subsection 4.

The board may enter into a contract or an agreement authorized under chapter 28E with a private agency or person, the department of natural resources, the Iowa finance authority, the department of administrative services, other departments, agencies, or governmental subdivisions of this state, another state, or the United States, in connection with its administration and implementation of this chapter or chapter 424 or 455B.

The board may reimburse a contractor, public or private, retained pursuant to this section for expenses incurred in the execution of a contract or agreement. Reimbursable expenses include, by way of example, but not exclusion, the costs of collecting the environmental protection charge or administering specific delegated duties or powers of the board.

2003 Acts, ch 145, §286  
Terminology change applied

#### **455G.6 Iowa comprehensive petroleum underground storage tank fund — general and specific powers.**

In administering the fund, the board has all of the general powers reasonably necessary and convenient to carry out its purposes and duties and may do any of the following, subject to express limitations contained in this chapter:

1. Guarantee secured and unsecured loans, and enter into agreements for corrective action, acquisition and construction of tank improvements, and provide for the insurance program. The loan guarantees may be made to a person or entity owning or operating a tank. The board may take any action which is reasonable and lawful to protect its security and to avoid losses from its loan guarantees.

2. Acquire, hold, and mortgage personal property and real estate and interests in real estate to be used.

3. Purchase, construct, improve, furnish, equip, lease, option, sell, exchange, or otherwise dispose of one or more improvements under the terms it determines.

4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more improvements, revenues, asset of right, accounts, or funds established or received in connection with the fund, including revenues derived from the use tax under section 423.24, subsection 1, paragraph "a", and deposited in the fund or an account of the fund.

5. Provide that the interest on bonds may vary in accordance with a base or formula.

6. Contract for the acquisition, construction, or both of one or more improvements or parts of

one or more improvements and for the leasing, subleasing, sale, or other disposition of one or more improvements in a manner it determines.

7. The board may contract with the authority for the authority to issue bonds and do all things necessary with respect to the purposes of the fund, as set out in the contract between the board and the authority. The board may delegate to the authority and the authority shall then have all of the powers of the board which are necessary to issue and secure bonds and carry out the purposes of the fund, to the extent provided in the contract between the board and the authority. The authority may issue the authority's bonds in principal amounts which, in the opinion of the board, are necessary to provide sufficient funds for the fund, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds, other expenditures of the authority incident to and necessary or convenient to carry out the bond issue for the fund, and all other expenditures of the board necessary or convenient to administer the fund. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code, chapter 554.

8. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the fund, all of which may be deposited with trustees or depositories in accordance with bond or security documents and pledged by the board to the payment thereof, and are not an indebtedness of this state or the authority, or a charge against the general credit or general fund of the state or the authority, and the state shall not be liable for any financial undertakings with respect to the fund. Bonds issued under this chapter shall contain on their face a statement that the bonds do not constitute an indebtedness of the state or the authority.

9. The proceeds of bonds issued by the authority and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested in any investment approved by the authority and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

10. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the authority. Chapters 73A, 74, 74A and 75 do not apply to their sale or issuance of the bonds.

c. Subject to the terms, conditions, and cove-

nants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

11. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

12. Bonds must be authorized by a trust indenture, resolution, or other instrument of the authority, approved by the board. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the issuer the power to negotiate and fix the details of an issue of bonds.

13. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code, chapter 554, to be valid, binding, or effective.

14. Bonds issued under the provisions of this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this chapter shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

15. *a.* Subject to the terms of any bond documents, moneys in the fund or fund accounts may be expended for administration expenses, civil penalties, moneys paid under an agreement, stipulation, or settlement, for the costs associated with sites within a community remediation project, for costs related to contracts entered into with a state agency or university, costs for activities relating to litigation, or for the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter. For purposes of this chapter, administration expenses include expenses incurred by the underground storage tank section of the department of natural resources in relation to tanks regulated under this chapter.

*b.* The authority granted under this subsection which allows the board to expend fund moneys on an activity the board determines is necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this chapter, shall only be used in

accordance with the following:

(1) Prior board approval shall be required before expenditure of moneys pursuant to this authority shall be made.

(2) If the expenditure of fund moneys pursuant to this authority would result in the board establishing a policy which would substantially affect the operation of the program, rules shall be adopted pursuant to chapter 17A prior to the board or the administrator taking any action pursuant to this proposed policy.

16. The board shall cooperate with the department of natural resources in the implementation and administration of this chapter to assure that in combination with existing state statutes and rules governing underground storage tanks, the state will be, and continue to be, recognized by the federal government as having an “*approved state account*” under the federal Resource Conservation and Recovery Act, especially by compliance with the Act’s subtitle I financial responsibility requirements as enacted in the federal Superfund Amendments and Reauthorization Act of 1986 and the financial responsibility regulations adopted by the United States environmental protection agency at 40 C.F.R. pts. 280 and 281. Whenever possible this chapter shall be interpreted to further the purposes of, and to comply, and not to conflict, with such federal requirements.

17. The board may adopt rules pursuant to chapter 17A providing for the transfer of all or a portion of the liabilities of the board under this chapter. Notwithstanding other provisions to the contrary, the board, upon such transfer, shall not maintain any duty to reimburse claimants under this chapter for those liabilities transferred.

2003 Acts, ch 44, §114; 2003 Acts, ch 110, §5  
Section repealed effective July 1, 2009; exception for outstanding bonds;  
89 Acts, ch 131, §63  
For future amendments to subsection 4 effective July 1, 2004, see 2003  
Acts, 1st Ex, ch 2, §199, 205  
Code chapter reference added  
NEW subsection 17

#### **455G.8 Revenue sources for fund.**

Revenue for the fund shall include, but is not limited to, the following, which shall be deposited with the board or its designee as provided by any bond or security documents and credited to the fund:

1. *Bonds issued to capitalize fund.* The proceeds of bonds issued to capitalize and pay the costs of the fund, and investment earnings on the proceeds except as required for the capital reserve funds.

2. *Use tax.* The revenues derived from the use tax imposed under chapter 423. The proceeds of the use tax under section 423.24, subsection 1, paragraph “*a*”, shall be allocated, consistent with this chapter, among the fund’s accounts, for debt service and other fund expenses, according to the fund budget, resolution, trust agreement, or other

instrument prepared or entered into by the board or authority under direction of the board.

3. *Storage tank management fee.* That portion of the storage tank management fee proceeds which are deposited into the fund, pursuant to section 455B.479.

4. *Cost recovery enforcement.* Cost recovery enforcement net proceeds as provided by section 455G.13 shall be allocated to the innocent landowners fund created under section 455G.21, subsection 2, paragraph "a". When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

5. *Other sources.* Interest attributable to investment of money in the fund or an account of the fund. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

For future amendments to subsection 2 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §200, 205  
Section not amended; footnote added

#### **455G.9 Remedial program.**

1. *Limits of remedial account coverage.* Moneys in the remedial account shall only be paid out for the following:

a. (1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(b) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(c) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to January 31, 1990, except that cities and counties must have filed their claim with the board by September 1, 1990.

(d) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release

reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

(3) Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1984, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage must be currently engaged in the business for which the tank connected with the release was used prior to the report of the release.

(b) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(c) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after January 1, 1985.

(d) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to September 1, 1990.

(e) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(4) One hundred percent of the costs of corrective action for a release reported to the department of natural resources on or before July 1, 1991, if the owner or operator is not a governmental entity and is a not-for-profit organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code with a net annual income of twenty-five thousand dollars or less for the year 1990, and if the tank which is the subject of the corrective action is a registered tank and is under one thousand one hundred gallons capacity.

(5) For the purposes of calculating corrective

action costs under this paragraph, corrective action shall include the cost of a tank system upgrade required by section 455B.474, subsection 1, paragraph “f”, subparagraph (9). Payments under this subparagraph shall be limited to a maximum of ten thousand dollars for any one site.

(6) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the costs associated with monitoring required by the rules adopted under section 455B.474, subsection 1, paragraph “f”, but corrective action shall exclude monitoring used for leak detection required by rules adopted under section 455B.474, subsection 1, paragraph “a”.

b. Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage. For the purposes of this section property shall not be deeded or quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have a net worth greater than fifteen thousand dollars, or where the responsible party can be determined. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

c. Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

d. One hundred percent of the costs of corrective action and third-party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a “responsible party” for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or evic-

tion, humiliation, discrimination, or malicious prosecution.

e. Corrective action for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990, in connection with a tank owned or operated by a state agency or department which elects to participate in the remedial account pursuant to this paragraph. A state agency or department which does not receive a standing unlimited appropriation which may be used to pay for the costs of a corrective action may opt, with the approval of the board, to participate in the remedial account. As a condition of opting to participate in the remedial account, the agency or department shall pay all registration fees, storage tank management fees, environmental protection charges, and all other charges and fees upon all tanks owned or operated by the agency or department in the same manner as if the agency or department were a person required to maintain financial responsibility. Once an agency has opted to participate in the remedial program, it cannot opt out, and shall continue to pay all charges and fees upon all tanks owned or operated by the agency or department so long as the charges or fees are imposed on similarly situated tanks of a person required to maintain financial responsibility. The board shall by rule adopted pursuant to chapter 17A provide the terms and conditions for a state agency or department to opt to participate in the remedial account. A state agency or department which opts to participate in the remedial account shall be subject to the minimum copayment schedule of subsection 4, as if the state agency or department were a person required to maintain financial responsibility.

f. One hundred percent of the costs up to twenty thousand dollars incurred by the board under section 455G.12A, subsection 2, unnumbered paragraph 2, for site cleanup reports. Costs of a site cleanup report which exceed twenty thousand dollars shall be considered a cost of corrective action and the amount shall be included in the calculations for corrective action cost copayments under subsection 4. The board shall have the discretion to authorize a site cleanup report payment in excess of twenty thousand dollars if the site is participating in community remediation.

g. Corrective action for the costs of a release under all of the following conditions:

(1) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

(2) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since December 31, 1975.

(3) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

(4) The release was reported to the board by

October 26, 1991.

Corrective action costs and copayment amounts under this paragraph shall be paid in accordance with subsection 4.

A person requesting benefits under this paragraph may establish that the conditions of subparagraphs (1), (2), and (3) are met through the use of supporting documents, including a personal affidavit.

*h.* One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States department of housing and urban development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991.

*i.* Notwithstanding section 455G.1, subsection 2, corrective action, for a release which was tested prior to October 26, 1990, and for which the site was issued a no-further-action letter by the department of natural resources and which was later determined, due to sale of the property or removal of a nonoperating tank, to require remediation which was reported to the administrator by October 26, 1992, in an amount as specified in subsection 4. In order to qualify for benefits under this paragraph, the applicant must not have operated a tank on the property during the period of time for which the applicant owned the property and the applicant must not be a financial institution.

*j.* One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank if the governmental subdivision did not own or operate the tank from which the release occurred, and the property was acquired pursuant to eminent domain after the release occurred. A governmental subdivision which acquires property pursuant to eminent domain in order to obtain benefits under this paragraph is not a responsible party for a release in connection with property which it acquired, and does not become a responsible party by sale or transfer of property so acquired.

*k.* Corrective action in response to a high risk condition caused by a release from an underground storage tank located on a site for which the department, after January 31, 1997, has issued a no further action certificate under section 455B.474. As a condition of receiving benefits under this paragraph, the department must determine that the condition necessitating the corrective action was not a result of a release that occurred after the issuance of the no further action

certificate, and that the site qualified for remedial benefits under this section prior to the issuance of the no further action certificate. No more than one hundred thousand dollars per site may be used for the costs of a corrective action under this paragraph. This paragraph does not confer a legal right on an owner or operator of petroleum-contaminated property or on any other person to receive benefits under this paragraph.

*2. Remedial account funding.* The remedial account shall be funded by that portion of the proceeds of the use tax imposed under chapter 423 and other moneys and revenues budgeted to the remedial account by the board.

*3. Trust fund to be established.* When the remedial account has accumulated sufficient capital to provide dependable income to cover the expenses of expected future releases or expected future losses for which no responsible owner is available, the excess capital shall be transferred to a trust fund administered by the board and created for that purpose.

*4. Minimum copayment schedule.* An owner or operator shall be required to pay the greater of five thousand dollars or eighteen percent of the first eighty thousand dollars of the total costs of corrective action for that release.

If a site's actual expenses exceed eighty thousand dollars, the remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, not to exceed one million dollars, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "d", unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

*5. Recovery of gain on sale of property.* If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within ten years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, adjusted for equipment and capital improvements, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same

manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

This subsection shall not apply if the sale or transfer is pursuant to a power of eminent domain, or benefits. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. *Recurring releases treated as a newly reported release.* A release shall be treated as a release reported on or after May 5, 1989, if prior to May 5, 1989, a release was reported to the department, corrective action was taken pursuant to a site cleanup report approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the site cleanup report or in addition to the work actually performed.

7. *Expenses of cleanup not required.* When an owner or operator who is eligible for benefits under this chapter is allowed by the department of natural resources to monitor in place, the expenses incurred for cleanup beyond the level required by the department of natural resources are not covered under any of the accounts established under the fund. The cleanup expenses incurred for work completed beyond what is required is the responsibility of the person contracting for the excess cleanup.

8. *Owner or operator defined.* For purposes of receiving benefits under this section, “owner or operator” means the then current tank owner or operator or the owner of the land for which a covered release was reported or application for benefits was submitted on or before the relevant application deadlines of this section.

9. *Self-insureds.* For a self-insured as determined under 567 IAC 136.6(455B), to qualify for remedial benefits under this section, tanks shall be upgraded by January 1, 1995, as specified by the United States environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989. A self-insured who qualifies for benefits under this section shall repay any benefits received if the upgrade date is not met.

10. *Expenses incurred by governmental subdivisions.* The board may adopt rules for reimbursement for reasonable expenses incurred by a governmental subdivision for treating, handling, or disposing, as required by the department, of petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance, or repair of a public improvement. The board may seek full recovery from a responsible party liable for the release for such expenses and for all other costs and reasonable attorney fees and costs of litigation for which moneys are expended by the fund. Any expense described in this subsection incurred by the fund constitutes a lien upon the property from which the release occurred. A lien shall be recorded and an expense shall be collected in the same manner as provided in section 424.11.

For future amendments to subsection 2 effective July 1, 2004, see 2003 Acts, 1st Ex, ch 2, §201, 205  
Section not amended; footnote added

## CHAPTER 455H

### LAND RECYCLING AND REMEDIATION STANDARDS

#### 455H.208 Public participation.

Public participation shall be a required component of the process for participants for all sites enrolled in the land recycling program. The required level of public participation shall vary depending on the conditions existing at a site. At a minimum, the department shall notify all adjacent property owners, occupants of adjacent property, and the city or county in which the property is located of a site's enrollment in the land recycling program and of the scope of work described in the participation agreement, and give the notified parties the opportunity to obtain updates regarding the status of activities relating to the enrolled site in the land recycling program. The notification shall not be required before the participant has had the opportunity to collect basic information characteriz-

ing the nature and extent of the contamination, but the notification shall be required in a timely manner allowing appropriate parties to have input in the formulation of the response action. If contaminants from the enrolled site have migrated off the enrolled site or are likely to migrate off the enrolled site, as determined by the department, the department shall notify by direct mailing all potentially affected parties, including the city or county in which the potentially affected property is located, and officials in charge of any potentially impacted public water supply and the notified parties shall be given opportunity to comment on proposed response actions. The department may require the participant of an enrolled site to publish public notice in a local newspaper if widespread interest in the site exists or is likely

to exist as determined by the department. The department shall consider reasonable comments from potentially affected parties in determining whether to approve or disapprove a proposed re-

sponse action or site closure.

2003 Acts, ch 108, §78  
Section amended

## CHAPTER 456

### GEOLOGICAL SURVEY

#### 456.4 Investigations — collection — renting space.

The state geologist shall investigate the characters of the various soils and their capacities for agricultural purposes, the streams, and other scientific and natural resource matters that may be of practical importance and interest. For the purpose of preserving well drilling samples, rock cores, fossils, and other materials as may be necessary to carry on investigations, the state geologist shall have the authority to lease or rent sufficient

space for storage of these materials with the approval of the director of the department of administrative services. A complete cabinet collection may be made to illustrate the natural products of the state, and the state geologist may also furnish suites of materials, rocks, and fossils for colleges and public museums within the state, if it can be done without impairing the general state collection.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 456A

### REGULATION AND FUNDING — NATURAL RESOURCES DEPARTMENT

#### 456A.16 Income tax refund checkoff for fish and game fund.

A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate any amount to be paid to the state fish and game protection fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the state fish and game protection fund, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return.

The revenues received shall be used within the state of Iowa for habitat development and shall be deposited in the state fish and game protection fund. The revenue may be used for the matching of federal funds. The revenues and matched federal funds may be used for acquisition of land, leasing of land or obtaining of easements from willing sellers for use of land as wildlife habitats for game and nongame species. Not less than fifty percent of the funds derived from the checkoff shall be used for the purposes of preserving, protecting, perpetuating and enhancing nongame wildlife in this state. Nongame wildlife includes those animal species which are endangered, threatened or not commonly pursued or killed either for sport or profit. Notwithstanding the exemption in section 427.1, the land acquired with the revenues and matched federal funds is subject to the full consolidated levy of property taxes which shall be paid from those revenues. In addition the revenues

may be used for the development and enhancement of wildlife lands and habitat areas and for research and management necessary to qualify for federal funds.

The director of revenue shall draft the income tax form to allow the designation of contributions to the state fish and game protection fund on the tax return.

The department of revenue on or before January 31 of the year following the preceding calendar year shall certify the total amount designated on the tax return forms due in the preceding calendar year and shall report the amount to the state treasurer. The state treasurer shall credit the amount to the state fish and game protection fund.

The general assembly shall appropriate annually from the state fish and game protection fund the amount credited to the fund from the checkoff to the department for the purposes specified in this section.

The action taken by a person for the checkoff is irrevocable.

The department shall adopt rules to implement this section. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of revenue and accounts identified as owing under section 421.17 and the political contribution allowed under section 68A.601 shall be satisfied.

2003 Acts, ch 145, §286  
Limitation on number of income tax return checkoffs; automatic repeal of certain checkoffs; see §422.12E  
Terminology change applied  
Internal reference change applied

**456A.17 Funds — restrictions.**

The following four funds are created in the state treasury:

1. A state fish and game protection fund.
2. A state conservation fund.
3. An administration fund.
4. A county conservation board fund.

The state fish and game protection fund, except as otherwise provided, consists of all moneys accruing from license fees and all other sources of revenue arising under the fish and wildlife programs. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the state fish and game protection fund shall be credited to that fund.

The county conservation board fund consists of all moneys credited to it by law or appropriated to it by the general assembly.

The conservation fund, except as otherwise provided, consists of all other funds accruing to the department for the purposes embraced by this chapter.

The administration fund shall consist of an equitable portion of the gross amount of the state fish and game protection fund and the state conservation fund, to be determined by the commission, sufficient to pay the expense of administration entailed by this chapter.

All receipts and refunds and reimbursements related to activities funded by the administration fund are appropriated to the administration fund. All refunds and reimbursements relating to activities of the state fish and game protection fund shall be credited to the state fish and game protection fund.

Notwithstanding section 8.33, revenues deposited in the state conservation fund, and remaining in the state conservation fund on June 30 of any fiscal year shall not revert to the general fund of the state but shall remain available for expenditure for one year after the close of the fiscal year during which such revenues were deposited. Any such revenues remaining unexpended at the end of the one-year period during which the revenues are available for expenditure shall revert to the general fund of the state.

The department may apply for a loan for the construction of facilities for the collection and treatment of waste water under the state water pollution control works and drinking water facilities financing program as established in sections 455B.291 through 455B.299. In order to provide for the repayment of a loan granted under the financing program, the commission may impose a lien on not more than ten percent of the annual revenues from user fees and related revenue derived from park and recreation areas under chapter 461A which are deposited in the state conservation fund. If a lien is established as provided in this paragraph, repayment of the loan is the first priority on the revenues received and dedi-

cated for the loan repayment each year.

2003 Acts, ch 17, §1, 2  
NEW unnumbered paragraph 7

**456A.19 Expenditures.**

All funds accruing to the fish and game protection fund, except an equitable portion of the administration fund, shall be expended solely in carrying on fish and wildlife activities. Expenditures incurred by the department in carrying on the activities shall be only on authorization by the general assembly.

The department shall by October 1 of each year submit to the department of management for transmission to the general assembly a detailed estimate of the amount required by the department during the succeeding year for carrying on fish and wildlife activities. The estimate shall be in the same general form and detail as required by law in estimates submitted by other state departments.

Any unexpended balance at the end of the biennium shall revert to the fish and game protection fund.

All administrative expense shall be paid from the administration fund.

All other expenditures shall be paid from the conservation fund.

All expenditures under this chapter are subject to approval by the director of management and the director of the department of administrative services.

All moneys credited to the county conservation board fund shall be used to provide grants to county conservation boards to provide funding for the purposes of chapter 350. These grants are in addition to moneys appropriated to the conservation boards from the county boards of supervisors. The grants shall be made to the conservation boards based upon the needs of the boards. Applications shall be made by the boards to the commission.

2003 Acts, ch 108, §79; 2003 Acts, ch 145, §286  
Terminology change applied  
Unnumbered paragraphs 1 and 2 amended

**456A.21 Forestry management and enhancement fund.**

1. A forestry management and enhancement fund is created in the state treasury under the department's control. The fund is composed of moneys deposited into the fund pursuant to section 456A.20, moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund.

2. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants written by the director of the department of administrative services, drawn upon the written requisition of the department.

3. The fund shall be used exclusively to support the management and enhancement of forests, including woodlands or timber stands in this state, on private lands in cooperation with the owners of those lands. The department shall use moneys in the fund to support the following full-time equivalent positions in addition to those supported from the general fund of the state:

a. Four forestry technicians who shall serve regions of the state as designated by the department.

b. One professional forester who shall serve

the southwest region of the state.

4. The commission may adopt rules pursuant to chapter 17A to administer this section.

5. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

2003 Acts, ch 108, §80, 81; 2003 Acts, ch 145, §286  
Legislative findings; 99 Acts, ch 206, §24  
Terminology change applied  
Subsections 1 and 2 amended  
Subsection 3, paragraph a amended

## CHAPTER 457A

### CONSERVATION EASEMENTS

#### 457A.1 Acquisition by other than condemnation.

The department of natural resources, soil and water conservation districts as provided in chapter 161A, the historical division of the department of cultural affairs, the state archaeologist appointed by the state board of regents pursuant to section 263B.1, any county conservation board, and any city or agency of a city may acquire by purchase, gift, contract, or other voluntary means, but not by eminent domain, conservation easements in land to preserve scenic beauty, wildlife habitat, riparian lands, wetlands, or forests; promote outdoor recreation, agriculture, soil or water conservation, or open space; or otherwise conserve for the benefit of the public the natural beauty, natural and cultural resources, and public recreation facilities of the state.

2003 Acts, ch 128, §1  
Section amended

#### 457A.2 Definitions.

1. “*Conservation easement*” means an ease-

ment in, servitude upon, restriction upon the use of, or other interest in land owned by another, created for any of the purposes set forth in section 457A.1. A conservation easement shall be transferable to any other public body authorized to acquire conservation easements. A conservation easement shall be perpetual unless expressly limited to a lesser term, or unless released by the holder, or unless a change of circumstances renders the easement no longer beneficial to the public. A comparative economic test shall not be used to determine whether a conservation easement is beneficial to the public. A conservation easement shall be enforceable during the term of the easement notwithstanding sections 614.24 through 614.38.

2. “*Natural and cultural resources*” includes, but is not limited to, archaeological and historical resources.

2003 Acts, ch 44, §70  
Subsection 2 amended

## CHAPTER 459

### ANIMAL AGRICULTURE COMPLIANCE ACT

#### 459.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Aerobic structure*” means an animal feeding operation structure other than an egg wash-water storage structure which employs bacterial action which is maintained by the utilization of air or oxygen and which includes aeration equipment.

2. “*Anaerobic lagoon*” means an unformed manure storage structure, if the primary function of the structure is to store and stabilize manure, the structure is designed to receive manure on a regular basis, and the structure’s design waste loading

rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:

a. A settled open feedlot effluent basin that collects and stores only precipitation-induced runoff from an open feedlot.

b. An anaerobic treatment system that includes collection and treatment facilities for all off gases.

3. “*Animal*” means a species classified as cattle, swine, horses, sheep, chickens, or turkeys.

4. “*Animal feeding operation*” means a lot, yard, corral, building, or other area in which ani-

mals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation. An animal feeding operation does not include a livestock market.

5. “Animal feeding operation structure” means a confinement building, manure storage structure, or egg washwater storage structure.

6. “Animal unit” means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor as follows:

a. Slaughter or feeder cattle	.....	1.000
b. Immature dairy cattle	.....	1.000
c. Mature dairy cattle	.....	1.400
d. Butcher or breeding swine weighing more than fifty-five pounds	.....	0.400
e. Swine weighing fifteen pounds or more but not more than fifty-five pounds	.....	0.100
f. Sheep or lambs	.....	0.100
g. Horses	.....	2.000
h. Turkeys weighing one hundred twelve ounces or more	.....	0.018
i. Turkeys weighing less than one hundred twelve ounces	.....	0.0085
j. Chickens weighing forty-eight ounces or more	.....	0.010
k. Chickens weighing less than forty-eight ounces	.....	0.0025

7. “Animal unit capacity” means a measurement used to determine the maximum number of animal units that may be maintained as part of an animal feeding operation at any one time, including as provided in sections 459.201 and 459.301.

8. “Animal weight capacity” means the product of multiplying the maximum number of animals which the owner or operator confines in an animal feeding operation at any one time by the average weight during a production cycle.

9. “Cemetery” means a space held for the purpose of permanent burial, entombment, or interment of human remains that is owned or managed by a political subdivision or private entity, or a cemetery regulated pursuant to chapter 523I or 566A. However, “cemetery” does not include a pioneer cemetery as defined in section 331.325.

10. “Commercial enterprise” means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

11. “Commercial manure service” means a sole proprietor or business association as defined in section 202B.102, engaged in the business of transporting, handling, storing, or applying manure for a fee.

12. “Commercial manure service representative” means a natural person who is any of the following:

a. A manager of a commercial manure service. As used in this paragraph a “manager” is a person who is actively involved in the operation of a commercial manure service and takes an important part in making management decisions substantially contributing to affecting the success of the commercial manure service.

b. An employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the commercial manure service.

13. “Commission” means the environmental protection commission created pursuant to section 455A.6.

14. “Confinement feeding operation” means an animal feeding operation in which animals are confined to areas which are totally roofed.

15. “Confinement feeding operation building” or “confinement building” means a building used in conjunction with a confinement feeding operation to house animals.

16. “Confinement feeding operation structure” means an animal feeding operation structure that is part of a confinement feeding operation.

17. “Confinement site manure applicator” means a person, other than a commercial manure service or a commercial manure service representative, who applies manure on land if the manure originates from a manure storage structure.

18. “Covered” means organic or inorganic material placed upon an animal feeding operation structure used to store manure as provided by rules adopted by the department after receiving recommendations which shall be submitted to the department by the college of agriculture at Iowa state university.

19. “Critical public area” means land as designated by the department pursuant to rules adopted pursuant to chapter 17A, if all of the following apply:

a. The land is part of a public park, preserve, or recreation area that is owned or managed by the federal government; by the department, including under chapter 461A or 465C; or by a political subdivision.

b. The land has a unique scenic, cultural, archaeological, scientific, or historic significance or contains a rare or valuable ecological system.

20. “Department” means the department of natural resources created pursuant to section 455A.2.

21. “Designated wetland” means land designated as a protected wetland by the United States department of the interior or the department of natural resources, including but not limited to a protected wetland as defined in section 456B.1, if the land is owned and managed by the federal gov-

ernment or the department of natural resources. However, a designated wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.

22. “*Director*” means the director of the department of natural resources.

23. “*Document*” means any form required to be processed by the department under this chapter regulating animal feeding operations, including but not limited to applications or related materials for permits as provided in section 459.303, manure management plans as provided in section 459.312, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department’s analysis of the application including using and responding to a master matrix pursuant to section 459.304, and notices required under those sections.

24. “*Earthen manure storage basin*” means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are completely removed at least once each year.

25. “*Educational institution*” means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

26. “*Egg washwater storage structure*” means an aerobic or anaerobic structure used to store the wastewater resulting from the washing and in-shell packaging of eggs.

27. “*Family member*” means a person related to another person as parent, grandparent, child, grandchild, sibling, or a spouse of such a related person.

28. “*Formed manure storage structure*” means a covered or uncovered impoundment used to store manure from an animal feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

29. “*High-quality water resource*” means that part of a water source or wetland that the department has designated as any of the following:

a. A high-quality water (Class “HQ”) or a high-quality resource water (Class “HQR”) according to 567 IAC ch. 61, in effect on January 1, 2001.

b. A protected water area system, according to a state plan adopted by the department in effect on January 1, 2001.

30. “*Indemnity fee*” means a fee provided in section 459.502 or 459.503.

31. “*Karst terrain*” means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of

limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves.

32. “*Livestock market*” means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

33. “*Major water source*” means a water source that is a lake, reservoir, river, or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding, which has been identified by rules adopted by the commission.

34. “*Manure*” means animal excreta or other commonly associated wastes of animals, including, but not limited to, bedding, litter, or feed losses.

35. “*Manure storage structure*” means a formed manure storage structure or an unformed manure storage structure. A manure storage structure does not include an egg washwater storage structure.

36. “*One hundred year floodplain*” means the land adjacent to a major water source, if there is at least a one percent chance that the land will be inundated in any one year, according to calculations adopted by rules adopted pursuant to section 459.103. In making the calculations, the department shall consider available maps or data compiled by the federal emergency management agency.

37. “*Open feedlot*” means an unroofed or partially roofed animal feeding operation if crop, vegetation, or forage growth or residue cover is not maintained as part of the animal feeding operation during the period that animals are confined in the animal feeding operation.

38. “*Permittee*” means a person who, pursuant to section 459.303, obtains a permit for the construction of a manure storage structure, or a confinement feeding operation, if a manure storage structure is connected to the confinement feeding operation.

39. “*Professional engineer*” means a person engaged in the practice of engineering as defined in section 542B.2 who is issued a certificate of licensure as a professional engineer pursuant to section 542B.17.

40. “*Public thoroughfare*” means a road, street, or bridge that is constructed or maintained by the state or a political subdivision.

41. “*Public use area*” means any of the following:

a. A portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time,

as provided by rules which shall be adopted by the department pursuant to chapter 17A.

b. A cemetery.

42. “*Qualified confinement feeding operation*” means a confinement feeding operation having an animal unit capacity of any of the following:

a. For a confinement feeding operation maintaining animals other than swine as part of a farrowing and gestating operation or farrow-to-finish operation or cattle as part of a cattle operation, five thousand three hundred thirty-three or more animal units.

b. For a confinement feeding operation maintaining swine as part of a farrowing and gestating operation, two thousand five hundred or more animal units.

c. For a confinement feeding operation maintaining swine as part of a swine farrow-to-finish operation, five thousand four hundred or more animal units.

d. For a confinement feeding operation maintaining cattle, eight thousand five hundred or more animal units.

43. “*Religious institution*” means a building in which an active congregation is devoted to worship.

44. “*Restricted spray irrigation equipment*” means spray irrigation equipment which disperses manure through an orifice at a maximum pressure of eighty pounds per square inch or more.

45. “*Settled open feedlot effluent*” means a combination of manure, precipitation-induced runoff, or other runoff originating from an open feedlot after its settleable solids have been removed.

46. “*Settled open feedlot effluent basin*” or “*basin*” means an impoundment which is part of an open feedlot, if the primary function of the impoundment is to collect and store settled open feedlot effluent.

47. “*Small animal feeding operation*” means an animal feeding operation which has an animal unit capacity of five hundred or fewer animal units.

48. “*Spray irrigation equipment*” means mechanical equipment used for the aerial application of manure, if the equipment receives manure from a manure storage structure during application via a pipe or hose connected to the structure, and includes a type of equipment customarily used for the aerial application of water to aid the growing of general farm crops.

49. “*Swine farrow-to-finish operation*” means a confinement feeding operation in which porcine are produced and in which a primary portion of the phases of the production cycle are conducted at one confinement feeding operation. Phases of the production cycle include, but are not limited to, gestation, farrowing, growing, and finishing.

50. “*Unformed manure storage structure*” means a covered or uncovered impoundment used to store manure, other than a formed manure stor-

age structure, which includes an anaerobic lagoon, aerobic structure, or earthen manure storage basin.

51. “*Water of the state*” means the same as defined in section 455B.171.

52. “*Water source*” means a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one landowner is riparian.

2003 Acts, ch 44, §71, 72; 2003 Acts, ch 52, §1, 6; 2003 Acts, ch 108, §82; 2003 Acts, ch 138, §1, 2; 2003 Acts, ch 163, §1, 2, 23

Internal reference change applied  
Subsection 6, paragraph h amended  
Subsection 6, NEW paragraph i and former paragraph i amended and redesignated as j

Subsection 6, NEW paragraph k  
Subsection 11 amended

NEW subsection 12 and former subsections 12 – 15 renumbered as 13 – 16

NEW subsection 17 and former subsections 16 and 17 renumbered as 18 and 19

NEW subsection 20 and former subsection 19 renumbered as 21  
NEW subsections 22 – 23 renumbered as 23

– 26  
NEW subsection 27 and former subsections 24 – 48 renumbered as 28

– 52  
Subsections 30, 33, and 44 amended

**459.103 General authority — commission and department.**

1. The commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of animal feeding operations, including related animal feeding operation structures. The requirements shall include but are not limited to minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing.

2. Any provision referring generally to compliance with the requirements of this chapter as applied to animal feeding operations also includes compliance with requirements in rules adopted by the commission pursuant to this section, orders issued by the department as authorized under this chapter, and the terms and conditions applicable to licenses, certifications, permits, or manure management plans required under subchapter III. However, for purposes of approving or disapproving an application for a construction permit as provided in section 459.304, conditions for the approval of an application based on results produced by a master matrix are not requirements of this chapter until the department approves or disapproves an application based on those results.

3. The department and the attorney general shall enforce the provisions of this chapter in the same manner as provided in chapter 455B, division I, unless otherwise provided in this chapter.

2003 Acts, ch 163, §3, 23  
Subsection 2 amended

**459.301 Special terms.**

For purposes of this subchapter, all of the following shall apply:

1. Two or more animal feeding operations under common ownership or management are

deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. In addition, for purposes of determining whether two or more confinement feeding operations are adjacent, all of the following must apply:

*a.* At least one confinement feeding operation structure must be constructed on or after May 21, 1998.

*b.* A confinement feeding operation structure which is part of one confinement feeding operation is separated by less than a minimum required distance from a confinement feeding operation structure which is part of the other confinement feeding operation. The minimum required distance shall be as follows:

(1) One thousand two hundred fifty feet for confinement feeding operations having a combined animal unit capacity of less than one thousand animal units.

(2) Two thousand five hundred feet for confinement feeding operations having a combined animal unit capacity of one thousand animal units or more.

2. A confinement feeding operation structure is “constructed” in the same manner as provided in section 459.201.

3. In calculating the animal unit capacity of a confinement feeding operation, the animal unit capacity shall include the animal unit capacity of all confinement feeding operation buildings which are part of the confinement feeding operation, unless a confinement feeding operation building has been abandoned as provided in section 459.201.

4. All distances between locations or objects provided in this subchapter shall be measured in feet from their closest points.

5. *a.* The department shall designate by rule each one hundred year floodplain in this state according to the location of the one hundred year floodplain. A person shall not be prohibited from constructing a confinement feeding operation structure on a one hundred year floodplain unless the one hundred year floodplain is designated by rule in accordance with this subsection.

*b.* (1) Until the effective date of rules adopted by the department to designate the location of each one hundred year floodplain in this state, a person shall not construct a confinement feeding operation structure on land that contains a soil type classified as alluvial unless one of the following applies:

(a) If the person does not apply for a construction permit as provided in section 459.303, the person must petition the department for a declaratory order pursuant to section 17A.9 to determine whether the location of the proposed confinement feeding operation structure is located on a one hundred year floodplain. The department shall issue a declaratory order in response to the petition, notwithstanding any other provision provided in section 17A.9 to the contrary, within thirty days

from the date that the petition is filed with the department.

(b) If the person does apply for a construction permit as provided in section 459.303, the person must identify that the land contains a soil type classified as alluvial. The department shall determine whether the land is located on a one hundred year floodplain.

(2) The department shall provide in its declaratory order or its approval or disapproval of a construction permit application a determination regarding whether the confinement feeding operation structure is to be located on a one hundred year floodplain, whether the confinement feeding operation structure may be constructed at the location, and any conditions for the construction.

(3) This paragraph “b” is repealed on the effective date that rules are adopted by the department pursuant to paragraph “a”. The department shall provide a caption on the adopted rule as published in the Iowa administrative bulletin as provided in section 17A.4, stating that this paragraph is repealed as provided in this subparagraph. The director of the department shall deliver a copy of the adopted rule to the Iowa Code editor.

2003 Acts, ch 44, §73  
Subsection 1, paragraph a amended

#### **459.303 Confinement feeding operations — permit requirements.**

1. The department shall approve or disapprove applications for permits for the construction, including the expansion, of confinement feeding operation structures, as provided by rules adopted pursuant to this chapter. The department’s decision to approve or disapprove a permit for the construction of a confinement feeding operation structure shall be based on whether the application is submitted according to procedures required by the department and the application meets standards established by the department. A person shall not begin construction of a confinement feeding operation structure requiring a permit under this section, unless the department first approves the person’s application and issues to the person a construction permit. The department shall provide conditions for requiring when a person must obtain a construction permit.

*a.* Except as provided in paragraph “b”, a person must obtain a permit to construct any of the following:

(1) A confinement feeding operation structure if after construction its confinement feeding operation would have an animal unit capacity of at least one thousand animal units.

(2) The confinement feeding operation structure is an unformed manure storage structure.

*b.* A person is not required to obtain a permit to construct a confinement feeding operation structure if any of the following apply:

(1) The confinement feeding operation structure, if constructed, would be part of a small ani-

mal feeding operation. However, the person must obtain a permit under this section if the confinement feeding operation structure is an unformed manure storage structure.

(2) The confinement feeding operation structure is part of a confinement feeding operation which is owned by a research college conducting research activities as provided in section 459.318.

2. The department shall issue a construction permit upon approval of an application. The department shall approve the application if the application is submitted to the county board of supervisors in the county where the proposed confinement feeding operation structure is to be located as required pursuant to section 459.304, and the application meets the requirements of this chapter. If a county submits an approved recommendation pursuant to a construction evaluation resolution filed with the department, the application must also achieve a satisfactory rating produced by the master matrix used by the board or department under section 459.304. The department shall approve the application regardless of whether the applicant is required to be issued a construction permit.

3. The department shall not approve an application for a construction permit unless the applicant submits all of the following:

*a.* An indemnity fee as provided in section 459.502 that the department shall deposit into the manure storage indemnity fund created in section 459.501.

*b.* A manure management plan as provided in section 459.312 and manure management plan filing fee as provided in section 459.400.

*c.* A construction permit application fee as provided in section 459.400.

4. The applicant may submit a master matrix as completed by the applicant.

5. *a.* A confinement feeding operation meets threshold requirements under this subsection if the confinement feeding operation after construction of a proposed confinement feeding operation structure would have a minimum animal unit capacity of the following:

(1) Three thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation or cattle maintained as part of a cattle operation.

(2) One thousand two hundred fifty animal units for swine maintained as part of a swine farrowing and gestating operation.

(3) Two thousand seven hundred fifty animal units for swine maintained as part of a farrow-to-finish operation.

(4) Four thousand animal units for cattle maintained as part of a cattle operation.

*b.* The department shall not approve an application for a construction permit unless the following apply:

(1) If the application is for a permit to con-

struct an unformed manure storage structure, the application must include a statement approved by a professional engineer certifying that the construction of the unformed manure storage structure complies with the construction design standards required in this subchapter.

(2) If the application is for a permit to construct three or more confinement feeding operation structures, the application must include a statement providing that the construction of the confinement feeding operation structures will not impede drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction. For a confinement feeding operation that meets threshold requirements, the statement must be approved by a professional engineer. Otherwise, if the application is for a permit to construct a formed manure storage structure, the statement must be part of the construction design statement as provided in section 459.306.

(3) If the application is for a permit to construct a formed manure storage structure, other than for a confinement feeding operation meeting threshold requirements, the applicant must include a construction design statement as provided in section 459.306. An application for a permit to construct a formed manure storage structure as part of a confinement feeding operation that meets threshold requirements must include a statement approved by a professional engineer certifying that the construction of the formed manure storage structure complies with the requirements of this subchapter.

(4) The department may only require that an application for a permit to construct a formed manure storage structure or egg washwater storage structure that is part of a confinement feeding operation meeting threshold requirements include an engineering report, construction plans, or specifications prepared by a licensed professional engineer or the natural resources conservation service of the United States department of agriculture.

6. As a condition to approving an application for a construction permit, the department may require any of the following:

*a.* The installation of a related pollution control device or practice, including but not limited to the installation and operation of a water pollution monitoring system for an unformed manure storage structure.

*b.* The department's approval of the installation of any proposed system to permanently lower the groundwater table at a site as part of the construction of an unformed manure storage structure, as is necessary to ensure that the unformed manure storage structure does not pollute groundwater sources, including providing for standards as provided in section 459.308.

7. *a.* The department shall not issue a permit to a person under this section if an enforcement ac-

tion by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending, as provided in section 459.317.

b. The department shall not issue a permit to a person under this section for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under section 459.604.

2003 Acts, ch 44, §74; 2003 Acts, ch 108, §83

For provisions effective until March 1, 2003, relating to applications for construction permits pending on April 29, 2002, including circumstances in which the provisions of this section apply retroactively, see 2002 Acts, ch 1137, §70, 71; 2002 Acts, 2nd Ex. ch 1003, §261, 262

For provisions effective until March 1, 2003, and applicable to construction permit applications received by a county board of supervisors prior to that date, providing for interim county participation in the approval of applications and for rights of applicants and counties to contest departmental decisions, see 2002 Acts, ch 1137, §61, 66, 71; 2002 Acts, 2nd Ex. ch 1003, §258, 262

Approval of construction permit applications using interim matrix until March 1, 2003; 2002 Acts, ch 1137, §63, 65, 70, 71

Internal reference change applied

Subsection 2 amended

Subsection 5, paragraph a, unnumbered paragraph 1 amended

#### **459.307 Construction design standards — formed manure storage structures.**

The department shall adopt rules establishing construction design standards for formed manure storage structures that are part of confinement feeding operations other than small animal feeding operations. However, the construction design standards shall apply to a formed manure storage structure that is part of a small animal feeding operation as provided in section 459.310.

1. The department may provide for different standards based on criteria developed by the department, which may include any of the following:

a. The animal unit capacity of the manure storage structure's confinement feeding operation or the manure storage structure's manure volume capacity.

b. Whether the manure storage structure stores manure in an exclusively dry form.

c. Whether the manure storage structure is part of a confinement feeding operation building.

d. The use of concrete, including its use for the structure's footings, walls, or floor.

2. The construction design standards shall be based, to every extent possible, on uniform standards such as available standards promulgated by the American society for testing and materials. The department may require that all or any part of a formed manure storage structure be constructed of concrete.

3. The construction design standards for concrete shall provide for all of the following:

a. The concrete's minimum compressive strength calculated on a pounds-per-square-inch basis.

b. The use of reinforcement, including but not limited to the grade, amount, and location of steel rebar or fiberglass, wire mesh or fabric, or similar

materials set in the concrete, or the use of exterior braces to support joints.

c. The depth of footings.

d. The thickness of the footings, the floor, and walls.

4. A person shall only construct a formed manure storage structure on karst terrain or an area which drains into a known sinkhole pursuant to upgraded construction design standards necessary to ensure that the structure does not pollute groundwater sources.

2003 Acts, ch 84, §1, 6

Unnumbered paragraph 1 amended

#### **459.308 Unformed manure storage structures — construction standards — inspections.**

1. The department shall adopt rules requiring construction design standards for unformed manure storage structures required to be constructed pursuant to a construction permit issued pursuant to section 459.303.

2. The construction design standards for unformed manure storage structures established by the department shall account for special design characteristics of confinement feeding operations, including all of the following:

a. The lining of the structure shall be constructed with materials deemed suitable by the department in order to minimize seepage loss through the lining's seal.

b. The structure shall be constructed with materials deemed suitable by the department in order to control erosion on the structure's berm, side slopes, and base.

c. The structure shall be constructed to minimize seepage into near-surface water sources.

d. The top of the floor of the structure's liner must be above the groundwater table as determined by the department. If the groundwater table is less than two feet below the top of the liner's floor, the structure shall be installed with a synthetic liner. If the department allows an unformed manure storage structure to be located at a site by permanently lowering the groundwater table, the department shall confirm that the proposed system meets standards necessary to ensure that the structure does not pollute groundwater sources. If the department allows drain tile installed to lower a groundwater table to remain where located, the department shall require that a device be installed to allow monitoring of the water in the drain tile line. The department shall also require the installation of a device to allow shutoff of the drain tile lines, if the drain tile lines do not have a surface outlet accessible on the property where the structure is located.

3. A person shall not construct an unformed manure storage structure on karst terrain or on an area that drains into a known sinkhole. However, a person may construct an unformed manure storage structure, if there is a twenty-five-foot vertical

separation distance between the bottom of the unformed manure storage structure and underlying limestone, dolomite, or other soluble rock.

4. *a.* The department shall conduct a routine inspection of each unformed manure storage structure at least once each year. A routine inspection conducted pursuant to this subsection shall be limited to a visual inspection of the site where the unformed manure storage structure is located. The department shall inspect the site at a reasonable time after providing at least twenty-four hours' notice to the person owning or managing the confinement feeding operation. The visual inspection shall include, but not be limited to, determining whether any of the following exists:

- (1) An adequate freeboard level.
- (2) The seepage of manure from the unformed manure storage structure.
- (3) Erosion.
- (4) Inadequate vegetation cover.
- (5) The presence of an opening allowing manure to drain from the unformed manure storage structure.

*b.* Nothing in this subsection restricts the department from conducting an inspection of a confinement feeding operation which is not routine.

2003 Acts, ch 84, §2, 6  
Subsection 3 amended

#### **459.309 Settled open feedlot effluent basins — construction design standards.**

If the department requires that a settled open feedlot effluent basin be constructed according to construction design standards, regardless of whether the department requires the owner to be issued a construction permit under section 459.103, any construction design standards for the basin shall be established by rule as provided in chapter 17A that exclusively account for special design characteristics of open feedlots and related basins, including but not limited to the dilute composition of settled open feedlot effluent as collected and stored in the basins.

2003 Acts, ch 44, §75  
Section amended

#### **459.310 Distance requirements.**

1. Except as provided in subsections 3 and 4, the following shall apply:

*a.* A confinement feeding operation structure shall not be constructed closer than five hundred feet away from the surface intake of an agricultural drainage well. A confinement feeding operation structure shall not be constructed closer than one thousand feet from a wellhead, cistern of an agricultural drainage well, or known sinkhole. However, the department may adopt rules requiring an increased separation distance under this paragraph in order to protect the integrity of a water of the state. The increased separation distance shall not be more than two thousand feet. If the department exercises its discretion to increase the sepa-

ration distance requirement, the department shall not approve an application for the construction of a confinement feeding operation structure within that separation distance as provided in section 459.303.

*b.* A confinement feeding operation structure shall not be constructed if the confinement feeding operation structure as constructed is closer than any of the following:

- (1) Five hundred feet away from a water source other than a major water source.
- (2) One thousand feet away from a major water source.
- (3) Two thousand five hundred feet away from a designated wetland.

*c.* (1) A water source, other than a major water source, shall not be constructed, expanded, or diverted, if the water source as constructed, expanded, or diverted is closer than five hundred feet away from a confinement feeding operation structure.

(2) A major water source shall not be constructed, expanded, or diverted, if the major water source as constructed, expanded, or diverted is closer than one thousand feet from a confinement feeding operation structure.

(3) A designated wetland shall not be established, if the designated wetland is closer than two thousand five hundred feet away from a confinement feeding operation structure.

2. Except as provided in subsection 4, a confinement feeding operation structure shall not be constructed on land that is part of a one hundred year floodplain as designated by rules adopted by the department pursuant to section 459.301.

3. A separation distance required in subsection 1 shall not apply to any of the following:

*a.* A location or object and a farm pond or privately owned lake, as defined in section 462A.2.

*b.* A confinement feeding operation building, an egg washwater storage structure, or a manure storage structure constructed with a secondary containment barrier. The department shall adopt rules providing for the construction and use of a secondary containment barrier, including construction design standards.

4. A separation distance required in subsection 1 or the prohibition against construction of a confinement feeding operation structure on a one hundred year floodplain as provided in subsection 2 shall not apply to a confinement feeding operation that includes a confinement feeding operation structure that was constructed prior to March 1, 2003, if any of the following apply:

*a.* One or more unformed manure storage structures that are part of the confinement feeding operation are replaced with one or more formed manure storage structures on or after April 28, 2003, and all of the following apply:

- (1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased

for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

(3) The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the formed manure storage structures during any eighteen-month period.

(4) No portion of the replacement formed manure storage structure is closer to the location or object from which separation is required under subsection 1 than any other confinement feeding operation structure which is part of the operation.

(5) The formed manure storage structure meets or exceeds the requirements of section 459.307.

b. A formed manure storage structure that is part of the confinement feeding operation is constructed on or after April 28, 2003, pursuant to a variance granted by the department. In granting the variance, the department shall make a finding of all of the following:

(1) The replacement formed manure storage structure replaces the confinement feeding operation's existing manure storage and handling facilities.

(2) The replacement formed manure storage structure complies with standards adopted pursuant to section 459.307.

(3) The replacement formed manure storage structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation's existing manure storage and handling facilities.

If the formed manure storage structure will replace any existing manure storage structure, the department shall, as a condition of granting the variance, require that the replaced manure storage structure be properly closed.

5. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as provided in section 460.205.

2003 Acts, ch 84, § 3 – 6; 2003 Acts, ch 108, § 84, 85  
Subsection 1, unnumbered paragraph 1 and paragraph a amended  
Subsection 1, paragraph c, subparagraph (2) amended  
Subsection 2 amended  
NEW subsection 4 and former subsection 4 renumbered as 5

#### **459.312 Manure management plan — requirements.**

1. The following persons shall submit a manure management plan, including an original manure management plan and an updated manure management plan, as required in this section to the department:

a. The owner of a confinement feeding operation, other than a small animal feeding operation,

if any of the following apply:

(1) The confinement feeding operation was constructed after May 31, 1985, regardless of whether the confinement feeding operation structure was required to be constructed pursuant to a construction permit.

(2) The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to section 459.303 or whether the person has submitted a prior manure management plan.

b. A person who applies manure from a confinement feeding operation, other than a small animal feeding operation, which is located in another state, if the manure is applied on land located in this state.

2. Not more than one confinement feeding operation shall be covered by a single manure management plan.

3. The owner of a confinement feeding operation who is required to submit a manure management plan under this section shall submit an updated manure management plan to the department on an annual basis. The department shall provide for a date that each updated manure management plan is required to be submitted to the department. The department may provide for staggering the dates on which updated manure management plans are due. To satisfy the requirements of an updated manure management plan, an owner of a confinement feeding operation may, in lieu of submitting a complete plan, file a document stating that the manure management plan has not changed, or state all of the changes made since the original manure management plan or a previous updated manure management plan was submitted and approved.

4. The department shall deliver a copy of the manure management plan or require the person submitting the manure management plan to deliver a copy of the manure management plan to all of the following:

a. The county board of supervisors in the county where the manure storage structure owned by the person is located.

b. The county board of supervisors in the county where the manure storage structure is proposed to be constructed. If the person is required to be issued a permit for the construction of the manure storage structure as provided in section 459.303, the manure management plan shall accompany the application for the construction permit as provided in section 459.303.

c. The county board of supervisors in the county where the manure is to be applied.

The manure management plan shall be filed with the county board of supervisors. The county auditor or other county officer may accept the manure management plan on behalf of the board.

5. A person shall not remove manure from a manure storage structure which is part of a confinement feeding operation for which a manure

management plan is required under this section, unless the department approves a manure management plan, including an original manure management plan and an updated manure management plan, as required in this section. The manure management plan shall be submitted by the owner of the confinement feeding operation as provided by the department in accordance with section 459.302. The owner of a confinement feeding operation required to submit a manure management plan for the construction of a manure storage structure may remove manure from another manure storage structure that is constructed, if the department has approved a manure management plan covering that manure storage structure. The department may adopt rules allowing a person to remove manure from a manure storage structure until the manure management plan is approved or disapproved by the department according to terms and conditions required by rules adopted by the department.

6. The department shall not approve an original manure management plan unless the plan is accompanied by a manure management plan filing fee required pursuant to section 459.400. The department shall not approve an updated manure management plan unless the updated manure management plan is accompanied by an annual compliance fee required pursuant to section 459.400.

7. *a.* The department shall not approve an application for a permit to construct a confinement feeding operation structure unless the owner of the confinement feeding operation applying for approval submits an original manure management plan together with the application for the construction permit as provided in section 459.303.

*b.* The department shall not file a construction design statement as provided in section 459.306 unless the owner of the confinement feeding operation structure submits an original manure management plan together with the construction design statement. The construction design statement and manure management plan may be submitted as part of an application for a construction permit as provided in section 459.303.

8. A manure management plan must be authenticated by the person required to submit the manure management plan as required by the department in accordance with section 459.302.

9. The department shall approve or disapprove a manure management plan according to procedures established by the department:

*a.* For an original manure management plan submitted due to the construction of a confinement feeding operation structure, the department shall approve or disapprove the manure management plan as follows:

(1) If the confinement feeding operation structure is constructed pursuant to a construction permit issued pursuant to section 459.303, the ma-

nure management plan shall be approved or disapproved as part of the construction permit application.

(2) If the confinement feeding operation structure is not constructed pursuant to a construction permit issued pursuant to section 459.303, the manure management plan shall be approved or disapproved within sixty days from the date that the department receives the manure management plan.

*b.* For an original manure management plan submitted for a reason other than the construction of a confinement feeding operation structure, the manure management plan shall be approved within sixty days from the date that the department receives the manure management plan.

*c.* For an updated manure management plan, the manure management plan shall be approved within thirty days from the date that the department receives the updated manure management plan.

10. A manure management plan shall include all of the following:

*a.* Restrictions on the application of manure based on all of the following:

(1) Calculations necessary to determine the land area required for the application of manure from a confinement feeding operation based on nitrogen use levels in order to obtain optimum crop yields according to a crop schedule specified in the manure management plan, and according to requirements adopted by the department.

(2) (a) A phosphorus index. The department shall establish a phosphorus index by rule in order to determine the manner and timing of the application to a land area of manure originating from a confinement feeding operation. The phosphorus index shall provide for the application of manure on a field basis. The phosphorus index shall be used to determine application rates, based on the number of pounds of phosphorus that may be applied per acre and application practices. The phosphorus index shall be based on the field office technical guide for Iowa as published by the United States department of agriculture, natural resources conservation service, which sets forth nutrient management standards.

(b) The department shall develop a state comprehensive nutrient management strategy. Prior to developing the state comprehensive nutrient management strategy, the department shall complete all of the following:

(i) The development of a comprehensive state nutrient budget for the maximum volume, frequency, and concentration of nutrients for each watershed that addresses all significant sources of nutrients in a water of the state on a watershed basis.

(ii) The assessment of the available nutrient control technologies required to identify and assess their effectiveness.

(iii) The development and adoption of admin-

istrative rules pursuant to chapter 17A required to establish a numeric water quality standard for phosphorus.

(c) Regardless of the development of the state comprehensive nutrient management strategy as provided in subparagraph subdivision (b), the department shall adopt rules required to establish a phosphorus index. The department shall cooperate with the United States department of agriculture natural resource conservation service technical committee for Iowa to refine and calibrate the phosphorus index in adopting the rules. Rules adopted by the department pursuant to this subparagraph shall become effective on July 1, 2003.

(d) The department shall conduct a study that considers the effects on waters of this state from phosphorus originating from municipal and industrial sources and from farm and lawn and garden use. The department shall report the results of its study to the general assembly by January 1, 2004.

(e) A person submitting a manure management plan shall include a phosphorus index as part of the manure management plan as follows:

(i) A person who has submitted an original manure management plan prior to April 1, 2002, shall not be required to submit a manure management plan update which includes a phosphorus index until on and after the four-year anniversary date that the department's rules adopted to implement the phosphorus index become effective.

(ii) A person required to submit an original manure management plan on and after April 1, 2002, but prior to the date that is sixty days after the department's rules adopted to implement the phosphorus index become effective, shall not be required to submit a manure management plan update that includes a phosphorus index until on and after the two-year anniversary date that the department's rules adopted to implement the phosphorus index become effective.

(iii) A person required to submit an original manure management plan on and after the date that is sixty days after the department's rules adopted to implement the phosphorus index become effective shall include the phosphorus index as part of the original manure management plan and updated manure management plans.

Subparagraph subdivisions (b) through (e) and this paragraph are repealed on the date that any person who has submitted an original manure management plan prior to April 1, 2002, is required to submit a manure management plan update which includes a phosphorus index as provided in subparagraph subdivision (e), subparagraph subdivision part (i). The department shall publish a notice in the Iowa administrative bulletin published immediately prior to that date, and the director of the department shall deliver a copy of the notice to the Iowa Code editor.

b. Manure nutrient levels as determined by either manure testing or accepted standard manure

nutrient values.

c. Manure application methods, timing of manure application, and the location of the manure application.

d. If the location of the application is on land other than land owned by the person applying for the construction permit, the plan shall include a copy of each written agreement executed between the person and the landowner where the manure will be applied.

e. An estimate of the annual animal production and manure volume or weight produced by the confinement feeding operation.

f. Methods, structures, or practices to prevent or diminish soil loss and potential surface water pollution.

g. Methods or practices to minimize potential odors caused by the application of manure by the use of spray irrigation equipment.

11. A confinement feeding operation classified as a habitual violator as provided in section 459.604 shall submit a manure management plan to the department on an annual basis, which must be approved by the department for the following year of operation. The manure management plan shall be a replacement original manure management plan rather than a manure management plan update. However, the habitual violator required to submit a replacement original manure management plan must submit an annual compliance fee in the same manner as if the habitual violator were submitting an updated manure management plan.

12. A person required to submit a manure management plan to the department shall maintain a current manure management plan and maintain records sufficient to demonstrate compliance with the manure management plan. Chapter 22 shall not apply to the records which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

a. Upon waiver by the person receiving the permit.

b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.

c. When required by subpoena or court order.

13. The department may inspect the confinement feeding operation at any time during normal working hours, and may inspect records required to be maintained as part of the manure management plan. The department shall regularly inspect a confinement feeding operation if the operation or a person holding a controlling interest in the operation is classified as a habitual violator pursuant to section 459.604. The department shall assess and the confinement feeding operation shall pay the actual costs of the inspection.

14. A person required to authenticate a manure management plan submitted to the department who is found in violation of the terms and

conditions of the plan shall not be subject to an enforcement action other than the assessment of a civil penalty pursuant to section 459.603.

2003 Acts, ch 108, §86  
 Manure management plan updates are not required to be submitted earlier than March 1, 2003; 2002 Acts, ch 1137, §71  
 Internal reference change applied  
 Subsection 10, paragraph a, subparagraph (2), subparagraph subdivision (b), subparagraph subdivision part (i) amended

**459.314A Licensure — commercial manure service.**

A person shall not engage in the business of a commercial manure service unless the department issues the person a commercial manure service license under this section.

1. The department shall not issue a license to a commercial manure service unless each manager of the commercial manure service is certified as a commercial manure service representative pursuant to section 459.315.

2. The department shall not issue a license to a commercial manure service if the license for the commercial manure service has been revoked within the previous three years or a person who holds a controlling interest in the commercial manure service held a controlling interest in another commercial service which has been revoked within the previous three years.

3. The department may impose conditions or limitations upon the license. However, the issuance of a license shall not be conditioned upon providing a bond or maintaining a certain financial condition. A commercial manure service shall be issued a single license regardless of the number of sites where the commercial manure service operates offices.

4. A license application must be submitted to the department on a form furnished by the department according to procedures required by the department. The license shall expire on March 1 of each year.

5. A commercial manure service shall be charged a license fee as provided in section 459.400.

2003 Acts, ch 163, §4, 23  
 Section takes effect January 1, 2004; 2003 Acts, ch 163, §23  
 NEW section

**459.314B Disciplinary action — commercial manure service.**

The department may issue an order to suspend or revoke the license of a commercial manure service as provided in chapter 17A, including an order to immediately suspend or revoke the license pursuant to section 17A.18A. The department may suspend or revoke the license of a commercial manure service for an applicable violation of this chapter. In addition, the department may suspend or revoke a commercial manure service's license for any of the following:

1. Committing a fraudulent act, including but not limited to engaging in a deceptive act or practice, deliberately misrepresenting or omitting a

material fact in the license application, or submitting a statement verifying that an employee may be substituted for certification without paying a fee as provided in section 459.400.

2. Knowingly assisting a person in evading the provisions of this chapter.

3. Knowingly employing or executing a contract with a person who acts as a commercial manure service representative who is not certified pursuant to section 459.315.

2003 Acts, ch 163, §5, 23  
 NEW section

**459.315 Certification and education requirements.**

1. a. A person shall not act as a commercial manure service representative unless the person is certified pursuant to an educational program as provided in this section.

b. A person shall not act as a confinement site manure applicator unless the person is certified pursuant to an educational program as provided in this section.

2. a. A person required to be certified as a commercial manure service representative must be certified by the department each year. The person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or three hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

b. A person required to be certified as a confinement site manure applicator must be certified by the department every three years. However, if the person is exempt from paying the certification fee because a family member has paid a certification fee as provided in section 459.400, the person's certification shall expire on the same date that the paid family member's certification expires. A person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or two hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

3. The department shall adopt, by rule, requirements for the certification, including educational program requirements. The department may establish different educational programs designed for commercial manure service representatives and confinement site manure applicators. The department shall adopt rules necessary to administer this section, including establishing certification standards, which shall at least include standards for transporting, handling, storing, and applying manure, the potential effects of manure upon surface water and groundwater, and procedures to remediate the potential effects on surface water or groundwater.

a. The department shall adopt by rule criteria for allowing a person required to be certified to

complete either a written or oral examination.

b. The department shall administer the continuing instructional courses, by either teaching the courses or selecting persons to teach the courses, according to criteria as provided by rules adopted by the department. The department shall, to the extent possible, select persons to teach the continuing instructional courses. The department is not required to compensate persons to teach the continuing instructional courses. In selecting persons, the department shall consult with organizations interested in transporting, handling, storing, or applying manure, including the Iowa commercial nutrient applicators association and associations representing agricultural producers. The Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology shall cooperate with the department in administering the continuing instructional courses. The Iowa cooperative extension service may teach continuing instructional courses, train persons selected to teach courses, or distribute informational materials to persons teaching the courses.

c. The department, in administering the certification program under this section, and the department of agriculture and land stewardship in administering the certification program for pesticide applicators may cooperate together.

4. This section shall not require a person to be certified as a confinement site manure applicator if the person applies manure which originates from a manure storage structure which is part of a small animal feeding operation.

5. a. This section shall not require a person to be certified as a commercial manure service representative if any of the following applies:

(1) The person is any of the following:

(a) Actively engaged in farming who trades work with another such person.

(b) Employed by a person actively engaged in farming not solely as a manure applicator who applies manure as an incidental part of the person's general duties.

(c) Engaged in applying manure as an incidental part of a custom farming operation.

(d) Engaged in applying manure as an incidental part of a person's duties as provided by rules adopted by the department providing for an exemption.

(2) The person transports, handles, stores, or applies manure for a period of thirty days from the date of initial employment as a commercial manure service representative and all of the following apply:

(a) The person is actively seeking certification under this section.

(b) The person is transporting, handling, storing, or applying manure under the instructions and control of a certified commercial manure service representative. The commercial manure service representative must be physically present at

the site where the manure is located. The commercial manure service representative must also be in sight or immediate communication distance of the supervised person.

b. This section shall not require a person to be certified as a confinement site manure applicator if all of the following apply:

(1) The person is a part-time employee or family member of a confinement site manure applicator.

(2) The person is acting under the instructions and control of a certified confinement site manure applicator who is both of the following:

(a) Physically present at the site where the manure is located.

(b) In sight or hearing distance of the supervised person.

6. The department may charge a fee for certifying a person under this section as provided in section 459.400.

2003 Acts, ch 163, §6 – 11, 23; 2003 Acts, 1st Ex, ch 2, §27, 209

Subsection 1 stricken

Subsection 2 stricken, rewritten, and renumbered as 1

Former subsections 3 and 4 renumbered as 2 and 3

Subsection 2, paragraph a amended

Subsection 3, unnumbered paragraph 1 and paragraph b amended

NEW subsection 4

Subsection 5, paragraph a amended

Subsection 6 amended

#### **459.315A Disciplinary action — commercial manure service representatives.**

The department may issue an order to suspend or revoke the certification of a commercial manure service representative for a violation of this chapter. The department shall issue an order for the suspension or revocation of a certificate as provided in chapter 17A. The department may issue an order to immediately suspend or revoke the certification notwithstanding section 17A.18.

2003 Acts, ch 163, §12, 23

NEW section

**459.316 Compliance fees.** Transferred to § 459.400; 2003 Acts, ch 163, § 22, 23.

### SUBCHAPTER IV

#### ANIMAL AGRICULTURE COMPLIANCE FUND — FEES

#### **459.400 Compliance fees.**

1. The department shall establish, assess, and collect all of the following compliance fees:

a. A construction permit application fee that is required to accompany an application submitted to the department for approval to construct a confinement feeding operation structure as provided in section 459.303. The amount of the construction permit application fee shall not exceed two hundred fifty dollars.

b. A manure management plan filing fee that is required to accompany an original manure management plan submitted to the department for approval as provided in section 459.312. However,

the manure management plan required to be filed as part of an application for a construction permit shall be paid together with the construction permit application fee. The amount of the manure management plan filing fee shall not exceed two hundred fifty dollars.

c. An annual compliance fee that is required to accompany an updated manure management plan submitted to the department for approval as provided in section 459.312. The amount of the annual compliance fee shall not exceed a rate of fifteen cents per animal unit based on the animal unit capacity of the confinement feeding operation covered by the manure management plan. If the person submitting the manure management plan is a contract producer, as provided in chapter 202, the active contractor shall be assessed the annual compliance fee.

d. Educational program fees paid by persons required by the department to be certified as commercial manure service representatives or confinement site manure applicators pursuant to section 459.315. The amount of the educational program fees together with commercial manure service licensing fees shall be adjusted annually by the department based on the costs of administering section 459.315 and paying the expenses of the department relating to certification.

(1) The fee for certification of a commercial manure service representative shall not be more than seventy-five dollars. A commercial manure service licensed pursuant to section 459.314A may pay for the annual certification of its employees. If a commercial manure service makes payment for an employee to be certified as a commercial manure service representative and that employee leaves employment, the commercial manure service may substitute a new employee to be certified for the former employee. The department shall not charge for the certification of the substituted employee. The department may require that the commercial manure service provide the department with documentation that the substitution is valid. The department shall not charge the fee to a person who is a manager of a commercial manure service licensed pursuant to section 459.314A. The department may require that the commercial manure service provide documentation that a person is a manager.

(2) A person who is certified as a confinement site manure applicator as provided in section 459.315 is exempt from paying the certification fee if all of the following apply:

(a) The person is certified within one year from the date that a family member has been certified as a confinement site manure applicator.

(b) The family member has paid the fee for that family member's own certification.

e. Fees paid by persons required by the department to be licensed as a commercial manure service as provided in section 459.314A. The fee for

a commercial manure service license shall not be more than two hundred dollars. The amount of the licensing fees together with educational program fees shall be adjusted annually by the department based on the costs of administering section 459.315 and paying the expenses of the department relating to certification.

2. Compliance fees collected by the department shall be deposited into the animal agriculture compliance fund created in section 459.401.

a. Except as provided in paragraph "b", moneys collected from all fees shall be deposited into the compliance fund's general account.

b. Moneys collected from the annual compliance fee shall be deposited into the compliance fund's assessment account. Moneys collected from commercial manure service license fees and educational program fees shall be deposited into the compliance fund's educational program account.

3. At the end of each fiscal year the department shall determine the balance of unencumbered and unobligated moneys in the assessment account and the educational program account of the animal agriculture compliance fund created pursuant to section 459.401.

a. If on June 30, the balance of unencumbered and unobligated moneys in the assessment account is one million dollars or more, the department shall adjust the rate of the annual compliance fee for the following fiscal year. The adjusted rate for the annual compliance fee shall be based on the department's estimate of the amount required to ensure that at the end of the following fiscal year the balance of unencumbered and unobligated moneys in the assessment account is not one million dollars or more.

b. If on June 30, the balance of unencumbered and unobligated moneys in the educational program account is twenty-five thousand dollars or more, the department shall adjust the rate of the commercial manure service license fee and the educational program fee for the following fiscal year. The adjusted rate for the fees shall be based on the department's estimate of the amount required to ensure that at the end of the following fiscal year the balance of unencumbered and unobligated moneys in the assessment account is not twenty-five thousand dollars or more.

2003 Acts, ch 163, §13 - 16, 22, 23

Waiver of commercial manure service license fee until March 1, 2004, for managers, and waiver of educational program fee until March 1, 2005, for commercial manure service representatives, if applicable certification fee was paid on or after January 1, 2003, and before May 30, 2003, under prior law; 2003 Acts, ch 163, §21, 23

Section transferred from §459.316 in Code Supplement 2003 pursuant to directive in 2003 Acts, ch 163, §22

Subsection 1, paragraph d amended

Subsection 1, NEW paragraph e

Subsections 2 and 3 amended

**459.401 Animal agriculture compliance fund.**

1. An animal agriculture compliance fund is created in the state treasury under the control of

the department. The compliance fund is separate from the general fund of the state.

2. The compliance fund is composed of three accounts, the general account, the assessment account, and the educational program account.

a. The general account is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the compliance fund. Unless otherwise specifically provided in statute, moneys required to be deposited in the compliance fund shall be deposited into the general account. The general account shall include moneys deposited into the account from all of the following:

(1) The construction permit application fee required pursuant to section 459.303.

(2) The manure management plan filing fee required pursuant to section 459.312.

(3) Educational program fees required to be paid by commercial service representatives or confinement site manure applicators pursuant to section 459.400.

(4) A commercial manure service license fee as provided in section 459.400.

(5) The collection of civil penalties assessed by the department and interest on civil penalties, arising out of violations involving animal feeding operations as provided in sections 459.602 and 459.603.

b. The assessment account is composed of moneys collected from the annual compliance fee required pursuant to section 459.400.

c. The educational program account is composed of moneys collected from the commercial manure service license fee and the educational program fee required pursuant to section 459.400.

3. Moneys in the compliance fund are appropriated to the department exclusively to pay the expenses of the department in administering and enforcing the provisions of subchapters II and III as necessary to ensure that animal feeding operations comply with all applicable requirements of those provisions, including rules adopted or orders issued by the department pursuant to those provisions. The moneys shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. The department shall not transfer moneys from the compliance fund's assessment account to another fund or account, including but not limited to the fund's general account.

4. Moneys in the fund, which may be subject to warrants written by the director of the department of administrative services, shall be drawn upon the written requisition of the director of the department of natural resources or an authorized representative of the director.

5. Notwithstanding section 8.33, any unexpended balance in an account of the compliance fund at the end of the fiscal year shall be retained

in that account. Notwithstanding section 12C.7, subsection 2, interest, earnings on investments, or time deposits of the moneys in an account of the compliance fund shall be credited to that account.

2003 Acts, ch 145, §286; 2003 Acts, ch 163, §17–20, 23; 2003 Acts, ch 179, §73

Temporary transfer of manure storage indemnity fund moneys to the animal agriculture compliance fund; schedule for return of funds; 2002 Acts, ch 1137, §59, 71; 2003 Acts, ch 52, §5, 6

Terminology change applied

Internal reference change applied

Subsection 2, unnumbered paragraph 1 amended

Subsection 2, paragraph a, subparagraph (3) stricken and rewritten

Subsection 2, paragraph a, NEW subparagraph (4) and former subparagraph (4) renumbered as (5)

Subsection 2, NEW paragraph c

Subsection 5 amended

#### **459.402 Animal agriculture compliance fees — delinquencies.**

If a fee imposed under this chapter for deposit into the animal agriculture compliance fund is delinquent, the department may charge interest on any amount of the fee that is delinquent. The rate of interest shall not be more than the current rate published in the Iowa administrative bulletin by the department of revenue pursuant to section 421.7. The interest amount shall be computed from the date that the fee is delinquent, unless the department designates a later date. The interest amount shall accrue for each month in which a delinquency is calculated as provided in section 421.7, and counting each fraction of a month as an entire month. The interest amount shall become part of the amount of the fee due.

2003 Acts, ch 145, §286

Terminology change applied

#### **459.501 Manure storage indemnity fund.**

1. A manure storage indemnity fund is created as a separate fund in the state treasury under the control of the department. The general fund of the state is not liable for claims presented against the fund.

2. The fund consists of moneys from indemnity fees remitted by permittees to the department as provided in section 459.502; moneys from indemnity fees remitted by persons required to submit manure management plans to the department pursuant to section 459.503; sums collected on behalf of the fund by the department through legal action or settlement; moneys required to be repaid to the department by a county pursuant to this subchapter; interest, property, and securities acquired through the use of moneys in the fund; or moneys contributed to the fund from other sources.

3. The moneys collected under this section shall be deposited in the fund and shall be appropriated to the department for the exclusive purpose of providing moneys for cleanup of abandoned facilities as provided in section 459.505, and to pay the department for costs related to administering the provisions of this subchapter. For each fiscal year, the department shall not use more than one percent of the total amount which is

available in the fund or ten thousand dollars, whichever is less, to pay for the costs of administration. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose than provided in this section.

4. The treasurer of state shall act as custodian of the fund and disburse amounts contained in the fund as directed by the department. The treasurer of state is authorized to invest the moneys deposited in the fund. The income from such investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes set out in this subchapter. The moneys in the fund shall be disbursed upon warrants drawn by the director of the department of administrative services pursuant to the order of the department. The fiscal year of the fund begins July 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The auditor of state shall regularly perform audits of the fund.

5. The following shall apply to moneys in the fund:

*a.* The executive council may allocate moneys from the general fund of the state as provided in section 7D.10A in an amount necessary to support the fund, including payment of claims as provided in section 459.505. However, an allocation of moneys from the general fund of the state shall be made only if the amount of moneys in the fund, which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be credited to the general fund of the state under this subsection, is less than one million dollars.

*b.* The department shall credit an amount to the general fund of the state which is equal to an amount allocated to the fund by the executive council under paragraph "a". The department shall credit the moneys to the general fund of the state if the moneys in the fund which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims and any amount required to be transferred to the general fund under this paragraph, are in excess of two million five hundred thousand dollars. The department is not required to credit the total amount to the general fund of the state during any one fiscal year.

2003 Acts, ch 44, §76; 2003 Acts, ch 52, §2, 3, 6; 2003 Acts, ch 145, §286  
 Temporary transfer of unencumbered and unobligated funds to the general fund of the animal agriculture compliance fund; schedule for return of funds; 2002 Acts, ch 1137, §59, 71; 2003 Acts, ch 52, §5, 6

See Code editor's note to §2.9  
 Terminology change applied  
 Subsection 2 amended  
 Subsection 5, paragraph a stricken and former paragraphs b and c redesignated as a and b

**459.503A Indemnity fee — waiver and reinstatement.**

The indemnity fee required under sections 459.502 and 459.503 shall be waived and the fee shall not be assessable or owing if, at the end of any three-month period, unobligated and unencumbered moneys in the manure storage indemnity fund, not counting the department's estimate of the cost to the fund for pending or unsettled claims, exceed three million dollars. The department shall reinstate the indemnity fee under those sections if unobligated and unencumbered moneys in the fund, not counting the department's estimate of the cost to the fund for pending or unsettled claims, are less than two million dollars.

2003 Acts, ch 52, §4, 6  
 NEW section

**459.505 Use of moneys by counties for cleanup.**

1. A county that has acquired real estate containing a manure storage structure following non-payment of taxes pursuant to section 446.19, may make a claim against the fund to pay cleanup costs incurred by the county as provided in section 459.506. Each claim shall include a bid by a qualified person, other than a governmental entity, to remove and dispose of the manure for a fixed amount specified in the bid.

2. If a county provides cleanup under section 459.506 after acquiring real estate following non-payment of taxes, the department shall determine if a claim is eligible to be satisfied under this subsection, and do one of the following:

*a.* Pay the amount of the claim required in this section, based on the fixed amount specified in the bid submitted by the county upon completion of the work.

*b.* Obtain a lower fixed amount bid for the work from another qualified person, other than a governmental entity, and pay the amount of the claim required in this section, based on the fixed amount in this bid upon completion of the work. The department is not required to comply with section 8A.311 in implementing this section.

3. If a county provides cleanup of a condition causing a clear, present, and impending danger to the public health or environment, as provided in section 459.506, the county may make a claim against the fund to pay cleanup costs incurred by the county, according to procedures and requirements established by rules adopted by the department. The department shall determine if a claim is eligible to be satisfied under this subsection, and pay the amount of the claim required in this section.

4. Upon a determination that the claim is eligible for payment, the department shall provide for payment of one hundred percent of the claim, as provided in this section. If at any time the depart-

ment determines that there are insufficient moneys to make payment of all claims, the department shall pay claims according to the date that the claims are received by the department. To the extent that a claim cannot be fully satisfied, the department shall order that the unpaid portion of the payment be deferred until the claim can be satisfied. However, the department shall not satisfy claims from moneys dedicated for the administration of the fund.

5. In the event of payment of a claim under this section, the fund is subrogated to the extent of the amount of the payment to all rights, powers, privileges, and remedies of the county regarding the payment amount. The county shall render all necessary assistance to the department in securing the rights granted in this section. A case or proceeding initiated by a county which involves a claim submitted to the department shall not be compromised or settled without the consent of the department. A county shall not be eligible to submit a claim to the department if the county has compromised or settled a case or proceeding, without the consent of the department.

6. If upon disposition of the real estate the county realizes an amount which exceeds the total amount of the delinquent real estate taxes, the county shall forward to the fund any excess amount which is not more than the amount expended by the fund to pay the claim by the county.

2003 Acts, ch 145, §264  
Subsection 2, paragraph b amended

#### **459.604 Habitual violators — classification — penalties.**

1. The department may impose a civil penalty upon a habitual violator which shall not exceed twenty-five thousand dollars for each day the violation continues. The increased penalty may be assessed for each violation committed subsequent to the violation which results in classifying the person as a habitual violator. A person shall be classified as a habitual violator if the person has committed three or more violations as described in this subsection. To be considered a violation that is applicable to a habitual violator determination, a violation must have been committed on or after January 1, 1995. In addition, each violation must have been referred to the attorney general for legal action under this chapter, and each violation must be subject to the assessment of a civil penalty or a court conviction, in the five years prior to the date of the latest violation provided in this subsection, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A person shall be removed from the classification of habitual violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than

three violations described in this subsection for the prior five years. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. A violation must relate to one of the following:

a. The construction or operation of a confinement feeding operation structure, or the installation or use of a related pollution control device or practice, for which the person must obtain a permit, in violation of this chapter, or rules adopted by the department, including the terms or conditions of the permit.

b. Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for a confinement feeding operation structure, or the installation of a related pollution control device or practice for which the person must obtain a construction permit.

c. Failing to obtain a permit or approval by the department in violation of this chapter or departmental rule which requires a permit to construct or operate a confinement feeding operation or use a confinement feeding operation structure, anaerobic lagoon, or a pollution control device or practice which is part of a confinement feeding operation.

d. Operating a confinement feeding operation, including a confinement feeding operation structure, or a related pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

e. Failing to submit a manure management plan as required pursuant to section 459.312, or operating a confinement feeding operation without having a manure management plan approved by the department.

This subsection shall not apply unless the department has previously notified the person of the person's classification as a habitual violator. The department shall notify persons classified as habitual violators of their classification, additional restrictions imposed upon the persons pursuant to their classification, and special civil penalties that may be imposed upon the persons. The notice shall be sent to the persons by certified mail.

2. Moneys assessed and collected in civil penalties and interest earned on civil penalties, arising out of a violation involving an animal feeding operation, shall be deposited in the animal agriculture compliance fund as created in section 459.401.

2003 Acts, ch 108, §87  
Subsection 1, unnumbered paragraph 2 amended

## CHAPTER 460

## AGRICULTURAL DRAINAGE WELLS AND SINKHOLES

**460.303 Agricultural drainage wells — alternative drainage system assistance fund.**

1. An alternative drainage system assistance fund is created in the state treasury under the control of the soil conservation division. The fund is composed of moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the division or the state soil conservation committee established pursuant to section 161A.4, from the United States or private sources for placement in the fund.

2. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants written by the director of the department of administrative services, drawn upon the written requisition of the division.

3. The fund shall be used to support the alternative drainage system assistance program as

provided in section 460.304. Moneys shall be used to provide financial incentives under the program, and to defray expenses by the division in administering the program. However, not more than one percent of the money in the fund is available to defray administrative expenses. The division may adopt rules pursuant to chapter 17A to administer this section.

4. The division shall not in any manner directly or indirectly pledge the credit of the state.

5. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 462A

## WATER NAVIGATION REGULATIONS

**462A.12 Prohibited operation.**

1. No person shall operate any vessel, or manipulate any water skis, surfboard or similar device in a careless, reckless or negligent manner so as to endanger the life, limb or property of any person.

2. A person shall not operate any vessel, or manipulate any water skis, surfboard or similar device while under the influence of an alcoholic beverage, marijuana, a narcotic, hypnotic or other drug, or any combination of these substances. However, this subsection does not apply to a person operating any vessel or manipulating any water skis, surfboard or similar device while under the influence of marijuana, or a narcotic, hypnotic or other drug if the substances were prescribed for the person and have been taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A, provided there is no evidence of the consumption of alcohol and further provided the medical practitioner has not directed the person to refrain from operating a motor vehicle, any vessel or from manipulating any water skis, surfboard or similar device.

3. No person shall place, cause to be placed, throw or deposit onto or in any of the public waters, ice or land of this state any cans, bottles, garbage, rubbish, and other debris.

4. No person shall operate on the waters of this state under the jurisdiction of the conservation

commission any vessel displaying or reflecting a blue light or flashing blue light unless such vessel is an authorized emergency vessel.

5. No person shall operate a vessel and enter into areas in which search and rescue operations are being conducted or an area affected by a natural disaster unless authorized by the officer in charge of the search and rescue or disaster operation. Any person authorized in an area of operation shall operate the person's vessel at a no wake speed and shall keep clear of all other vessels engaged in the search and rescue or disaster operation. A person who must operate a vessel in a disaster area to gain access or egress from the person's home shall be considered an authorized person by the officer in charge.

6. An owner or operator shall not permit any person under twelve years of age to operate the personal watercraft unless accompanied in or on the same personal watercraft by a responsible person of at least eighteen years of age. Commencing January 1, 2003, a person who is twelve years of age or older but less than eighteen years of age shall not operate any personal watercraft unless the person has successfully completed a department-approved watercraft safety course. A person required to have a watercraft safety certificate shall carry and shall exhibit or make available the certificate upon request of an officer of the department. A violation of this subsection is a simple misdemeanor as provided in section 462A.13.

However, a person charged with violating this subsection shall not be convicted if the person produces in court, within a reasonable time, a department-approved certificate. The cost of a department certificate, or any duplicate, shall not exceed five dollars.

7. A person shall not operate watercraft in a manner which unreasonably or unnecessarily interferes with other watercraft or with the free and proper navigation of the waters of the state. Anchoring under bridges, in a heavily traveled channel, in a lock chamber, or near the entrance of a lock constitutes such interference if unreasonable under the prevailing circumstances.

8. A person shall not operate a vessel in violation of restrictions as given by state-approved buoys or signs marking an area.

9. A person shall not operate on the waters of this state under the jurisdiction of the commission a vessel equipped with an engine of greater horsepower rating than is designated for the vessel by the federally required capacity plate or by the manufacturer's plate on those vessels not covered by federal regulations.

10. A person shall not leave an unattended vessel tied or moored to a dock which is placed immediately adjacent to a public boat launching ramp or to a dock which is posted for loading and unloading.

11. A person shall not operate a vessel within fifty feet of a diver's flag placed in accordance with the rules of the commission adopted under chapter 17A.

12. A person shall not operate a personal watercraft at any time between sundown and sunup.

13. A person shall not chase or harass animals while operating a personal watercraft or motorboat.

2003 Acts, ch 44, §77

For applicable scheduled fines, see §805.8B, subsection 1, paragraph c  
Subsection 6 amended

#### **462A.55 Sales or use tax to be paid before registration.**

No vessel shall be registered by the county recorder until there has been presented to the recorder receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the vessel. If the owner of the vessel is unable to present satisfactory evidence that

the sales or use tax has been paid, the county recorder shall collect the tax. On or before the tenth day of each month, the county recorder shall remit to the department of revenue the amount of the taxes so collected during the preceding month, together with an itemized statement on forms furnished by the department of revenue showing the name of each taxpayer, the make and purchase price of each vessel and motor, the amount of tax paid, and such other information as the department of revenue shall require.

2003 Acts, ch 145, §286

Terminology change applied

#### **462A.78 Fees — surcharge — duplicates.**

1. *a.* The county recorder shall charge a five dollar fee to issue a certificate of title, a transfer of the certificate, a duplicate, or a corrected certificate of title.

*b.* In addition to the fee required under paragraph "a", and sections 462A.82 and 462A.84, a surcharge of five dollars shall be required.

2. If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate, as shown by the county recorder's records, shall within thirty days obtain a duplicate by applying to the county recorder. The applicant shall furnish information the department requires concerning the original certificate and the circumstances of its loss, mutilation, or destruction. Mutilated or illegible certificates shall be returned to the department with the application for a duplicate.

3. The duplicate certificate of title shall be marked plainly "duplicate" across its face, and mailed or delivered to the applicant.

4. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the department for cancellation.

5. The funds collected under subsection 1, paragraph "a", shall be placed in the general fund of the county and used for the expenses of the county conservation board if one exists in that county. Of each surcharge collected as required under subsection 1, paragraph "b", the county recorder shall remit five dollars to the department of revenue for deposit in the general fund of the state.

2003 Acts, ch 145, §286

Terminology change applied

## CHAPTER 466

### IMPROVEMENT OF WATERSHED ATTRIBUTES

#### **466.5 Conservation reserve enhancement program.**

1. A conservation reserve enhancement program is established within the department of agri-

culture and land stewardship to restore or construct wetlands for the purposes of intercepting tile line runoff, reducing nutrient loss, improving water quality, and enhancing agricultural produc-

tion practices. The program shall be directed primarily, but not exclusively, toward the tile-drained areas of the state.

2. The department of agriculture and land stewardship shall request the assistance of and consult with the United States department of agriculture's natural resources conservation service and farm service agency to implement the conservation reserve enhancement program. The department shall also consult with county boards of supervisors, county conservation boards, drainage district representatives, department of natural resources, and soil and water conservation districts affected by the implementation of the conservation reserve enhancement program. The department shall also collaborate with other public agencies and private organizations to develop wetland habitat and related projects to improve water quality.

3. The department of agriculture and land stewardship shall maintain a record of all wetlands established pursuant to the conservation reserve enhancement program including any conditions that may apply to the landowner's right to remove the wetland after the provisions of the conservation reserve enhancement program contract or easement are concluded.

4. When establishing a wetland under this section, the department of agriculture and land stewardship shall be governed by the following requirements:

a. Wetland construction or restoration shall not damage the value of property in any public or private drainage system without the property owner's consent.

b. Wetland construction or restoration shall improve water quality and provide aesthetic and habitat benefits.

c. Wetland construction or restoration under this section may be used to mitigate wetland removal by the landowner if it meets the requirements of federal agencies with wetland jurisdictional authorities. Where practicable, priority shall be given to mitigating wetland removal within the same United States geological survey hydrologic unit code 8 watershed, but a watershed confines shall not limit the use of duly authorized wetland mitigation banks.

5. The five-year goal of the conservation reserve enhancement program is the establishment of thirty-two thousand five hundred acres of wetlands.

2003 Acts, ch 108, §88  
 Subsection 4, unnumbered paragraph 1 amended

## CHAPTER 468

### LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS

**468.165 Duty of treasurer.** Repealed by 2003 Acts, ch 24, § 9.

**468.327 Trustee control.**

A district formed pursuant to this part, under the control of a city council, may be placed under the control and management of a board of trustees as provided in subchapter III of this chapter. Each trustee shall be a citizen of the United States not less than eighteen years of age and a bona fide owner of benefited land in the district for which the trustee is elected. If the owner is a family farm corporation as defined by section 9H.1, subsection 8, a business corporation organized and existing under chapter 490 or 491, or a partnership, a stockholder or officer authorized by the corporation or a general partner may be elected as a trustee of the district.

Section not amended; internal reference change applied

**468.506 Eligibility of trustees.**

Each trustee shall be a citizen of the United States not less than eighteen years of age, and one of the following:

1. The bona fide owner of agricultural land in the election district for which the trustee is

elected, and a resident of the county in which that district is located or of a county which is contiguous to or corners on that county.

2. The bona fide owner of nonagricultural land in the election district for which the trustee is elected, and a resident of that district. This subsection applies only when the election district is wholly within the corporate limits of a city.

3. A stockholder of a family farm corporation as defined in section 9H.1, subsection 8, which owns land in the election district who is a resident of the county in which that district is located or of a county which is contiguous to or corners on that county.

4. In a district which is a levee and drainage district which has eighty-five percent of its acreage within the corporate limits of a city and has been under the control of a city under subchapter II, part 3, a bona fide owner of benefited land in the district. If the owner is a family farm corporation as defined by section 9H.1, subsection 8, a business corporation organized and existing under chapter 490 or 491, or a partnership, a stockholder or officer authorized by the corporation or a general partner may be elected as a trustee of the district.

Section not amended; internal reference changes applied

## CHAPTER 473

## ENERGY DEVELOPMENT AND CONSERVATION

**473.11 Energy conservation trust established — receipts and disbursements.**

1. *a.* The energy conservation trust is created within the state treasury. This state, on behalf of itself, its citizens, and its political subdivisions accepts any moneys awarded or allocated to the state, its citizens, and its political subdivisions as a result of the federal court decisions and United States department of energy settlements resulting from alleged violations of federal petroleum pricing regulations and deposits the moneys in the energy conservation trust.

*b.* The energy conservation trust is established to provide for an orderly, efficient, and effective mechanism to make maximum use of moneys available to the state, in order to increase energy conservation efforts and thereby to save the citizens of this state energy expenditures. The moneys in the funds in the trust shall be expended only upon appropriation by the general assembly and only for programs which will benefit citizens who may have suffered economic penalties resulting from the alleged petroleum overcharges.

*c.* The moneys awarded or allocated from each court decision or settlement shall be placed in a separate fund in the energy conservation trust. Notwithstanding section 12C.7, interest and earnings on investments from moneys in the trust shall be credited proportionately to the funds in the trust.

*d.* Unless prohibited by the conditions applying to a settlement, the petroleum overcharge moneys in the energy conservation trust may be used for the payment of attorney fees and expenses incurred by the state to obtain the moneys and shall be paid by the director of the department of administrative services from the available moneys in the trust subject to the approval of the attorney general.

*e.* However, petroleum overcharge moneys received pursuant to claims filed on behalf of the state, its institutions, departments, agencies, or political subdivisions shall be deposited in the general fund of the state to be disbursed directly to the appropriate claimants in accordance with federal guidelines and subject to the approval of the attorney general.

*f.* The moneys deposited under section 473.16 in the general fund of the state shall be used for research and development of selected projects to improve Iowa's energy independence by developing improved methods of energy efficiency, or by increased development and use of Iowa's renewable nonresource-depleting energy resources. The moneys credited to the general fund of the state under section 556.18, subsection 3, shall be used for energy conservation and alternative energy re-

source projects. The projects shall be selected by the director and administered by the department. Selection criteria for funded projects shall include consideration of indirect restitution to those persons in the state in the utility customer classes and the utility service territories affected by unclaimed utility refunds or deposits.

Moneys deposited into the general fund of the state under sections 473.16, 476.51, and 556.18, subsection 3, are subject to the requirements of section 8.60.

2. The treasurer of state shall be the custodian of the energy conservation trust and shall invest the moneys in the trust, in consultation with the energy fund disbursement council established in subsection 3 and the investment board of the Iowa public employees' retirement system, in accordance with the following guidelines:

*a.* To maximize the rate of return on moneys in the trust while providing sufficient liquidity to make fund disbursements, including contingency disbursements.

*b.* To absolutely insure the trust against loss.

*c.* To use such investment tools as are necessary to achieve these purposes.

3. An energy fund disbursement council is established. The council shall be composed of the governor or the governor's designee, the director of the department of management, who shall serve as the council's chairperson, the administrator of the division of community action agencies of the department of human rights, a designee of the director of the department of natural resources who is knowledgeable in the field of energy conservation, and a designee of the director of transportation who is knowledgeable in the field of energy conservation. The council shall include as nonvoting members two members of the senate appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and two members of the house of representatives appointed by the speaker of the house, after consultation with the majority leader and the minority leader of the house. The legislative members shall be appointed upon the convening and for the period of each general assembly. Not more than one member from each house shall be of the same political party. The council shall be staffed by the department of natural resources. The attorney general shall provide legal assistance to the council.

The council shall do all of the following:

*a.* Oversee the investment of moneys deposited in the energy conservation trust.

*b.* Make recommendations to the governor and the general assembly regarding annual appropriations from the energy conservation trust.

c. Work with the department of natural resources in adopting administrative rules necessary to administer expenditures from the trust, encourage applications for grants and loans, review and select proposals for the funding of competitive grants and loans from the energy conservation trust, and evaluate their comparative effectiveness.

d. Monitor expenditures from the trust.

e. Approve any grants or contracts awarded from the energy conservation trust in excess of five thousand dollars.

f. Prepare, in conjunction with the department of natural resources, an annual report to the governor and the general assembly regarding earnings of and expenditures from the energy conservation trust.

4. The director of the department of natural resources or the director's designee shall be the administrator of the energy conservation trust. The administrator shall disburse moneys appropriated by the general assembly from the funds in the trust in accordance with the federal court orders, law and regulation, or settlement conditions applying to the moneys in that fund, and subject to the approval of the energy fund disbursement council if such approval is required. The council, after consultation with the attorney general, shall immediately approve the disbursement of moneys from the funds in the trust for projects which meet the federal court orders, law and regulations, or settlement conditions which apply to that fund.

5. The following funds are established in the energy conservation trust:

a. The Warner/Imperial fund.

b. The Exxon fund.

c. The Stripper Well fund.

d. The Diamond Shamrock fund.

e. The office of hearings and appeals second-stage settlement fund.

6. The moneys in the fund in the energy conservation trust distributed to the state as a result of the federal court decisions finding oil companies in violation of federal petroleum pricing regulations shall be expended expeditiously, until all the

receipts are depleted and shall be disbursed for projects which meet the strict guidelines of the five existing federal energy conservation programs specified in Pub. L. No. 97-377, § 155, 96 Stat. 1830, 1919 (1982). The council shall approve the disbursement of moneys from the fund in the trust for other projects only if the projects meet one or more of the following conditions:

a. The projects meet the guidelines for allowable projects under a modification order entered by the federal court in the case involving Exxon corporation.

b. The projects meet the guidelines for allowable projects under a directive order entered by the federal court in the case involving Exxon corporation.

c. The projects meet the guidelines for allowable projects under the regulations adopted or written clarifications issued by the United States department of energy.

d. The projects meet the guidelines for allowable projects under the petroleum violation settlement agreement expenditure plan approved by the United States department of energy.

7. On June 30, 2003, the energy fund disbursement council established in subsection 3 shall be dissolved. At that time, the department of natural resources shall be responsible for the disbursement of any funds either received or remaining in the energy conservation trust. These disbursements shall be for projects and programs consistent with the allowable uses for the energy conservation trust. Also, at that time, and annually thereafter, the state department of transportation shall report to the department of natural resources on the status of the intermodal revolving loan fund established in the department. In the fiscal year beginning July 1, 2019, the department of natural resources shall assume responsibility for funds remaining in the intermodal revolving loan fund and disburse them for energy conservation projects and programs consistent with the allowable uses for the energy conservation trust.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 474

### UTILITIES DIVISION

#### 474.1 Creation of division and board — organization.

A utilities division is created within the department of commerce. The policymaking body for the division is the utilities board which is created within the division. The board is composed of three members appointed by the governor and subject to confirmation by the senate, not more than two of whom shall be from the same political

party. Each member appointed shall serve for six-year staggered terms beginning and ending as provided by section 69.19. Vacancies shall be filled for the unexpired portion of the term in the same manner as full-term appointments are made.

The utilities board shall organize by appointing an executive secretary, who shall take the same oath as the members. The board shall set the salary of the executive secretary within the limits

of the pay plan for exempt positions provided for in section 8A.413, subsection 2, unless otherwise provided by the general assembly. The board may employ additional personnel as it finds necessary. Subject to confirmation by the senate, the governor shall appoint a member as the chairperson of the board. The chairperson shall be the administrator of the utilities division. The appointment as chairperson shall be for a two-year term which begins and ends as provided in section 69.19.

As used in this chapter and chapters 475A, 476, 476A, 478, 479, 479A, and 479B, “*division*” and “*utilities division*” mean the utilities division of the department of commerce.

2003 Acts, ch 145, §265  
Confirmation, see §2.32  
Unnumbered paragraph 2 amended

#### 474.10 General counsel.

The board shall employ a competent attorney to serve as its general counsel, and assistants to the general counsel as it finds necessary for the full and efficient discharge of its duties. The general counsel is the attorney for, and legal advisor of, the

board and is exempt from the merit system provisions of chapter 8A, subchapter IV. Assistants to the general counsel are subject to the merit system provisions of chapter 8A, subchapter IV. The general counsel or an assistant to the general counsel shall provide the necessary legal advice to the board in all matters and represent the board in all actions instituted in a state or federal court challenging the validity of a rule or order of the board. The existence of a fact which disqualifies a person from election or from acting as a utilities board member disqualifies the person from employment as general counsel or assistant general counsel. The general counsel shall devote full time to the duties of the office. During employment the counsel shall not be a member of a political committee, contribute to a political campaign fund other than through the income tax checkoff for contributions to the Iowa election campaign fund and the presidential election campaign fund, participate in a political campaign, or be a candidate for a political office.

2003 Acts, ch 145, §266  
Section amended

## CHAPTER 475A

### CONSUMER ADVOCATE

#### 475A.3 Office — employees — expenses.

1. *Office.* The office of consumer advocate shall be a separate division of the department of justice and located at the same location as the utilities division of the department of commerce. Administrative support services may be provided to the consumer advocate division by the department of commerce.

2. *Employees.* The consumer advocate may employ attorneys, legal assistants, secretaries, clerks, and other employees the consumer advocate finds necessary for the full and efficient discharge of the duties and responsibilities of the office. The consumer advocate may employ consultants as expert witnesses or technical advisors pursuant to contract as the consumer advocate finds necessary for the full and efficient discharge of the duties of the office. Employees of the con-

sumer advocate division, other than the consumer advocate, are subject to merit employment, except as provided in section 8A.412.

3. *Salaries, expenses, and appropriation.* The salary of the consumer advocate shall be fixed by the attorney general within the salary range set by the general assembly. The salaries of employees of the consumer advocate shall be at rates of compensation consistent with current standards in industry. The reimbursement of expenses for the employees and the consumer advocate is as provided by law. The appropriation for the office of consumer advocate shall be a separate line item contained in the appropriation from the general fund of the state.

2003 Acts, ch 145, §267  
Subsection 2 amended

## CHAPTER 476

### PUBLIC UTILITY REGULATION

#### 476.1C Applicability of authority — certain gas utilities.

1. Gas public utilities having fewer than two thousand customers are not subject to the regulation authority of the utilities board under this chapter unless otherwise specifically provided.

Sections 476.10, 476.20, 476.21, and 476.51 apply to such gas utilities.

Gas public utilities having fewer than two thousand customers shall be subject to the assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for glob-

al and regional environmental research created by the state board of regents and shall file energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may waive all or part of the energy efficiency filing requirements if the gas utility demonstrates superior results with existing energy efficiency efforts.

Gas public utilities having fewer than two thousand customers shall keep books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the board. The board may inspect the accounts of the utility at any time.

A gas public utility having fewer than two thousand customers may make effective a new or changed rate, charge, schedule, or regulation after giving written notice of the proposed new or changed rate, charge, schedule, or regulation to all affected customers served by the public utility. The notice shall inform the customers of their right to petition for a review of the proposal to the utilities board within sixty days after notice is served if the petition contains the signatures of at least one hundred of the gas utility's customers. The notice shall state the address of the utilities board. The new or changed rate, charge, schedule, or regulation takes effect sixty days after such valid notice is served unless a petition for review of the new or changed rate, charge, schedule, or regulation signed by at least one hundred of the gas utility's customers is filed with the board prior to the expiration of the sixty-day period.

If such a valid petition is filed with the board within the sixty-day period, any new or changed rate, charge, schedule, or regulation shall take effect, under bond or corporate undertaking, subject to refund of all amounts collected in excess of those amounts which would have been collected under the rates or charges finally approved by the board. The board shall within five months of the date of filing make a determination of just and reasonable rates based on a review of the proposal, applying established regulatory principles. The board may call upon the gas public utility and its customers to furnish factual evidence in support of or opposition to the new or changed rate, charge, schedule, or regulation. If the gas public utility disputes the finding, the utility may within twenty days file for further review, and the board shall docket the case as a formal proceeding under section 476.6, subsection 4, and set the case for hearing. The gas public utility shall submit factual evidence and written argument in support of the filing.

A gas public utility having fewer than two thousand customers shall not make effective a new or changed rate, charge, schedule, or regulation which relates to services for which a rate change is pending within twelve months following the date the petition to review the prior proposed rate, charge, schedule, or regulation was filed with the board or until the board has made its determina-

tion of just and reasonable rates, whichever date is earlier, unless the utility applies to the board for authority and receives authority to make a subsequent rate change at an earlier date.

Gas public utilities having fewer than two thousand customers shall not make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage. Rates charged by a gas public utility having less than two thousand customers for transportation of customer-owned gas shall not exceed the actual cost of such transportation services including a fair rate of return.

2. If, as a result of a review of a proposed new or changed rate, charge, schedule, or regulation of a gas public utility having fewer than two thousand customers, the consumer advocate alleges in a filing with the board that the utility rates are excessive, the disputed amounts shall be specified by the consumer advocate in the filing. The gas public utility shall, within the time prescribed by the board, file a bond or undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected after the date of the filing which are in excess of rates or charges finally determined by the board to be lawful. If after formal proceeding and hearing pursuant to section 476.6 the board finds that the utility rates are unlawful, the board shall order a refund, with interest, of amounts collected after the date of filing of the petition that are determined to be in excess of the amounts which would have been collected under the rates finally approved. However, the board shall not order a refund that is greater than the amount specified in the petition, plus interest. If the board fails to render a decision within ten months following the date of filing of the petition, the board shall not order a refund of any excess amounts that are collected after the expiration of that ten-month period and prior to the date the decision is rendered.

Section not amended; internal reference change applied

#### **476.1D Regulation and deregulation of communications services.**

1. Except as provided in this section, the jurisdiction of the board as to the regulation of communications services is not applicable to a service or facility that is provided or is proposed to be provided by a telephone utility that is or becomes subject to effective competition, as determined by the board. In determining whether a service or facility is or becomes subject to effective competition, the board shall consider, among other factors, whether a comparable service or facility is available from a supplier other than the telephone utility in the geographic market being considered by the board and whether market forces in that market are sufficient to assure just and reasonable rates without regulation.

2. Deregulation of a service or facility for a utility is effective only after all of the following:

a. A finding of effective competition by the board.

b. Election by a utility providing the service or facility to file a deregulation accounting plan.

c. Approval of a utility's deregulation accounting plan by the board.

3. If the board determines a service or facility is subject to effective competition and approves the utility's deregulation accounting plan, the board shall deregulate the service or facility within a reasonable time.

4. Upon deregulation, all investment, revenues, and expenses associated with the service or facility shall be removed from the telephone utility's regulated operations and shall not be considered by the board in setting rates for the telephone utility unless they continue to affect the utility's regulated operations. If the board considers investment, revenues, and expenses associated with unregulated services or facilities in setting rates for the telephone utility, the board shall not use any profits or costs from such unregulated services or facilities to determine the rates for regulated services or facilities. This section does not preclude the board from considering the investment, revenues, and expenses associated with the sale of classified directory advertising by a telephone utility in determining rates for the telephone utility.

5. Notwithstanding the presence of effective competition, if the board determines a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation, the board shall deregulate rates and may continue service regulation.

6. The board may reimpose rate and service regulation on a deregulated service or facility if it determines the service or facility is no longer subject to effective competition.

7. The board may reimpose service regulation only on a deregulated service or facility if the board determines the service or facility is an essential communications service or facility and the public interest warrants service regulation, notwithstanding the presence of effective competition.

8. If the board reimposes regulation pursuant to subsection 6 or 7, the reimposition of regulation shall apply to all providers of the service or facility.

9. The board may investigate and obtain information from providers of deregulated services or facilities to determine whether the services or facilities are subject to effective competition or whether the service or facility is an essential communications service or facility and the public interest warrants service regulation. However, the board shall not, for purposes of this subsection, request or obtain information related to the provider's costs or earnings.

10. The board, at the request of a long distance telephone company, shall classify such company as a competitive long distance telephone company if more than half of the company's revenues from its Iowa intrastate telecommunications services and facilities are received from services and facilities that the board has determined to be subject to effective competition, or if more than half of the company's revenues from its Iowa intrastate telecommunications services and facilities are received from intralata interexchange services and facilities. For purposes of this subsection, "*intralata interexchange services*" means those interexchange services that originate and terminate within the same local access transport area.

The board shall promptly notify the director of revenue that a long distance telephone company has been classified as a competitive long distance telephone company. Upon such notification by the board, the director of revenue shall assess the property of such competitive long distance telephone company, which property is first assessed for taxation in this state on or after January 1, 1996, in the same manner as all other property assessed as commercial property by the local assessor under chapters 427, 427A, 427B, 428, and 441. As used in this section, "*long distance telephone company*" means an entity that provides telephone service and facilities between local exchanges, but does not include a cellular service provider or a local exchange utility holding a certificate issued under section 476.29, subsection 12.

2003 Acts, ch 126, §1; 2003 Acts, ch 145, §286  
Terminology change applied  
Subsection 1 amended

#### **476.2 Board powers and rules — utility's Iowa office.**

1. The board shall have broad general powers to effect the purposes of this chapter notwithstanding the fact that certain specific powers are hereinafter set forth. The board shall have authority to issue subpoenas and to pay the same fees and mileage as are payable to witnesses in the courts of record of general jurisdiction and shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, contents and filing of reports, documents and other papers provided for in this chapter or in the board's rules. In the establishment, amendment, alteration or repeal of any of such rules, the board shall be subject to the provisions of chapter 17A.

2. The board shall employ at rates of compensation consistent with current standards in industry such professionally trained engineers, accountants, attorneys, and skilled examiners and inspectors, secretaries, clerks, and other employees as it may find necessary for the full and efficient discharge of its duties and responsibilities as re-

quired by this chapter.

3. The board may intervene in any proceedings before the federal energy regulatory commission or any other federal or state regulatory body when it finds that any decision of that tribunal would adversely affect the costs of any public utility service within the state of Iowa.

4. The board shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and may obtain from any public utility all necessary information to enable the board to perform its duties.

5. Each rate-regulated gas and electric utility operating within the state shall maintain within the state the utility's principal office for Iowa operations. The principal office shall be subject to the jurisdiction of the board and shall house those books, accounts, papers, and records of the utility deemed necessary by the board to be housed within the state. The utility shall maintain within the state administrative, technical, and operating personnel necessary for the delivery of safe and reasonably adequate services and facilities as required pursuant to section 476.8. A public utility which violates this section shall be subject to the penalties provided in section 476.51 and shall be denied authority to recover, for a period determined by the board, the costs of an energy efficiency plan pursuant to section 476.6, subsection 8.

6. The board shall provide the general assembly with a report on the energy efficiency planning efforts undertaken by utilities required to offer energy efficiency plans pursuant to section 476.6, subsection 14. The report shall be completed by January 1, 1998.

Section not amended; internal reference changes applied

**476.6 Changes in rates, charges, schedules and regulations — supply and cost review — water costs for fire protection.**

1. *Filing with board.* A public utility subject to rate regulation shall not make effective a new or changed rate, charge, schedule or regulation until the rate, charge, schedule, or regulation has been approved by the board, except as provided in subsections 8 and 10.

2. *Written notice of increase.* All public utilities, except those exempted from rate regulation by section 476.1, shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility no more than sixty-two days prior to and prior to the time the application for the increase is filed with the board. Public utilities exempted from rate regulation by section 476.1 shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase. If the public utility is subject to rate reg-

ulation, the notice to affected customers shall also state that the customer has a right to file a written objection to the rate increase and that the affected customers may request the board to hold a public hearing to determine if the rate increase should be allowed. The board shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

3. *Facts and arguments submitted.* At the time a public utility subject to rate regulation files with the board an application for any new or changed rates, charges, schedules, or regulations, the public utility also shall submit factual evidence and written argument offered in support of the filing. If the filing is an application for a general rate increase, the utility shall also file affidavits containing testimonial evidence to be offered in support of the filing, although this requirement does not apply if the public utility is a rural electric cooperative.

4. *Hearing set.* After the filing of an application for new or changed rates, charges, schedules, or regulations by a public utility subject to rate regulation, the board, prior to the expiration of thirty days after the filing date, shall docket the case as a formal proceeding and set the case for hearing unless the new or changed rates, charges, schedules, or regulations are approved by the board. However, if an application presents no material issue of fact subject to dispute, and the board determines that the application violates a relevant statute, or is not in substantial compliance with a board rule lawfully adopted pursuant to chapter 17A, the application may be rejected by the board without prejudice and without a hearing, provided that the board issues a written order setting forth all of its reasons for rejecting the application. In the case of a gas public utility having less than two thousand customers, the board shall docket a case as a formal proceeding and set the case for hearing as provided in section 476.1C. In the case of a rural electric cooperative, the board may docket the case as a formal proceeding and set the case for hearing prior to the proposed effective date of the tariff. The board shall give notice of formal proceedings as it deems appropriate. The docketing of a case as a formal proceeding suspends the effective date of the new or changed rates, charges, schedules, or regulations until the rates, charges, schedules, or regulations are approved by the board, except as provided in subsection 10.

5. *Utility hearing expenses reported.* When a case has been docketed as a formal proceeding under subsection 4, the public utility, within a reasonable time thereafter, shall file with the board a report outlining the utility's expected expenses for litigating the case through the time period allowed by the board in rendering a decision. At the conclusion of the utility's presentation of com-

ments, testimony, exhibits, or briefs the utility shall submit to the board a listing of the utility's actual litigation expenses in the proceeding. As part of the findings of the board under subsection 6, the board shall allow recovery of costs of the litigation expenses over a reasonable period of time to the extent the board deems the expenses reasonable and just.

6. *Finding by board.* If, after hearing and decision on all issues presented for determination in the rate proceeding, the board finds the proposed rates, charges, schedules, or regulations of the utility to be unlawful, the board shall by order authorize and direct the utility to file new or changed rates, charges, schedules, or regulations which, when approved by the board and placed in effect, will satisfy the requirements of this chapter. The rates, charges, schedules, or regulations so approved are lawful and effective upon their approval.

7. *Limitation on filings.* A public utility shall not make a subsequent filing of an application for a new or changed rate, charge, schedule, or regulation which relates to services for which a rate filing is pending within twelve months following the date the prior application was filed or until the board has issued a final order on the prior application, whichever date is earlier, unless the public utility applies to the board for authority and receives authority to make a subsequent filing at an earlier date.

8. *Automatic adjustments permitted.* This chapter does not prohibit a public utility from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing the automatic adjustment of rates and charges is first filed with the board.

9. *Rate levels for telephone utilities.* The board may approve a schedule of rate levels for any regulated service provided by a utility providing communication services.

10. *Temporary authority.* Upon the request of a public utility, the board shall, when required by this subsection, grant the public utility temporary authority to place in effect any or all of the suspended rates, charges, schedules or regulations by filing with the board a bond or other undertaking approved by the board conditioned upon the refund in a manner to be prescribed by the board of any amounts collected in excess of the amounts which would have been collected under rates, charges, schedules or regulations finally approved by the board. In determining that portion of the new or changed rates, charges, schedules or regulations to be placed in effect prior to a final decision, the board shall apply previously established regulatory principles and shall, at a minimum, permit rates and charges which will allow the utility the opportunity to earn a return on common stock equity equal to that which the board held reasonable and just in the most recent rate

case involving the same utility or the same type of utility service, provided that if the most recent final decision of the board in an applicable rate case was rendered more than twelve months prior to the date of filing of the request for temporary rates, the board shall in addition consider financial market data that is filed or that is otherwise available to the board and shall adjust the rate of return on common stock equity that was approved in that decision upward or downward as necessary to reflect current conditions. The board shall render a decision on a request for temporary authority within ninety days after the date of filing of the request. The decision shall be effective immediately. If the board has not rendered a final decision with respect to suspended rates, charges, schedules or regulations upon the expiration of ten months after the filing date, plus the length of any delay that necessarily results either from the failure of the public utility to exercise due diligence in connection with the proceedings or from intervening judicial proceedings, plus the length of any extension permitted by section 476.33, subsection 3, then those portions that were approved by the board on a temporary basis shall be deemed finally approved by the board and the utility may place them into effect on a permanent basis, and the utility also may place into effect subject to refund and until the final decision of the board any portion of the suspended rates, charges, schedules or regulations not previously approved on a temporary basis by filing with the board a bond or other undertaking approved by the board.

If the board finds that an extension of the ten-month period is necessary to permit the accumulation of necessary data with respect to the operation of a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity and that is proposed to be included in the rate base for the first time, the board may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules or regulations shall, for purposes of computing the ninety-day and ten-month limitations stated above, be the date as determined by the board that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this

subsection is two percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

11. *Refunds passed on to customers.* If pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a refund or credit for past gas purchases, the savings shall be passed on to the customers in a manner approved by the board. Similarly, if pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a rate for future gas purchases which is lower than the price included in the public utility's approved rate application, the savings shall be passed on to the customers in a manner approved by the board.

12. *Natural gas supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

Under procedures established by the board, each rate-regulated public utility furnishing gas shall periodically file a complete natural gas procurement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the board. The utilities shall file information as the board deems appropriate.

During the natural gas supply and cost review, the board shall evaluate the reasonableness and prudence of the gas procurement plan. If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long-term supply of natural gas, the board shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

13. *Electric energy supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The evaluation may review the reasonableness and prudence of actions taken by a rate-regulated public utility to comply with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the board, the utility shall file information as the board deems appropriate. If a utility is not taking all reasonable

actions to minimize its fuel and allowance transaction costs, the board shall not allow the utility to recover from its customers fuel and allowance transaction costs in excess of those costs that would be or would have been incurred under reasonable and prudent policies and practices.

14. *Energy efficiency plans.* Electric and gas public utilities shall offer energy efficiency programs to their customers through energy efficiency plans. An energy efficiency plan as a whole shall be cost-effective. In determining the cost-effectiveness of an energy efficiency plan, the board shall apply the societal test, utility cost test, rate-payer impact test, and participant test. Energy efficiency programs for qualified low-income persons and for tree planting programs need not be cost-effective and shall not be considered in determining cost-effectiveness of plans as a whole. The energy efficiency programs in the plans may be provided by the utility or by a contractor or agent of the utility.

15. *Water costs for fire protection in certain cities.*

*a. Application.* A city furnished water by a public utility subject to rate regulation may apply to the board for inclusion of all or a part of the costs of fire hydrants or other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection in the rates or charges assessed to consumers covered by the applicant's fire protection service. The application shall be made in a form and manner approved by or as directed by the board. The applicant shall provide such additional information as the board may require to consider the application.

*b. Review.* The board shall review the application, and may in its discretion consider additional evidence, beyond that supplied in the application or provided by the applicant in response to a request for additional information pursuant to paragraph "a", including, but not limited to, soliciting oral or written testimony from other interested parties.

*c. Notice.* Written notice of a proposed rate increase shall be provided by the public utility pursuant to subsection 2, except that notice shall be provided within ninety days of the date of application. Costs of the notice shall be paid for by the applicant.

*d. Conditions for approval.* As a condition to approving an application to include water-related fire protection costs in the utility's rates or charges, the board shall make an affirmative determination that the following conditions will be met:

(1) That the service area currently charged for fire protection, either directly or indirectly, is substantially the same service area containing those persons who will pay for water-related fire protection through inclusion of such costs within the utility's rates or charges.

(2) That the inclusion of such costs within the utility's rates or charges will not cause substantial inequities among the utility's customers.

(3) That all or a portion of the costs sought to be included in the utility's rates or charges by the applicant are reasonable in the circumstances, and limited to the purposes specified in paragraph "c".

(4) That written notice has been provided pursuant to paragraph "c" and that the costs of the notice have been paid by the applicant.

e. Inclusion within rates or charges. If the board affirmatively determines that the conditions of paragraph "d" are or will be satisfied, the board shall include the reasonable costs in the rates or charges assessed to consumers covered by the applicant's fire protection service.

f. Written order. The board shall issue a written order within six months of the date of application. The written order shall include a recitation of the facts found pursuant to consideration of the application.

16. *Energy efficiency implementation, cost review, and cost recovery.*

a. Gas and electric utilities required to be rate-regulated under this chapter shall file energy efficiency plans with the board. An energy efficiency plan and budget shall include a range of programs, tailored to the needs of all customer classes, including residential, commercial, and industrial customers, for energy efficiency opportunities. The plans shall include programs for qualified low-income persons including a cooperative program with any community action agency within the utility's service area to implement countywide or communitywide energy efficiency programs for qualified low-income persons. Rate-regulated gas and electric utilities shall utilize Iowa agencies and Iowa contractors to the maximum extent cost-effective in their energy efficiency plans filed with the board.

b. A gas and electric utility required to be rate-regulated under this chapter shall assess potential energy and capacity savings available from actual and projected customer usage by applying commercially available technology and improved operating practices to energy-using equipment and buildings. The utility shall submit the assessment to the board. Upon receipt of the assessment, the board shall consult with the department of natural resources to develop specific capacity and energy savings performance standards for each utility. The utility shall submit an energy efficiency plan which shall include economically achievable programs designed to attain these energy and capacity performance standards.

c. The board shall conduct contested case proceedings for review of energy efficiency plans and budgets filed by gas and electric utilities required to be rate-regulated under this chapter. The board may approve, reject, or modify the plans and budgets. Notwithstanding the provisions of section

17A.19, subsection 5, in an application for judicial review of the board's decision concerning a utility's energy efficiency plan or budget, the reviewing court shall not order a stay. Whenever a request to modify an approved plan or budget is filed subsequently by the office of consumer advocate or a gas or electric utility required to be rate-regulated under this chapter, the board shall promptly initiate a formal proceeding if the board determines that any reasonable ground exists for investigating the request. The formal proceeding may be initiated at any time by the board on its own motion. Implementation of board-approved plans or budgets shall be considered continuous in nature and shall be subject to investigation at any time by the board or the office of the consumer advocate.

d. Notice to customers of a contested case proceeding for review of energy efficiency plans and budgets shall be in a manner prescribed by the board.

e. A gas or electric utility required to be rate-regulated under this chapter may recover, through an automatic adjustment mechanism filed pursuant to subsection 8, over a period not to exceed the term of the plan, the costs of an energy efficiency plan approved by the board, including amounts for a plan approved prior to July 1, 1996, in a contested case proceeding conducted pursuant to paragraph "c". The board shall periodically conduct a contested case proceeding to evaluate the reasonableness and prudence of the utility's implementation of an approved energy efficiency plan and budget. If a utility is not taking all reasonable actions to cost-effectively implement an approved energy efficiency plan, the board shall not allow the utility to recover from customers costs in excess of those costs that would be incurred under reasonable and prudent implementation and shall not allow the utility to recover future costs at a level other than what the board determines to be reasonable and prudent. If the result of a contested case proceeding is a judgment against a utility, that utility's future level of cost recovery shall be reduced by the amount by which the programs were found to be imprudently conducted. The utility shall not represent energy efficiency in customer billings as a separate cost or expense unless the board otherwise approves.

f. A rate-regulated utility required to submit an energy efficiency plan under this subsection shall, upon the request of a state agency or political subdivision to which it provides service, provide advice and assistance regarding measures which the state agency or political subdivision might take in achieving improved energy efficiency results. The cooperation shall include assistance in accessing financial assistance for energy efficiency measures.

17. *Filing of forecasts.* The board shall periodically require each rate-regulated gas or electric public utility to file a forecast of future gas requirements or electric generating needs and the board

shall evaluate the forecast. The forecast shall include, but is not limited to, a forecast of the requirements of its customers, its anticipated sources of supply, and its anticipated means of addressing the forecasted gas requirements or electric generating needs.

18. *Energy efficiency program financing.* The board may require each rate-regulated gas or electric public utility to offer qualified customers the opportunity to enter into an agreement for the amount of moneys reasonably necessary to finance cost-effective energy efficiency improvements to the qualified customers' residential dwellings or businesses.

19. *Allocation of replacement tax costs.* The costs of the replacement tax imposed pursuant to chapter 437A shall be reflected in the charges of utilities subject to rate regulation, in lieu of the utilities' costs of property taxes. The imposition of the replacement taxes pursuant to chapter 437A is not intended to initiate any change in the rates and charges for the sale of electricity, the sale of natural gas, or the transportation of natural gas that is subject to regulation by the board and in effect on January 1, 1999.

The cost of the replacement taxes imposed by chapter 437A shall be allocated among and within customer classes in a manner that will replicate the tax cost burden of the current property tax on individual customers to the maximum extent practicable.

Upon the restructuring of the electric industry in this state so that individual consumers are given the right to choose their electric suppliers, replacement tax costs shall be assigned to the service corresponding to the individual generation, transmission, and delivery taxes. In all other respects, the allocation of the replacement tax costs among and within the customer classes shall remain the same to the maximum extent practicable.

Notwithstanding this subsection, the board may determine the amount of replacement tax properly included in retail rates subject to its jurisdiction. The board may determine whether the base rates or some other form of rate is most appropriate for recovery of the costs of the replacement tax, subject to the requirement that utility rates be reasonable and just. The board may also determine the appropriate allocation of the tax. Any significant modification to rate design relating to the replacement tax shall be made in a manner consistent with this subsection unless made in a contested case proceeding where the impact of such modification on competition and consumer costs is considered.

20. *Replacement tax study committee.* On or before July 1, 2000, the utilities board, in consultation with the department of revenue, shall initiate and coordinate the establishment of a replacement tax study committee and provide staffing assistance to the committee. It is the intent of the

general assembly that the committee include representatives of the utilities board, department of revenue, department of management, investor-owned utilities, municipal utilities, cooperative utilities, local governments, major customer classes, and other stakeholders.

The committee shall study the effects of the replacement tax on both restructuring and the development of competition in the gas and electric industries in this state. The board shall report to the general assembly by January 1 of each year through 2003, the results of the study, and the committee's recommendations as to whether the replacement tax, in its then present form, should be continued, whether a different form of taxation of electric and gas utilities should be adopted in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, whether a different basis for determination of the generation, transmission, and delivery taxes should be adopted or whether the relative share of the total replacement tax burden imposed on each of the generation, transmission, and delivery functions should be modified in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, and whether the replacement tax in its then present form, appropriately accounts for the decline in value of electric power generating plants. The replacement tax study committee shall reconvene by January 1, 2006, to further study these same issues, and the board shall report the results of the study and the committee's recommendations to the general assembly by January 1, 2008.

Upon recommendation of the committee, the board may contract for services necessary to the implementation of this subsection with persons who are not state employees, including, but not limited to, facilitators, consultants, and other experts required to assist the committee. The cost of contracted services shall not be paid from appropriated funds, but shall be assessed to entities paying replacement tax pursuant to chapter 437A, subchapter II, pro rata, based on the amount of tax paid.

21. *Recovery of management costs.* A public utility which is assessed management costs by a local government pursuant to chapter 480A is entitled to recover those costs. If the public utility serves customers within the boundaries of the local government imposing the management costs, such costs shall be recovered exclusively from those customers.

22. *Electric power generating facility emissions.*

a. It is the intent of the general assembly that the state, through a collaborative effort involving state agencies and affected generation owners, provide for compatible statewide environmental and electric energy policies with respect to regulated emissions from rate-regulated electric power

generating facilities in the state that are fueled by coal. Each rate-regulated public utility that is an owner of one or more electric power generating facilities fueled by coal and located in this state on July 1, 2001, shall develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.

(1) The initial multiyear plan and budget shall be filed with the board by April 1, 2002. Updates to the plan and budget shall be filed at least every twenty-four months.

(2) Copies of the initial plan and budget, as well as any subsequent updates, shall be served on the department of natural resources.

(3) The initial multiyear plan and budget and any subsequent updates shall be considered in a contested case proceeding pursuant to chapter 17A. The department of natural resources and the consumer advocate shall participate as parties to the proceeding.

(4) The department of natural resources shall state whether the plan or update meets applicable state environmental requirements for regulated emissions. If the plan does not meet these requirements, the department shall recommend amendments that outline actions necessary to bring the plan or update into compliance with the environmental requirements.

*b.* The board shall not approve a plan or update that does not meet applicable state environmental requirements and federal ambient air quality standards for regulated emissions from electric power generating facilities located in the state.

*c.* The board shall review the plan or update and the associated budget, and shall approve the plan or update and the associated budget if the plan or update and the associated budget are reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards. In reaching its decision, the board shall consider whether the plan or update and the associated budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.

*d.* The board shall issue an order approving or rejecting a plan, update, or budget within one hundred eighty days after the public utility's filing is deemed complete; however, upon good cause shown, the board may extend the time for issuing the order as follows:

(1) The board may grant an extension of thirty days.

(2) The board may grant more than one extension, but each extension must rely upon a separate showing of good cause.

(3) A subsequent extension must not be granted any earlier than five days prior to the expiration of the original one-hundred-eighty-day period, or the current extension.

*e.* The reasonable costs incurred by a rate-regulated public utility in preparing and filing the plan, update, or budget and in participating in the proceedings before the board and the reasonable costs associated with implementing the plan, update, or budget shall be included in its regulated retail rates.

*f.* It is the intent of the general assembly that the board, in an environmental plan, update, or associated budget filed under this section by a rate-regulated public utility, may limit investments or expenditures that are proposed to be undertaken prior to the time that the environmental benefit to be produced by the investment or expenditure would be required by state or federal law.

*g.* The board shall report to the general assembly by January 21, 2003, on the appropriateness and desirability of requiring the municipal utilities and the rural electric cooperatives to file multiyear plans and budgets for managing regulated emissions from their electric power generating facilities fueled by coal and located in this state, similar to the process required for rate-regulated public utilities under this subsection.

2003 Acts, ch 126, §2, 3; 2003 Acts, ch 145, §286  
Terminology change applied  
Subsection 1 amended  
Subsections 2 – 4 stricken and former subsections 5 – 25 renumbered as 2 – 22

#### **476.10A Funding for Iowa energy center and center for global and regional environmental research.**

1. *a.* The board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations. The board shall by rule provide a schedule for remittances.

*b.* The amounts collected pursuant to this section shall be in addition to the amounts permitted to be assessed pursuant to section 476.10. The board shall allow inclusion of these amounts in the budgets approved by the board pursuant to section 476.6, subsection 16, paragraph “c”.

*c.* (1) Eighty-five percent of the remittances collected pursuant to this section is appropriated to the Iowa energy center created in section 266.39C.

(2) Fifteen percent of the remittances collected pursuant to this section is appropriated to the center for global and regional environmental research established by the state board of regents.

2. Notwithstanding section 8.33, any unexpended moneys remitted to the treasurer of state under this section shall be retained for the purposes designated. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys remitted under this section shall be retained and used for the purposes designated, pursuant to section 476.46.

3. The Iowa energy center and the center for

global and regional environmental research shall each provide a written annual report to the utilities board that describes each center's activities and the results that each center has accomplished. Each report shall include an explanation of initiatives and projects of importance to the state of Iowa.

Section not amended; internal reference change applied

#### **476.23 Electric service conflicts — certificates of authority.**

1. An electric utility shall not construct or extend facilities or furnish or offer to furnish electric service to the existing point of delivery of any customer already receiving electric service from another electric utility without having first filed with the board the express written agreement of the electric utility presently serving this customer, except as otherwise provided in this section. Any municipal corporation, after being authorized by a vote of the people, or any electric utility may file a petition with the board requesting a certificate of authority to furnish electric service to the existing point of delivery of any customer already receiving electric service from another electric utility. If, after notice by the board to the electric utility currently serving the customer, objection to the petition is not filed and investigation is not deemed necessary, the board shall issue a certificate within thirty days of the filing of the petition. When an objection is filed, if the board, after notice and opportunity for hearing, determines that service to the customer by the petitioner is in the public interest, including consideration of any unnecessary duplication of facilities, it shall grant this certificate in whole or in part, upon such terms, conditions, and restrictions as may be justified. Whether or not an objection is filed, any certificate issued shall require that the petitioner pay to the electric utility presently serving the customer, the reasonable price for facilities serving the customer. This price determination by the board shall include due consideration of the cost of the facilities being acquired; any necessary generating capacity and transmission capacity dedicated to the customer, including, but not limited to, electric power generating facilities and alternate energy production facilities not yet in service but for which the board has issued an order pursuant to section 476.53, and electric power generating facility emissions plan budgets approved by the board pursuant to section 476.6, subsection 22; depreciation; loss of revenue; and the cost of facilities necessary to reintegrate the system of the utility after detaching the portion sold.

2. An electric utility shall not construct or extend facilities or furnish electric service to a prospective customer not presently being served, unless its existing service facilities are nearer the

proposed point of delivery than the service facilities of any other utility. However, an electric utility may extend electric service and transmission lines if the electric utility closest to the delivery point consents to this extension in writing and a copy of the agreement is filed with the board or, if the board, after notice and opportunity for hearing and after giving due consideration to the prevention of unnecessary duplication of facilities, finds that service from an electric utility, other than the closest utility, is in the public interest. This subsection shall not apply if the prospective customers are within an exclusive service area assigned to an electric utility as provided in this division.

3. Notwithstanding subsections 1 and 2 of this section, any electric utility may extend electric service and transmission lines to its own utility property and facilities.

4. If not inconsistent with the provisions of this division:

*a.* All rights of municipal corporations under chapter 364 to grant a person a franchise to erect, maintain, and operate plants and systems for electric light and power within the corporate boundaries, and rights acquired by franchise or agreement shall be preserved in these municipal corporations;

*b.* All rights of city utilities under the city code shall be preserved in these city utilities;

*c.* All rights of city utilities and joint electric utilities under chapter 390 shall be preserved in these city utilities and joint electric utilities; and

*d.* All rights of cities under chapter 6B are preserved. However, prior to the institution of condemnation proceedings, the city shall obtain a certificate of authority from the board in accordance with this division and the board's determination of price under this division shall be conclusive evidence of damages in these condemnation proceedings.

2003 Acts, ch 29, §1, 6

Internal reference change applied

Subsection 1 amended

#### **476.33 Rules governing hearings.**

1. The board shall adopt rules pursuant to chapter 17A to provide for the completion of proceedings under section 476.3 within ten months after the date of the filing of a petition under section 476.3, subsection 2, and to provide for the completion of proceedings under section 476.6 within ten months after the date of filing of the new or changed rates, charges, schedules, or regulations under that section. These rules shall include reasonable time limitations for the submission or completion of comments and testimony, and exhibits, briefs, and hearings, and may provide for the granting of additional time upon the request of a party to the proceeding for good cause shown.

2. Additional time granted to a party under subsection 1 shall not extend the amount of time for which a utility is required to file a bond or other undertaking conditioned upon refund under section 476.3, subsection 2.

3. If in a proceeding under section 476.6 additional time is granted to a party under subsection 1, the board may extend the ten-month period during which a utility is prohibited from placing its entire rate increase request into effect under section 476.6, but an extension shall not exceed the aggregate amount of all additional time granted under subsection 1.

4. The board shall adopt rules that require the board, in rate regulatory proceedings under sections 476.3 and 476.6, to consider the use of the most current test period possible in determining reasonable and just rates, subject only to the availability of existing and verifiable data respecting costs and revenues, and in addition to consider verifiable data that exists as of the date of commencement of the proceedings respecting known and measurable changes in costs not associated with a different level of revenue, and known and measurable revenues not associated with a different level of costs, that are to occur at any time within twelve months after the date of commencement of the proceedings. For purposes of this subsection, a proceeding commences under section 476.6 upon the filing date of new or changed rates, charges, schedules or regulations. This subsection does not limit the authority of the board to consider other evidence in proceedings under sections 476.3 and 476.6.

5. *a.* The board shall adopt rules that require the board, in a rate regulatory proceeding under sections 476.3 and 476.6, to consider both of the following for inclusion in rates:

(1) Capital infrastructure investments that will not produce significant additional revenues and will be in service in Iowa within nine months after the conclusion of the test year.

(2) Cost of capital changes that will occur within nine months after the conclusion of the test year that are associated with a new generating plant that has been the subject of a ratemaking principles proceeding pursuant to section 476.53.

*b.* This subsection is repealed effective July 1, 2007. However, any utilities board proceeding that is pending on July 1, 2007, that is being conducted pursuant to section 476.3 or 476.6 shall be completed as if this section had not been repealed. Upon repeal, the board may still consider the adjustments addressed in this subsection, but shall not be required to consider them.

2003 Acts, ch 179, §134  
NEW subsection 5

#### **476.43 Rates for alternate energy production facilities.**

1. Subject to section 476.44, the board shall re-

quire electric utilities to do both of the following under terms and conditions that the board finds are just and economically reasonable for the electric utilities' customers, are nondiscriminatory to alternate energy producers and small hydro producers, and will further the policy stated in section 476.41:

*a.* At least one of the following:

(1) Own alternate energy production facilities or small hydro facilities located in this state.

(2) Enter into long-term contracts to purchase or wheel electricity from alternate energy production facilities or small hydro facilities located in the utility's service area.

*b.* Provide for the availability of supplemental or backup power to alternate energy production facilities or small hydro facilities on a nondiscriminatory basis and at just and reasonable rates.

2. Upon application by the owner or operator of an alternate energy production facility or small hydro facility or any interested party, the board shall establish for the affected public utility just and economically reasonable rates for electricity purchased under subsection 1, paragraph "a". The rates shall be established at levels sufficient to stimulate the development of alternate energy production and small hydro facilities in Iowa and to encourage the continuation of existing capacity from those facilities.

3. The board may adopt individual utility or uniform statewide facility rates. The board shall consider the following factors in setting individual or uniform rates:

*a.* The estimated capital cost of the next generating plant, including related transmission facilities, to be placed in service by the electric utility serving the area.

*b.* The term of the contract between the electric utility and the seller.

*c.* A levelized annual carrying charge based upon the term of the contract and determined in a manner consistent with both the methods and the current interest or return requirements associated with the electric utility's new construction program.

*d.* The electric utility's annual energy costs, including current fuel costs, related operation and maintenance costs, and other energy-related costs considered appropriate by the board.

*e.* External factors, including but not limited to, environmental and economic factors.

*f.* Other relevant factors.

*g.* If the board adopts uniform statewide rates, the board shall use representative data in lieu of utility specific information in applying the factors listed in paragraphs "a" through "f".

4. In the case of a utility that purchases all or substantially all of its electricity requirements, the rates established under this section must be based on the electric utility's current purchased power costs.

5. In lieu of the other procedures provided by this section, an electric utility and an owner or operator of an alternate energy production facility or small hydro facility may enter into a long-term contract in accordance with subsection 1 and may agree to rates for purchase and sale transactions. A contract entered into under this subsection must be filed with the board in the manner provided for tariffs under section 476.4.

6. This section does not require an electric utility to construct additional facilities unless those facilities are paid for by the owner or operator of the affected alternate energy production facility or small hydro facility.

2003 Acts, ch 29, §2, 6  
Subsection 1 amended

#### 476.44 Exceptions.

1. The board shall not require an electric utility to purchase or wheel electricity from an alternate energy production facility or small hydro facility unless the facility is owned or operated by an individual, firm, copartnership, corporation, company, association, joint stock association, city, town, or county that meets both of the following:

*a.* Is not primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy other than electricity, gas, or useful thermal energy sold solely from alternate energy production facilities or small hydro facilities.

*b.* Does not sell electricity, gas, or useful thermal energy to residential users other than the tenants or the owner or operator of the facility.

2. An electric utility subject to this division, except a utility that elects rate regulation pursuant to section 476.1A, shall not be required to own or purchase, at any one time, more than its share of one hundred five megawatts of power from alternative energy production facilities or small hydro facilities at the rates established pursuant to section 476.43. The board shall allocate the one hundred five megawatts based upon each utility's percentage of the total Iowa retail peak demand, for the year beginning January 1, 1990, of all utilities subject to this section. If a utility undergoes reorganization as defined in section 476.76, the board shall combine the allocated purchases of power for each utility involved in the reorganization.

Notwithstanding the one hundred five megawatt maximum, the board may increase the amount of power that a utility is required to own or purchase at the rates established pursuant to section 476.43 if the board finds that a utility, including a reorganized utility, exceeds its 1990 Iowa retail peak demand by twenty percent and the additional power the utility is required to purchase will encourage the development of alternate energy production facilities and small hydro facilities. The increase shall not exceed the utility's increase in peak demand multiplied by the ratio of the utility's share of the one hundred five mega-

watt maximum to its 1990 Iowa retail peak demand.

2003 Acts, ch 29, §3, 6  
Subsection 2 amended

#### 476.45 Exemption from excess capacity.

Capacity of an alternate energy production facility or small hydro facility, that is owned or purchased by an electric utility, shall not be included in a calculation of an electric utility's excess generating capacity for ratemaking purposes.

2003 Acts, ch 29, §4, 6  
Section amended

#### 476.46 Alternate energy revolving loan program.

1. The Iowa energy center created under section 266.39C shall establish and administer an alternate energy revolving loan program to encourage the development of alternate energy production facilities and small hydro facilities within the state.

2. *a.* An alternate energy revolving loan fund is created in the office of the treasurer of state to be administered by the Iowa energy center.

*b.* The fund shall include moneys remitted to the fund pursuant to subsection 3 and any other moneys appropriated or otherwise directed to the fund.

*c.* Moneys in the fund shall be used to provide loans for the construction of alternate energy production facilities or small hydro facilities as defined in section 476.42.

*d.* (1) A gas or electric utility that is not required to be rate-regulated shall not be eligible for a loan under this section.

(2) A facility shall be eligible for no more than two hundred fifty thousand dollars in loans outstanding at any time under this program.

*e.* (1) Each loan shall be for a period not to exceed twenty years, shall bear no interest, and shall be repayable to the fund created under this section in installments as determined by the Iowa energy center. The interest rate upon delinquent payments shall accelerate immediately to the current legal usury limit.

(2) Any loan made pursuant to this program shall become due for payment upon sale of the facility for which the loan was made.

(3) Interest on the fund shall be deposited in the fund. A portion of the interest on the fund, not to exceed fifty percent of the total interest accrued, shall be used for promotion and administration of the fund.

*f.* Section 8.33 shall not apply to the moneys in the fund.

3. The board shall direct all gas and electric utilities required to be rate-regulated to remit to the treasurer of state by July 1, 1996, eighty-five one-thousandths of one percent of the total gross operating revenues during calendar year 1995 derived from their intrastate public utility opera-

tions, by July 1, 1997, eighty-five one-thousandths of one percent of the total gross operating revenues during calendar year 1996 derived from their intrastate public utility operations and by July 1, 1998, eighty-five one-thousandths of one percent of the total gross operating revenues during calendar year 1997 derived from their intrastate public utility operations. The amounts collected pursuant to this section shall be in addition to the amounts permitted to be assessed pursuant to section 476.10 and the amounts assessed pursuant to section 476.10A. The board shall allow inclusion of these amounts in the budgets approved by the board pursuant to section 476.6, subsection 16, paragraph "c".

Section not amended; internal reference change applied

#### 476.51 Civil penalty.

1. A public utility which, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one hundred dollars nor more than two thousand five hundred dollars per violation.

2. A public utility which willfully, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one thousand dollars nor more than ten thousand dollars per violation. For the purposes of this section, "willful" means knowing and deliberate, with a specific intent to violate.

3. Each violation is a separate offense. In the case of a continuing violation, each day a violation continues, after the time specified for compliance in the written notice by the board, is a separate and distinct offense. Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the appropriateness of the penalty in relation to the size of the public utility, the gravity of the violation, and the good faith of the public utility in attempting to achieve compliance following notification of a violation, and any other relevant factors.

4. The written notice given by the board to a public utility under this section shall specify an appropriate time for compliance.

5. Civil penalties collected pursuant to this section from utilities providing water, electric, or gas service shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for the low income home energy assistance program and the weatherization assistance program administered by the division of community action agencies of the department of human rights. Civil penalties collected pursuant to this

section from utilities providing telecommunications service shall be forwarded to the treasurer of state to be credited to the general fund of the state to be used only for consumer education programs administered by the board. Penalties paid by a rate-regulated public utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to customers.

2003 Acts, ch 126, §4  
Section amended

#### 476.53 Electric generating and transmission facilities.

1. It is the intent of the general assembly to attract the development of electric power generating and transmission facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers and provide economic benefits to the state.

2. The general assembly's intent with regard to the development of electric power generating and transmission facilities, as provided in subsection 1, shall be implemented in a manner that is cost-effective and compatible with the environmental policies of the state, as expressed in Title XI.

3. For purposes of this section, unless the context otherwise requires, the terms "cogeneration pilot project facility", "energy sales agreement", "qualified cogeneration pilot project facility", and "utility-owned cogeneration pilot project facility" mean the same as defined in section 15.269.

4. a. The board shall specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the electric power generating facility, alternate energy production facility, cogeneration pilot project facility, or energy sales agreement are included in regulated electric rates whenever a rate-regulated public utility does any of the following:

(1) Files an application pursuant to section 476A.3 to construct in Iowa a baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or an alternate energy production facility as defined in section 476.42.

(2) Leases or owns in Iowa, in whole or in part, a new baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or a new alternate energy production facility as defined in section 476.42.

(3) Enters into an agreement for the purchase of the electric power output of a qualified cogeneration pilot project facility or constructs a utility-owned cogeneration pilot project facility pursuant to section 15.269.

b. In determining the applicable ratemaking principles, the board shall not be limited to traditional ratemaking principles or traditional cost recovery mechanisms. Among the principles and mechanisms the board may consider, the board has the authority to approve ratemaking principles proposed by a rate-regulated public utility that provide for reasonable restrictions upon the ability of the public utility to seek a general increase in electric rates under section 476.6 for at least three years after the generation facility begins providing service to Iowa customers.

c. In determining the applicable ratemaking principles, the board shall make the following findings:

(1) The rate-regulated public utility has in effect a board-approved energy efficiency plan as required under section 476.6, subsection 16.

(2) The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility, lease, or cogeneration pilot project facility is reasonable when compared to other feasible alternative sources of supply. The rate-regulated public utility may satisfy the requirements of this subparagraph through a competitive bidding process, under rules adopted by the board, that demonstrate the facility, energy sales agreement, or lease is a reasonable alternative to meet its electric supply needs.

d. The applicable ratemaking principles shall be determined in a contested case proceeding, which proceeding may be combined with the proceeding for issuance of a certificate conducted pursuant to chapter 476A.

e. The order setting forth the applicable ratemaking principles shall be issued prior to the commencement of construction or lease of the facility, or execution of an energy sales agreement related to the cogeneration pilot project facility.

f. Following issuance of the order, the rate-regulated public utility shall have the option of proceeding according to either of the following:

(1) Withdrawing its application for a certificate pursuant to chapter 476A.

(2) Proceeding with the construction or lease of the facility or implementation of an energy sales agreement related to a cogeneration pilot project facility.

g. Notwithstanding any provision of this chapter to the contrary, the ratemaking principles established by the order issued pursuant to paragraph "e" shall be binding with regard to the specific electric power generating facility or cogeneration pilot project facility in any subsequent rate proceeding.

5. The utilities board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and the consumer advocate deem necessary to perform required functions as provided in this section, in-

cluding but not limited to review of power purchase contracts, review of emission plans and budgets, and review of ratemaking principles proposed for construction or lease of a new generating facility or a cogeneration pilot project facility. Beginning July 1, 2002, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board and the consumer advocate to hire additional staff and contract for services under this section. The costs of the additional staff and services shall be assessed to the utilities pursuant to the procedure in section 476.10 and section 475A.6.

6. a. A qualified cogeneration pilot project facility may file a petition with the board for a determination of the avoided cost of an electric utility as provided in the federal Public Utility Regulatory Policies Act of 1978 and related federal regulations, if such a determination has not been made within the last twenty-four months or if there is reason to believe the avoided cost has changed.

b. The board shall issue its determination of the electric utility's avoided cost within one hundred twenty days after the petition is filed.

c. The board, for good cause shown, may extend the deadline for issuing the decision for an additional period not to exceed one hundred twenty days.

d. The board shall not issue a decision under this subsection without providing notice and an opportunity for hearing.

e. The utilities board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and the consumer advocate deem necessary to perform required functions as provided in this subsection. There is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board and the consumer advocate to hire additional staff and contract for services under this section. The costs of the additional staff and services shall be assessed to the electric utility pursuant to the procedure in sections 476.10 and 475A.6.

2003 Acts, ch 29, §5, 6; 2003 Acts, ch 159, §2 - 4

See Code editor's note to §2.9

2003 amendment to subsection 4, paragraph b, takes effect April 11, 2003; 2003 Acts, ch 29, §6

Internal reference change applied

NEW subsection 3 and former subsections 3 and 4 amended and renumbered as 4 and 5

NEW subsection 6

#### 476.86 Definitions.

As used in this section and section 476.87, unless the context otherwise requires:

1. "Aggregator" means a person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services.

2. "Competitive natural gas provider" means a person who takes title to natural gas and sells it

for consumption by a retail end user in the state of Iowa. “*Competitive natural gas provider*” includes an affiliate of an Iowa gas utility.

“*Competitive natural gas provider*” does not include the following:

*a.* A public utility which is subject to rate regulation under this chapter.

*b.* A municipally owned utility which provides natural gas service within its incorporated area or within the municipal natural gas competitive service area, as defined in section 437A.3, subsection 22, paragraph “*a*”, subparagraph (1), in which the municipally owned utility is located.

Section not amended; internal reference change applied

#### **476.97 Price regulation.**

1. Notwithstanding contrary provisions of this chapter relating to rate regulation, the board may approve a plan for price regulation submitted by a rate-regulated local exchange carrier. The plan for price regulation is not effective until the approval by the board of tariffs implementing the unbundling of essential facilities pursuant to section 476.101, subsection 4, except for a local exchange carrier with less than seventy-five thousand access lines whose plan for price regulation will be effective concurrent with the approval of its plan. The board may approve a plan for price regulation prior to the adoption of rules related to the unbundling of essential facilities or concurrent with a rate proceeding under section 476.3, 476.6, or 476.7. During the term of the plan, the board shall regulate the prices of the local exchange carrier’s basic and nonbasic communications services pursuant to the requirements of the price regulation plan approved by the board. The local exchange carrier shall not be subject to rate of return regulation during the term of the plan.

2. The board, after notice and opportunity for hearing, may approve, modify, or reject the plan. The board shall approve, modify, or reject the plan by no later than ninety days after the date the plan is filed. The local exchange carrier shall have ten days to accept or reject any board modifications to its plan. If the local exchange carrier rejects a modification to its plan, the board shall reject the plan without prejudice to the local exchange carrier to submit another plan.

3. A price regulation plan, at a minimum, shall include provisions, consistent with the provisions of this section and any rules adopted by the board, for the following:

*a.* (1) Establishing and changing prices, terms, and conditions for basic communications services. The initial plan for price regulation must include a proposal, which the board shall approve, for reducing the local exchange carrier’s average intrastate access service rates to the local exchange carrier’s average interstate access service rates in effect as of the last day of the calendar year immediately preceding the date of filing of the

plan, as follows:

(a) A local exchange carrier with five hundred thousand or more access lines in this state shall reduce its average intrastate access service rates by at least one hundred percent of the difference between average intrastate access service rates and average interstate access service rates as of the date that the plan becomes effective.

(b) A local exchange carrier with fewer than five hundred thousand but seventy-five thousand or more access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates in increments of at least twenty-five percent, with the initial reduction to take effect on approval of the plan and equal annual reductions on each anniversary of the approval during the first three years that its plan is in effect.

(c) A local exchange carrier with fewer than seventy-five thousand access lines in this state shall reduce its average intrastate access service rates to its average interstate access service rates with equal annual reductions during a period beginning no more than two years and ending no more than five years from the plan’s inception.

(2) The board, during the term of the plan for a local exchange carrier with five hundred thousand or more access lines in this state, may consider further reductions toward economic costs in the local exchange carrier’s average intrastate access service rates. The board may consider offsetting such reductions by an explicit subsidy replacement to the extent that such offsets are competitively neutral. In determining economic costs of access service the board shall consider all relevant costs of the service including shared and common costs of the local exchange carrier.

(3) This section shall not be construed to do either of the following:

(a) Prohibit an additional decrease in a carrier’s average intrastate access service rate during the term of the plan.

(b) Permit any increase in a carrier’s average intrastate access service rates during the term of the plan.

(4) The plan shall also provide that the initial prices for basic communications services shall be three percent less than the rates approved and in effect at the time the local exchange carrier files its plan. A local exchange carrier which elects to reduce its rates by three percent shall not, at a later time, increase its rates for basic communications services as a result of the carrier’s compliance with the board’s rules relating to unbundling. In lieu of the three percent reduction, and prior to the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph “*a*”, subparagraph (1), the local exchange carrier may request and the board may establish a regulated revenue requirement in a rate proceeding under section 476.3 or 476.6 commenced after July

1, 1995. After the determination of the local exchange carrier's regulated revenue requirement pursuant to the rate proceeding, the local exchange carrier shall not immediately implement rates designed to recover that regulated revenue requirement. Following the adoption of rules relating to unbundling pursuant to section 476.101, subsection 4, paragraph "a", subparagraph (1), the local exchange carrier shall commence a tariff proceeding for the approval of tariffs implementing such unbundling. The board has six months to complete this tariff proceeding and determine the local exchange carrier's final unbundled rates. The local exchange carrier shall carry forward the regulated revenue requirement determined by the board pursuant to the rate proceeding and design rates that comply with the board's rules relating to unbundling that recover the regulated revenue requirement, and that implement the board's approved rate design established in the tariff proceeding.

In lieu of taking the three percent reduction, a local exchange carrier that submits a plan for price regulation after the board adopts rules relating to unbundling may file a rate proceeding under section 476.3 or 476.6 and the board may approve rates designed to comply with those rules which allow the carrier to recover the established regulated revenue requirement and that implement the board's approved rate design established in the tariff proceeding.

(5) The plan shall provide for both increases and decreases in the prices for basic communications services reflecting annual changes in inflation. Initially, the board shall use the gross domestic product price index, as published by the federal government, for an inflation measure. The board by rule may adopt a more current measure of inflation. Any plan in effect as of July 1, 2003, that contains a productivity factor shall strike the productivity factor on a prospective basis.

(6) The plan may provide that price increases for basic communications services which are permitted under this section may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this section shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier.

b. Establishing and changing prices, terms, and conditions for nonbasic communications services.

c. Reporting new service offerings to the board.

d. Reflecting in rates any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier.

e. Providing notice to customers, the board, and the consumer advocate of changes in prices, terms, or conditions for basic and nonbasic communications services.

4. The board shall consider the extent to which a proposed plan complies with the requirements of subsection 3 and achieves the following:

a. Just, nondiscriminatory, and reasonable rates.

b. High quality, universally available communications services.

c. Encouragement of investment in communications infrastructure, efficiency improvements, and technological innovation.

d. The introduction of new communications products and services from a variety of sources.

e. Regulatory efficiency including reduction of regulatory costs and delays. A plan shall not provide for waiver of, release from, or delay in implementing the provisions of this section, section 476.101 or 476.102 or any rules adopted by the board pursuant to those sections.

5. Notwithstanding an approved plan for price regulation, the board shall continue to have regulatory authority over the following:

a. The level, extent, and timing of the unbundling of essential facilities offered by a local exchange carrier.

b. Ensuring against cross-subsidization between nonbasic communications services and basic communications services.

6. Any person, including the consumer advocate, a body politic, or the board on its own motion, may file a written complaint pursuant to section 476.3, subsection 1, regarding a local exchange carrier's implementation, operation under, or satisfaction of the purposes of its price regulation plan.

7. The consumer advocate may represent consumers before the board regarding any rule, order, or proceeding pertaining to price regulation. The consumer advocate may act as attorney for and represent consumers generally before any state or federal court concerning a board rule, order, or proceeding pertaining to price regulation.

8. In implementing price regulation, the board shall consider competitively neutral methods to assist lower-income Iowans to secure and retain telephone services.

9. The board shall determine the duration of any plan. The board shall review a local exchange carrier's operation under its plan, with notice and an opportunity for hearing, within four years of the initiation of the plan and prior to the termination of the plan. The local exchange carrier, consumer advocate, or any person may propose, and the board may approve, any reasonable modifications to a local exchange carrier's plan as a result

of the review, except that such modifications shall not require a reduction in the rates for any basic communications service.

10. The board, in determining whether to file a written complaint pursuant to subsection 6 or prior to reviewing a local exchange carrier's operation pursuant to subsection 9, may request that such carrier provide any information which the board deems necessary to make such determination or conduct such review. The carrier shall provide the requested information upon receipt of the request from the board.

11. *a.* Notwithstanding subsections 1 through 10, a local exchange carrier with fewer than five hundred thousand access lines in this state shall have the option to be regulated pursuant to subsections 1 through 10 or pursuant to this subsection. A local exchange carrier which elects to become price regulated under this subsection shall also be subject to subsections 5 through 8 and subsection 10 in the same manner as a local exchange carrier which operates under an approved plan of price regulation submitted pursuant to subsection 1.

*b.* A local exchange carrier which elects to become price regulated under this subsection shall give written notice to the board of such election not less than thirty days prior to the date such regulation is to commence.

*c.* Upon election of a local exchange carrier to become price-regulated under this subsection, the carrier shall reduce its rates for basic local telephone service an average of three percent. In lieu of the three percent reduction, the local exchange carrier may establish its rates for basic local telephone service in a rate proceeding under section 476.3 or 476.6 commenced after July 1, 1995.

*d.* Initial prices for basic communications services, other than basic local telephone service, shall be set at the rates in effect as of the first of July prior to the date such regulation is to commence.

*e.* (1) A price-regulated local exchange carrier shall not increase its rates for basic communications services for a period of twelve months after electing to become price regulated. To the extent necessary, rates for basic services may be increased to carry out the purpose of any rules that may be adopted by the board relating to the terms and conditions of unbundled services and interconnection. A price-regulated local exchange carrier may increase its rates for basic communications services following the initial twelve-month period to the extent that the change in its aggregate revenue weighted prices does not exceed the most recent annual change in the gross domestic product price index, as published by the federal government. If application of that formula achieves a negative result, prices shall be reduced so that the cumulative price change for basic services, including prior price reductions in these services, achieves the negative result. The board by

rule may adopt different measures of inflation if they are found to be more reflective of the individual price-regulated carriers.

(2) Price increases for basic communications services which are permitted under this subsection may be deferred and accumulated for a maximum of three years into a single price increase, provided that a deferred and accumulated price increase under this subsection shall not at any time exceed six percent. A price decrease for basic communications services shall not be deferred or accumulated, except that price decreases of less than two percent may be deferred by the local exchange carrier for one year. A price decrease required under this section may be offset by a price increase for a basic communications service that would have been permitted under this section in the previous twelve-month period, but which was deferred by the local exchange carrier. A rate change pursuant to this subsection may take effect thirty days after the notification of the board and consumers.

(3) A price-regulated local exchange carrier shall not increase its aggregate revenue weighted prices for nonbasic communications services more than six percent in any twelve-month period.

(4) A price-regulated local exchange carrier may reduce the price for any basic communications service, to an amount not less than the total service long-run incremental cost for such service on one day's notice filed with the board. For purposes of this subsection, "*total service long-run incremental costs*" means the difference between the company's total cost and the total cost of the company less the applicable service, feature, or function.

(5) A price-regulated local exchange carrier may offer new service alternatives for any basic communications services on thirty days prior notice to the board, provided that the preexisting basic communications service rate structure continues to be offered to customers. New telecommunications services shall be considered nonbasic communications services as defined in section 476.96, subsection 6.

(6) A price-regulated local exchange carrier must reduce the average intrastate access service rates to the carrier's average interstate access service rates. Such carrier shall reduce the average intrastate access service rates by at least twenty-five percent of the difference of such rates within ninety days of the election to be price-regulated and twenty-five percent each of the next three years.

*f.* A local exchange carrier shall notify customers of a rate change under this subsection at least thirty days prior to the effective date of the rate change.

*g.* A local exchange carrier which elects to become price regulated under this subsection shall also be subject to the following:

(1) The local exchange carrier shall not be sub-

ject to rate-of-return regulation while operating under price regulation.

(2) All regulated services shall be provided pursuant to board-approved tariffs.

(3) All new regulated service offerings shall be reported to the board.

(4) Rates may be adjusted by the board to reflect any changes in revenues, expenses, and investment due to exogenous factors beyond the control of the local exchange carrier, including, but not limited to, the effects of local competition. The board shall have one hundred eighty days to consider rate changes proposed under this subparagraph, but for good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days.

*h.* The board may review a local exchange carrier's operation under this subsection, with notice and an opportunity for hearing, after four years of the carrier's election to be price-regulated. The local exchange carrier, consumer advocate, or any person may propose, and the board may approve, any reasonable modifications to the price regulation requirements in this subsection as a result of the specific carrier review, with the following limitations:

(1) Such modifications shall not require a reduction in the rates for any basic communications service or a return to rate-base, rate-of-return regulation.

(2) Such proposals for modifications under this paragraph "*h*" are limited to no more than one every three years.

The board shall approve, or approve subject to modification, a proposal for modification within one hundred eighty days of filing, but for good cause may grant one extension of sixty days, not to exceed a total of two hundred forty days. Reasonable modifications may include increases without offsetting decreases in any rate for basic and non-basic communications service of the carrier. In reviewing the carrier's proposal, the board shall consider, but not be limited to, potential rate consolidations, the impact of competition or other external factors since election of price regulation, the impact of the proposal on the carrier's ability to attract capital, and the impact of the proposal on the ability of the carrier to deploy advanced telecommunications services.

*i.* This subsection shall not be construed to prohibit an additional decrease or to permit any increase in a local exchange carrier's average intrastate access service rates during the term of the local exchange carrier's operation under price regulation.

*j.* Upon the request of a local exchange carrier, the board shall, when required by this subsection, grant the carrier temporary authority to place in effect seventy-five percent, or such lesser amount as the carrier may request, of the requested increases in rates, charges, schedules, or regulations by filing with the board a bond conditioned

upon the refund in a manner to be prescribed by the board of any amounts collected from any customer class in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board. The board shall approve a request for temporary authority within thirty days after the date of filing of the request. The decision shall be effective immediately.

The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is one percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

*k.* The board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and consumer advocate deem necessary to review a local exchange carrier's operations, proposal for modifications, rate change proposal, or proposed changes in aggregate revenue weighted prices pursuant to this subsection. Beginning July 1, 2002, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board to hire additional staff and contract for services under this subsection. The costs of the additional staff and services shall be assessed to the local exchange carrier pursuant to the procedures in sections 475A.6 and 476.10.

12. *a.* The Iowa broadband initiative is created to provide access to advanced telecommunications services to all customers in all exchanges served by rate-regulated local exchange carriers where advanced telecommunications services are not already available at affordable rates, to the extent consistent with technological limitations and the public interest as determined by the board. The general assembly specifically finds that regulatory flexibility is appropriate when fostering economic development through the increased availability of advanced telecommunications services.

*b.* For purposes of this section, "*advanced telecommunications services*" is defined as infrastructure capable of delivering a data transmission speed of at least two hundred kilobits per second in each direction.

*c.* Any rate-regulated local exchange carrier may implement a single increase in monthly rates for residential or business dial tone access service lines by an amount not to exceed two dollars per month. The increase shall be included in the customer's bill as an unidentified part of the overall

rate for service. The revenue from this increase shall be used to provide advanced telecommunications services in each of the carrier's local exchange central office wire centers where advanced telecommunications services are not currently available at affordable rates in all or a substantial part of the exchange, subject to the requirements in subparagraphs (1) through (7). In addition, any increase or decrease required by an approved price regulation plan that, as of July 1, 2003, has been deferred pursuant to subsection 3, paragraph "a", subparagraph (6), shall not be implemented and the amount of any deferral shall also be used to provide advanced telecommunications services, subject to the following requirements:

(1) Any carrier electing to participate in the Iowa broadband initiative shall file for the board's review and approval a plan for using the revenue resulting from the rate increase. In reviewing the plan, the board shall consider investments and expenditures by the carrier that will best serve the public interest as described in this subsection, including upgrading the existing telecommunications infrastructure to permit improved data services for customers who cannot be offered advanced telecommunications services because of their geographical location. The board shall adopt rules to implement its review process, including rules that specify the initial plan filing requirements, further define the public interest, and identify some of the factors the board will consider in reviewing plans.

(2) The carrier shall use the revenue resulting from the rate increase to implement its approved plan. Whenever the board is of the opinion that a carrier is not complying with its approved plan, the board may commence an action in the district court for any county in which such violation is alleged to have occurred to have such violation stopped and prevented by injunction, mandamus, or other appropriate remedy. The board may also, after notice and opportunity for hearing, require that the carrier refund any revenue resulting from the rate increase that has not been used to implement its approved plan. The board may also enforce the approved plan with civil penalties, pursuant to section 476.51.

(3) The carrier shall file annual reports with the board detailing its progress toward completion of its approved plan.

(4) The carrier, the board, or any other inter-

ested person may propose modifications to a carrier's plan at any time.

(5) By choosing to participate in the Iowa broadband initiative, the participating carrier agrees to make available to other carriers, on both a wholesale and an unbundled basis, the services and facilities that result from implementation of the participating carrier's plan. The wholesale rates and unbundled rates shall be set by the board, which shall consider, among other factors, the extent to which the service or facility was financed by the revenues generated by the rate increase allowed under this paragraph "c".

(6) Upon completion of its initial Iowa broadband initiative plan, a carrier shall do one or more of the following:

(a) File a plan for board review and approval for continued use of the revenue resulting from the rate increase for further deployment of advanced services.

(b) File a rate of return rate proceeding pursuant to section 476.6 to determine new rates.

(c) File proposed tariffs for board review and approval to reduce the monthly rates that were increased under this subsection by an amount equal to the increase.

(7) A carrier choosing to participate in the Iowa broadband initiative shall also apply a credit, in an amount equal to the amount of the residential service increase, to the monthly local exchange service rate for qualified applicants for low-income lifeline assistance programs. This credit shall continue for as long as the retail rate increase is in effect.

2003 Acts, ch 126, §5, 6  
Subsection 3, paragraph a, subparagraph (5) amended  
NEW subsection 12

## SEVERABILITY

### 476.104 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid or otherwise rendered ineffective by any entity, the invalidity or ineffectiveness shall not affect other provisions or applications of this chapter that can be given effect without the invalid or ineffective provision or application, and to this end the provisions of this chapter are severable.

2003 Acts, ch 126, §7  
NEW section

## CHAPTER 476A

### ELECTRIC POWER GENERATION AND TRANSMISSION

#### 476A.23 Issuance of public bonds or obligations — purposes — limitations.

1. An electric power agency may from time to

time issue its public bonds or obligations in such principal amounts as the electric power agency deems necessary to provide sufficient funds to

carry out any of its purposes and powers, including but not limited to any of the following:

*a.* The acquisition or construction of any project to be owned or leased by the electric power agency, or the acquisition of any interest in such project or any right to the capacity of such project, including the acquisition, construction, or acquisition of any interest in an electric power generating plant to be constructed in this state, or the acquisition, construction, or acquisition of any interest in a transmission line or system.

*b.* The funding or refunding of the principal of, or interest or redemption premiums on, any public bonds or obligations issued by the electric power agency whether or not the public bonds or obligations or interest to be funded or refunded have become due.

*c.* The establishment or increase of reserves to secure or to pay the public bonds or obligations or interest on the public bonds or obligations.

*d.* The payment of all other costs or expenses of the electric power agency incident to and necessary to carry out its purposes and powers.

2. Notwithstanding anything in this subchapter or chapter 28F to the contrary, a facility shall not be financed with the proceeds of public bonds or obligations, the interest on which is exempt from federal income tax, unless the public issuer

of such public bonds or obligations covenants that the issuer shall comply with the requirements or limitations imposed by the Internal Revenue Code or other applicable federal law to preserve the tax exemption of interest payable on the bonds or obligations.

3. Notwithstanding anything in this subchapter or chapter 28F to the contrary, an electric power generating facility shall not be financed under this subchapter unless all of the following conditions are satisfied:

*a.* The portion of the electric power generating facility financed by the electric power agency is not designed to serve the electric power requirements of retail customers of members that are municipal electric utilities established in the state after January 1, 2001.

*b.* The electric power agency annually files with the utilities board, in a manner to be determined by the utilities board, information regarding sales from the electric power generating facility in sufficient detail to determine compliance with these provisions.

The utilities board shall report to the general assembly if any of the provisions are being violated.

2003 Acts, ch 44, §78, 79

Subsection 3, paragraph b amended

Subsection 3, unnumbered paragraph 2 amended

## CHAPTER 481A

### WILDLIFE CONSERVATION

#### 481A.1 Definitions.

Words and phrases as used in this chapter and chapters 350, 456A, 456B, 457A, 461A through 461C, 462A, 462B, 463B, 464A, 465A through 465C, 481B, 482, 483A, 484A, and 484B and such other chapters as relate to the subject matter of these chapters shall be construed as follows:

1. “*Alien*” shall not be construed to mean any person who has applied for naturalization papers.

2. “*Amphibian*” means a member of the class Amphibia.

3. “*Aquaculture*” means the controlled propagation, growth, and harvest of aquatic organisms, including, but not limited to fish, amphibians, reptiles, mollusks, crustaceans, gastropods, algae, and other aquatic plants, by an aquaculturist.

4. “*Aquaculture unit*” means all private waters for aquaculture with or without buildings, used for the purpose of propagating, raising, holding, or harvesting aquatic organisms for commercial purposes.

5. “*Aquaculturist*” means an individual involved in producing, transporting, or marketing aquatic products from private waters for commercial purposes.

6. “*Bag limit*” or “*possession limit*” is the number of any kind of game, fish, bird or animal or oth-

er wildlife form permitted to be taken or held in a specified time.

7. “*Bait*” includes, but is not limited to, minnows, green sunfish, orange-spotted sunfish, gizzard shad, frogs, crayfish, salamanders, and mussels.

8. “*Biological balance*” means that condition when the number of animals present over the long term is at or near the number of animals of a particular species that the available habitat is capable of supporting.

9. “*Bird*” means a member of the class Aves.

10. “*Buy*” means to purchase, offer to purchase, barter for, trade for, or lease.

11. “*Closed season*” is that period of time during which hunting, fishing, trapping or taking is prohibited.

12. “*Commercial purposes*” means selling, giving, or furnishing to others.

13. “*Commission*” means the natural resource commission.

14. “*Contraband*” as used in the laws pertaining to the work of the commission shall mean anything, the possession of which was illegally procured, or the possession of which is unlawful.

15. “*Department*” means the department of natural resources.

16. “*Director*” means the director of the department or the director’s designee.

17. “*Farm deer*” means the same as defined in section 170.1.

18. “*Fish*” means a member of the class Pisces.

19. “*Frog*” means a member of the order Anura.

20. “*Fur-bearing animals*” means the following which are declared to be fur-bearing animals for the purpose of regulation and protection under the Code: beaver, badger, mink, otter, muskrat, raccoon, skunk, opossum, spotted skunk or civet cat, weasel, coyote, bobcat, wolf, groundhog, red fox, and gray fox. This chapter does not apply to domesticated fur-bearing animals.

21. “*Game*” means all of the animals specified in this subsection except those designated as not protected, and includes the heads, skins, and any other parts, and the nests and eggs of birds and their plumage.

a. The Anatidae: such as swans, geese, brant, and ducks.

b. The Rallidae: such as rails, coots, mudhens, and gallinules.

c. The Limicolae: such as shorebirds, plovers, surfbirds, snipe, woodcock, sandpipers, tattlers, godwits, and curlews.

d. The Gallinae: such as wild turkeys, grouse, pheasants, partridges, and quail.

e. The Columbidae: such as mourning doves and wild rock doves only.

f. The Sciuridae: such as gray squirrels and fox squirrels.

g. The Leporidae: cottontail rabbits and jackrabbits only.

h. The Cervidae: such as elk or deer, other than farm deer.

22. “*Measurement of fish*” is the length from end of nose to longest tip of tail.

23. “*Minnows*” means chubs, suckers, shiners, dace, stonerollers, mud minnows, redhorse, blunt-nose, and fathead minnows.

24. “*Mussels*” means the pearly fresh water mussels, clams or naiads, and their shells.

25. “*Open season*” is that period of time during which hunting, fishing, trapping or taking is permitted.

26. “*Person*” shall mean any person, firm, partnership or corporation.

27. “*Possession*” is both active and constructive possession and any control of things referred to.

28. “*Private waters for aquaculture*” means waters confined within an artificial containment, such as man-made ponds, vats, tanks, raceways, and other indoor or outdoor facilities constructed wholly within or on the land of an owner or lessee and used for aquaculture.

29. “*Reptile*” means a member of the class Reptilia.

30. “*Sell*” or “*sale*” is selling, bartering, exchanging, offering or exposing for sale.

31. “*Spawn*” means any of the eggs of any fish, amphibian, or mussel.

32. “*Take*” or “*taking*” or “*attempting to take*” or “*hunt*” is any pursuing, or any hunting, fishing, killing, trapping, snaring, netting, searching for or shooting at, stalking or lying in wait for any game, animal, bird, or fish protected by the state laws or rules adopted by the commission whether or not such animal be then subsequently captured, killed, or injured.

33. “*Transport*” or “*transportation*” is all carrying or moving or causing to be carried or moved.

34. “*Turtle*” means any member of the order Testudines.

35. “*Whitetail*” means an animal belonging to the cervidae family and classified as part of the virginianus species of the odocoileus genus, commonly referred to as whitetail.

36. “*Wild animal*” means a wild mammal, bird, fish, amphibian, reptile, or other wildlife found in this state, whether game or nongame, migratory or nonmigratory, the ownership and title to which is claimed by this state.

37. “*Wild mammal*” means a member of the class Mammalia.

2003 Acts, ch 149, §14 – 16, 23

NEW subsection 17 and former subsections 17 – 33 renumbered as 18 – 34

Subsection 21, paragraph h amended

NEW subsection 35 and former subsections 34 and 35 renumbered as 37 and 35

#### 481A.68 Tip-up fishing device.

1. As used in this section, “*tip-up fishing device*” means an ice fishing mechanism with an attached flag or signal to indicate fishing action, used to hold a fishing rod or pole with line and hook.

2. A person shall not use more than three tip-up fishing devices for fishing in the waters of the Mississippi river, the Missouri river, and the Big Sioux river, and their connected backwaters. A person may use two or three hooks on the same line, but the total number of hooks used by each person shall not exceed three. Each tip-up fishing device used in fishing shall have attached a tag plainly labeled with the owner’s name and address. A person shall not use a tip-up fishing device for fishing within three hundred feet of a dam or spillway or in a part of the river which is closed or posted against use of the device. Three tip-up fishing devices may be used in addition to the two lines with no more than two hooks per line, as specified in section 481A.72.

3. An untagged tip-up fishing device found in use shall be confiscated by any officer appointed pursuant to section 456A.13 or 456A.14.

2003 Acts, ch 31, §1

Subsection 2 amended

**481A.124 Taking predominantly white deer of the whitetail species prohibited.**

1. A person shall not take a predominantly white deer in this state.
2. This section only applies to whitetail, other than farm deer that are kept as provided in chapter 170.
3. A person violating subsection 1 is guilty of a simple misdemeanor.

2003 Acts, ch 149, §17, 23  
Subsection 2 amended

**481A.130 Damages in addition to penalty — animals — ginseng.**

1. In addition to the penalties for violations of this chapter and chapters 350, 461A, 481B, and 482, a person convicted of unlawfully selling, taking, catching, killing, injuring, destroying, or having in possession any animal, shall reimburse the state for the value of such as follows:
  - a. For each elk, antelope, buffalo, or moose, two thousand five hundred dollars.
  - b. For each wild turkey, two hundred dollars.
  - c. For each bird or animal or the raw pelt or plumage of such bird or animal for which damages are not otherwise prescribed, fifty dollars.
  - d. For each fish, reptile, mussel, or amphibian,

fifteen dollars.

- e. For each beaver, mink, otter, red fox, gray fox, or raccoon, two hundred dollars.
- f. For each animal classified by the commission as an endangered or threatened species, one thousand dollars.
- g. For each antlered deer during September, October, November, or December before the regular gun season, two thousand dollars and eighty hours of community service or, in lieu of the community service, a total of four thousand dollars.
- h. For each deer, except as provided in paragraph “g”, and for each swan or crane, one thousand five hundred dollars.

2. In addition to any other penalty, a person convicted of unlawfully harvesting wild ginseng in violation of section 456A.24 shall reimburse the state at one hundred fifty percent of the ginseng’s market value, as determined by the department.

3. This section does not apply to a landowner who cooperates with the department of natural resources and the department of agriculture and land stewardship to remove all whitetail from enclosed land as provided in section 170.5, even if all whitetail are not removed.

2003 Acts, ch 149, §18, 23  
NEW subsection 3

**CHAPTER 481B**

**ENDANGERED PLANTS AND WILDLIFE**

**481B.5 Prohibitions.**

Except as otherwise provided in this chapter or by rule, a person shall not take, possess, transport, import, export, process, sell or offer for sale, buy or offer to buy, nor shall a common or contract carrier transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists which shall be adopted by rule of the commission:

1. The list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 481B.3.

2. The United States list of endangered or threatened native fish and wildlife as contained in 50 C.F.R. pt. 17 as amended to December 30, 1991.

3. The United States list of endangered or threatened plants as contained in 50 C.F.R. pt. 17 as amended to December 30, 1991.

4. The United States list of endangered or threatened foreign fish and wildlife as contained in 50 C.F.R. pt. 17 as amended to December 30, 1991.

2003 Acts, ch 108, §89  
For applicable scheduled fines, see §805.8B, subsection 3, paragraph e  
Subsections 2 – 4 amended

**CHAPTER 482**

**COMMERCIAL FISHING**

**482.12 Freshwater mussels.**

1. A person shall not take, possess, or sell freshwater mussels from the waters of the state without an appropriate license.

- a. A sport fishing license entitles a person to take and possess a maximum amount of mussels or shells daily as authorized by rule of the depart-

ment or commission under the authority of sections 456A.24, 481A.38, 481A.39, and 482.1.

- b. A commercial mussel license is required to take more than twenty pounds of mussels or shells daily, or possess more than twenty pounds of mussels or shells. The holder of a commercial mussel license may sell mussels or shells.

c. A commercial mussel buyer license is required to buy mussels or shells.

d. A commercial mussel helper license is required to assist commercial mussel fishers in the possessing, processing, or transporting of commercial freshwater mussels. The taking or sale of mussels or shells is not permitted with a commercial mussel helper license.

2. A person may take all species of freshwater mussels, or their parts, except where otherwise prohibited by rules of the commission.

3. The method of taking freshwater mussels shall only be by hand, by diving, or by crowfoot bar, a device designed to catch mussels by inserting hooks between the shells, or by other means designated by rules of the commission. A crowfoot bar shall not exceed twenty feet in length and a licensee shall not fish more than three bars.

2003 Acts, ch 38, §1  
For applicable scheduled fines, see §805.8B, subsection 3, paragraph o  
Subsection 1, paragraph a stricken and rewritten

## CHAPTER 483A

### FISHING AND HUNTING LICENSES, CONTRABAND, AND GUNS

#### 483A.1 Licenses — fees.

Except as otherwise provided in this chapter, a person shall not fish, trap, hunt, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or a part of any wild animal, bird, game, or fish, the protection and regulation of which is desirable for the conservation of resources of the state, without first obtaining a license for that purpose and the payment of a fee as follows:

1. Residents:
  - a. Fishing license ..... \$ 17.00
  - b. Fishing license, lifetime, sixty-five years or older ..... \$ 50.50
  - c. Hunting license ..... \$ 17.00
  - d. Hunting license, lifetime, sixty-five years or older ..... \$ 50.50
  - e. Deer hunting license ..... \$ 25.50
  - f. Wild turkey hunting license .... \$ 22.50
  - g. Fur harvester license, sixteen years or older ..... \$ 20.50
  - h. Fur harvester license, under sixteen years of age ..... \$ 5.50
  - i. Fur dealer license ..... \$225.50
  - j. Aquaculture unit license ..... \$ 25.50
  - k. Retail bait dealer license ..... \$ 30.50
  - l. Fishing license, seven-day ..... \$ 11.50
  - m. Trout fishing fee ..... \$ 10.50
  - n. Game breeder license ..... \$ 15.50
  - o. Taxidermy license ..... \$ 15.50
  - p. Falconry license ..... \$ 20.50
  - q. Wildlife habitat fee ..... \$ 8.00
  - r. Migratory game bird fee ..... \$ 8.00
  - s. Fishing license, one-day ..... \$ 7.50
  - t. Wholesale bait dealer license ... \$125.00
2. Nonresidents:
  - a. Fishing license, annual ..... \$ 39.00
  - b. Fishing license, seven-day ..... \$ 30.00
  - c. Hunting license, eighteen years of age or older ..... \$ 80.00
  - d. Hunting license, under eighteen years of age ..... \$ 30.00

- e. Deer hunting license, antlered or any sex deer ..... \$220.00
  - f. Deer hunting license, antlerless deer only ..... \$150.00
  - g. Wild turkey hunting license .... \$100.00
  - h. Fur harvester license ..... \$200.00
  - i. Fur dealer license ..... \$501.00
  - j. Location permit for fur dealers .. \$ 56.00
  - k. Aquaculture unit license ..... \$ 56.00
  - l. Retail bait dealer license ..... \$125.00
- or the amount for the same type of license in the nonresident's state, whichever is greater
- m. Trout fishing fee ..... \$ 13.00
  - n. Game breeder license ..... \$ 26.00
  - o. Taxidermy license ..... \$ 26.00
  - p. Falconry license ..... \$ 26.00
  - q. Wildlife habitat fee ..... \$ 8.00
  - r. Migratory game bird fee ..... \$ 8.00
  - s. Fishing license, three-day ..... \$ 15.50
  - t. Wholesale bait dealer license ... \$250.00
- or the amount for the same type of license in the nonresident's state, whichever is greater
- u. Fishing license, one-day ..... \$ 8.50

2003 Acts, ch 120, §1 - 4, 6; 2003 Acts, ch 152, §1 - 3, 6  
Commercial fishing licenses, see §482.4

For applicable scheduled fines, see §805.8B, subsection 3, paragraph p  
2003 amendments to subsection 1, paragraphs a, l, and s and to subsection 2, paragraphs a, b, and s, and the addition of new paragraph u to subsection 2 take effect December 15, 2003, and apply to licenses and fees for years beginning on or after January 1, 2004; 2003 Acts, ch 152, §6

Subsection 1, paragraphs a, k, l, and s amended  
Subsection 1, NEW paragraph t  
Subsection 2, paragraphs a, b, l, and s amended  
Subsection 2, NEW paragraphs t and u

#### 483A.1A Definitions.

As used in this chapter unless the context otherwise requires:

1. "Commission" means the natural resource commission.
2. "Department" means the department of natural resources created under section 455A.2.
3. "Director" means the director of the department.

4. “License” means a privilege granted by the commission to fish, hunt, fur harvest, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or part of a wild animal, bird, game, or fish, including any privilege related to a license granted by issuance of a stamp or a payment of a fee.

5. “License agent” means an individual, business, or governmental agency authorized to sell a license.

6. “License document” means an authorization, certificate, or permit issued by the department or a license agent that lists and confers one or more license privileges.

7. “Resident” means a natural person who meets any of the following criteria:

a. Has physically resided in this state at least thirty consecutive days immediately before applying for or purchasing a resident license under this chapter and has been issued an Iowa driver’s license or an Iowa nonoperator’s identification card.

b. Is a full-time student at an educational institution located in this state and resides in this state while attending the educational institution. A student qualifies as a resident pursuant to this paragraph only for the purpose of purchasing any resident license specified in section 483A.1 or 484A.2.

c. Is a nonresident under eighteen years of age whose parent is a resident of this state.

d. Is a member of the armed forces of the United States who is serving on active duty, claims residency in this state, and has filed a state individual income tax return as a resident pursuant to chapter 422, division II, for the preceding tax year, or is stationed in this state.

e. Is registered to vote in this state.

2003 Acts, ch 37, §1

Subsection 7, paragraph d amended

**483A.3A Fish habitat development funding.**

Three dollars from each resident and nonresident annual and seven-day fishing license sold shall be deposited in the state fish and game protection fund and shall be used within this state for fish habitat development. Not less than fifty percent of this amount shall be used by the commission to enter into agreements with county conservation boards to carry out the purposes of this section.

2003 Acts, ch 152, §4, 6

2003 strike and rewrite of section takes effect December 15, 2003, and applies to licenses and fees for years beginning on or after January 1, 2004; 2003 Acts, ch 152, §6

Section stricken and rewritten

**483A.6 Trout fishing fee.**

Any person required to have a fishing license shall not fish for or possess trout unless that person has paid the trout fishing fee. The proceeds from the fee shall be used exclusively for the trout program designated by the commission. The com-

mission may grant a permit to a community event in which trout will be stocked in water which is not designated trout water and a person may catch and possess trout during the period and from the water covered by the permit without having paid the trout fishing fee.

2003 Acts, ch 152, §5, 6

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b 2003 amendment takes effect December 15, 2003, and applies to licenses and fees for years beginning on or after January 1, 2004; 2003 Acts, ch 152, §6

Section amended

**483A.8 Deer license and tag.**

1. A resident hunting deer who is required to have a hunting license must have a resident hunting license in addition to the deer hunting license and must pay the wildlife habitat fee.

2. The deer hunting license shall be accompanied by a tag designed to be used only once. When a deer is taken, the deer shall be tagged and the tag shall be dated.

3. A nonresident hunting deer is required to have a nonresident hunting license and a nonresident deer license and must pay the wildlife habitat fee. The commission shall annually limit to eight thousand five hundred licenses the number of nonresidents allowed to have deer hunting licenses. Of the first six thousand nonresident deer licenses issued, not more than thirty-five percent of the licenses shall be bow season licenses and, after the first six thousand nonresident deer licenses have been issued, all additional licenses shall be issued for antlerless deer only. The commission shall allocate the nonresident deer hunting licenses issued among the zones based on the populations of deer. However, a nonresident applicant may request one or more hunting zones, in order of preference, in which the applicant wishes to hunt. If the request cannot be fulfilled, the applicable fees shall be returned to the applicant. A nonresident applying for a deer hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

4. The commission may provide, by rule, for the issuance of an additional antlerless deer license to a person who has been issued an antlerless deer license. The rules shall specify the number of additional antlerless deer licenses which may be issued, and the season and zone in which the license is valid. The fee for an additional antlerless deer license shall be ten dollars for residents.

5. A nonresident owning land in this state may apply for one of the first six thousand nonresident deer licenses not limited to antlerless deer, and the provisions of subsection 3 shall apply. However, if a nonresident owning land in this state is unsuccessful in obtaining one of the first six thousand nonresident deer licenses, the landowner shall be

given preference for one of the two thousand five hundred antlerless only nonresident deer licenses. A nonresident owning land in this state shall pay the fee for a nonresident antlerless only deer license and the license shall be valid to hunt on the nonresident's land only. A nonresident owning land in this state is eligible for only one nonresident deer license annually. If one or more parcels of land have multiple nonresident owners, only one of the nonresident owners is eligible for a nonresident antlerless only deer license. If a nonresident jointly owns land in this state with a resident, the nonresident shall not be given preference for a nonresident antlerless only deer license. The department may require proof of land ownership from a nonresident landowner applying for a nonresident antlerless only deer license.

6. The commission shall provide by rule for the issuance to a nonresident of a nonresident antlerless deer hunting license that is valid for use only during the period beginning on December 24, 2003, and ending at sunset on January 2, 2004, and costs fifty dollars. A nonresident hunting deer with a license issued under this subsection shall be otherwise qualified to hunt deer in this state and shall have a nonresident hunting license and pay the wildlife habitat fee. Pursuant to this subsection, the commission shall make available for issuance only the remaining nonresident antlerless deer hunting licenses allocated under subsection 3 that have not yet been issued for the 2003 – 2004 antlerless deer hunting seasons.

2003 Acts, ch 85, §1

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c  
NEW subsection 6

#### 483A.20 Reciprocity.

Licenses for bait dealers or for fishing, hunting, or fur harvesting shall not be issued to residents of states that do not sell similar licenses or certificates to residents of Iowa.

2003 Acts, ch 120, §5, 6

Section amended

#### 483A.24A Harvested deer.

1. *Intent.* It is the intent of the general assembly in enacting this section, to express its concern to the natural resource commission about the burgeoning deer population in this state, by requiring the natural resource commission to make additional antlerless deer hunting licenses available to encourage hunters in this state to assist the commission in bringing the state's deer population under control.

2. *Definitions.* As used in this section:

a. *"Department of corrections"* means the Iowa department of corrections.

b. *"Establishment"* means an establishment

as defined in section 189A.2 where animals or poultry are prepared for food purposes or where wild deer may be processed or dressed for human consumption.

c. *"Public institution"* means a state institution listed under section 904.102, subsections 1 through 10, that is administered by the department of corrections.

3. The natural resource commission shall provide by rule for the distribution of antlerless deer hunting licenses annually to resident hunters and to applicants qualified under section 483A.24. The licenses shall be in addition to deer hunting licenses otherwise allocated in this chapter to resident hunters and applicants qualified under section 483A.24 and shall be equivalent to the least restrictive license issued pursuant to section 481A.38. Pursuant to this section, the department shall make available for issuance at least an additional eighteen thousand antlerless deer hunting licenses for resident hunters for 2003 – 2004 antlerless deer hunting seasons than were available for the 2002 – 2003 antlerless deer hunting seasons.

4. A resident hunter or an applicant qualified under section 483A.24, who receives an antlerless deer hunting license under this section, may deliver the deer harvested with the license to an establishment designated by the department of corrections for processing, packaging, and delivery to locations designated by the department of corrections. Each antlerless deer hunting license issued under this section shall be accompanied by a list of establishments that will accept deer harvested with the license.

5. Each resident hunter or applicant qualified under section 483A.24 shall be otherwise qualified to hunt deer in this state. A wildlife habitat fee shall not be required. The commission shall establish, by rules adopted pursuant to chapter 17A, the procedures for allocating the antlerless deer hunting licenses.

6. The department of corrections may, in cooperation with the commission, contract with one or more establishments to receive, process, package, and deliver the harvested deer meat to the public institutions in the manner specified by the department of corrections and at a cost to the department of corrections that is competitive with the cost of obtaining similar meat products in the private sector.

7. A person violating a provision of this section or a rule adopted pursuant to this section is guilty of a simple misdemeanor punishable as a scheduled violation as provided in section 483A.42.

2003 Acts, ch 85, §2

NEW section

CHAPTER 484B
HUNTING PRESERVES

484B.3 Authority of the director.

The director shall develop, administer, and enforce hunting preserve programs and requirements within the state which implement the provisions of this chapter and the rules adopted by the commission.

The chapter does not apply to keeping farm deer as defined in section 170.1.

2003 Acts, ch 149, §19, 23
NEW unnumbered paragraph 2

484B.12 Health requirements — ungulates.

All ungulates which are purchased, propagated, confined, released, or sold by a licensed hunting preserve shall be free of diseases considered significant for wildlife, poultry, or livestock. The department of agriculture and land stewardship shall provide for the regulation of farm deer as provided in chapter 170.

2003 Acts, ch 149, §20, 23
Section amended

CHAPTER 490

BUSINESS CORPORATIONS

Reorganization option for cooperative associations, §499.43B

490.122 Filing, service, and copying fees.

1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary's office for filing:

Table with 2 columns: DOCUMENT and FEE. Lists various documents like Articles of incorporation, Application for use of indistinguishable name, etc., with corresponding fees.

Table with 2 columns: DOCUMENT and FEE. Lists various documents like Certificate of reinstatement, Certificate of judicial dissolution, etc., with corresponding fees.

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- a. \$1.00 a page for copying.
b. \$5.00 for the certificate.

Filing fee for biennial report; §490.1622
Authority to refund fees; 2003 Acts, ch 181, §16
Section not amended; footnote revised

490.202 Articles of incorporation.

1. The articles of incorporation must set forth all of the following:

- a. A corporate name for the corporation that

satisfies the requirements of section 490.401.

b. The number of shares the corporation is authorized to issue.

c. The street address of the corporation's initial registered office and the name of its initial registered agent at that office.

d. The name and address of each incorporator.

2. The articles of incorporation may set forth any or all of the following:

a. The names and addresses of the individuals who are to serve as the initial directors.

b. Provisions not inconsistent with law regarding:

(1) The purpose or purposes for which the corporation is organized.

(2) Managing the business and regulating the affairs of the corporation.

(3) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders.

(4) A par value for authorized shares or classes of shares.

(5) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.

c. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

d. A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for any of the following:

(1) The amount of a financial benefit received by a director to which the director is not entitled.

(2) An intentional infliction of harm on the corporation or the shareholders.

(3) A violation of section 490.833.

(4) An intentional violation of criminal law.

A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

e. A provision permitting or making obligatory indemnification of a director for liability, as defined in section 490.850, subsection 5, to any person for any action taken, or any failure to take any action, as a director, except liability for any of the following:

(1) Receipt of a financial benefit to which the person is not entitled.

(2) An intentional infliction of harm on the corporation or its shareholders.

(3) A violation of section 490.833.

(4) An intentional violation of criminal law.

3. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

2003 Acts, ch 44, §80  
Subsection 2, paragraph d amended  
Subsection 2, paragraph f stricken

#### **490.724 Corporation's acceptance of votes.**

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

2. If the name signed on a voted consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

a. The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.

b. The name signed purports to be that of an administrator, executor, guardian of the property, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

c. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

d. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment.

e. Two or more persons are the shareholder as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

3. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

4. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or section 490.722, subsection 2, are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a

court of competent jurisdiction determines otherwise.

2003 Acts, ch 44, §81  
Subsection 5 amended

#### **490.727 Greater quorum or voting requirements.**

1. The articles of incorporation or bylaws may provide for a greater quorum or voting requirement for shareholders or voting groups of shareholders than is provided for by this chapter.

2. An amendment to the articles of incorporation or bylaws that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

2003 Acts, ch 44, §82  
Subsection 2 amended

#### **490.825 Committees.**

1. Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on any committee.

2. Unless this chapter provides otherwise, the creation of a committee and appointment of members to it must be approved by the greater of either:

*a.* A majority of all the directors in office when the action is taken.

*b.* The number of directors required by the articles of incorporation or bylaws to take action under section 490.824.

3. Sections 490.820 through 490.824 apply both to committees of the board and to committee members.

4. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under section 490.801.

5. A committee shall not, however:

*a.* Authorize or approve distributions, except according to formula or method, or within limits, prescribed by the board of directors.

*b.* Approve or propose to shareholders action that this chapter requires be approved by shareholders.

*c.* Fill vacancies on the board of directors or, subject to subsection 7, on any of its committees.

*d.* Adopt, amend, or repeal bylaws.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 490.830.

7. The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualifica-

tion. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

2003 Acts, ch 108, §90  
Subsection 3 amended

#### **490.831 Standards of liability for directors.**

1. A director shall not be liable to the corporation or its shareholders for any decision as director to take or not to take action, or any failure to take any action, unless the party asserting liability in a proceeding establishes both of the following:

*a.* That any provision in the articles of incorporation authorized by section 490.202, subsection 2, paragraph "d", or the protection afforded by section 490.832 if interposed as a bar to the proceeding by the director, does not preclude liability.

*b.* That the challenged conduct consisted or was the result of one of the following:

(1) Action not in good faith.

(2) A decision that satisfies one of the following:

*(a)* That the director did not reasonably believe to be in the best interests of the corporation.

*(b)* As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances.

(3) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct, which also meets both of the following criteria:

*(a)* Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation.

*(b)* After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation.

(4) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for such oversight, attention, or inquiry.

(5) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under ap-

plicable law.

2. *a.* A party seeking to hold the director liable for money damages shall also have the burden of establishing both of the following:

(1) That harm to the corporation or its shareholders has been suffered.

(2) The harm suffered was proximately caused by the director's challenged conduct.

*b.* A party seeking to hold the director liable for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances.

*c.* A party seeking to hold the director liable for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

3. This section shall not do any of the following:

*a.* In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section 490.832, alter the burden of proving the fact or lack of fairness otherwise applicable.

*b.* Alter the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under section 490.833 or a transactional interest under section 490.832.

*c.* Affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

2003 Acts, ch 44, §83

Subsection 3, paragraphs a and b amended

#### 490.851 Permissible indemnification.

1. Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if either of the following apply:

*a.* All of the following apply:

(1) The individual acted in good faith.

(2) The individual reasonably believed:

(a) In the case of conduct in the individual's official capacity, that the individual's conduct was in the best interests of the corporation.

(b) In all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation.

(3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

*b.* The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by section 490.202,

subsection 2, paragraph "e".

2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection 1, paragraph "b", subparagraph (2).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

4. Unless ordered by a court under section 490.854, subsection 1, paragraph "c", a corporation shall not indemnify a director under this section in either of the following circumstances:

*a.* In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1.

*b.* In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

2003 Acts, ch 44, §84, 116

2003 amendments are effective April 21, 2003, and apply retroactively to January 1, 2003; 2003 Acts, ch 44, §116

Subsection 1 amended

#### 490.856 Indemnification of officers.

1. A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to the proceeding because the person is an officer, according to all of the following:

*a.* To the same extent as to a director.

*b.* If the person is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract, except for either of the following:

(1) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding.

(2) Liability arising out of conduct that constitutes any of the following:

(a) Receipt by the officer of a financial benefit to which the officer is not entitled.

(b) An intentional infliction of harm on the corporation or the shareholders.

(c) An intentional violation of criminal law.

2. The provisions of subsection 1, paragraph "b", shall apply to an officer who is also a director if the basis on which the officer is made a party to a proceeding is an action taken or a failure to take an action solely as an officer.

3. An officer of a corporation who is not a director is entitled to mandatory indemnification under

section 490.852, and may apply to a court under section 490.854 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

2003 Acts, ch 44, §85  
Subsection 2 amended

#### **490.1323 Perfection of rights — right to withdraw.**

1. A shareholder who receives notice pursuant to section 490.1322 and who wishes to exercise appraisal rights must certify on the form sent by the corporation whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to section 490.1322, subsection 2, paragraph “a”. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder’s shares as after-acquired shares under section 490.1325. In addition, a shareholder who wishes to exercise appraisal rights must execute and return the form and, in a case of certificated shares, deposit the shareholder’s certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 490.1322, subsection 2, paragraph “b”, subparagraph (2). Once a shareholder deposits that shareholder’s certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection 2.

2. A shareholder who has complied with subsection 1 may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to section 490.1322, subsection 2, paragraph “b”, subparagraph (5). A shareholder who fails to so withdraw from the appraisal process shall not thereafter withdraw without the corporation’s written consent.

3. A shareholder who does not execute and return the form and, in the case of certificated shares, deposit the shareholder’s share certificates where required, each by the date set forth in the notice described in section 490.1322, subsection 2, shall not be entitled to payment under this division.

2003 Acts, ch 44, §86  
Subsection 3 amended

#### **490.1324 Payment.**

1. Except as provided in section 490.1325, within thirty days after the form required by section 490.1322, subsection 2, paragraph “b”, subparagraph (2), is due, the corporation shall pay in cash to those shareholders who complied with sec-

tion 490.1323, subsection 1, the amount the corporation estimates to be the fair value of their shares, plus interest.

2. The payment to each shareholder pursuant to subsection 1 must be accompanied by all of the following:

a. Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders’ equity for that year, and the latest available interim financial statements, if any.

b. A statement of the corporation’s estimate of the fair value of the shares, which estimate must equal or exceed the corporation’s estimate given pursuant to section 490.1322, subsection 2, paragraph “b”, subparagraph (3).

c. A statement that shareholders described in subsection 1 have the right to demand further payment under section 490.1326 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted the payment to the shareholder pursuant to subsection 1 in full satisfaction of the corporation’s obligations under this chapter.

2003 Acts, ch 44, §87  
Subsection 2, paragraph c amended

#### **490.1404 Revocation of dissolution.**

1. A corporation may revoke its dissolution within one hundred twenty days of the effective date of its articles of dissolution.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

3. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the corporation.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the corporation’s board of directors or incorporators revoked the dissolution, a statement to that effect.

e. If the corporation’s board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

f. If shareholder action was required to revoke the dissolution, the information required by section 490.1403, subsection 1, paragraph "c".

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

2003 Acts, ch 44, §88  
Subsection 1 amended

#### **490.1422 Reinstatement following administrative dissolution.**

1. A corporation administratively dissolved under section 490.1421 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the corporation at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

c. State a corporate name that satisfies the requirements of section 490.401.

d. State the federal tax identification number of the corporation.

2. a. The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the department of revenue. The department of revenue shall report to the secretary of state the tax status of the corporation. If the department reports to the secretary of state that a filing delinquency or liability exists against the corporation, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

b. If the secretary of state determines that the application contains the information required by subsection 1, and that a delinquency or liability reported pursuant to paragraph "a" of this subsection has been satisfied, and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 490.504. If the corporate name in subsection 1, paragraph "c", is different than the corporate name in subsection 1, paragraph "a", the certificate of reinstatement shall constitute an amendment to the articles of incorporation insofar as it pertains to the corporate name.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

4. Notwithstanding the reinstatement period established in subsection 1, a corporation administratively dissolved after December 31, 1984, which files an application for reinstatement prior to January 1, 1996, containing the information required under subsection 1, shall be treated as if its application had been timely filed under subsection 1. In this case, the secretary of state shall process the application pursuant to subsection 2 and, if a certificate of reinstatement is issued, the provisions of subsection 3 shall apply.

2003 Acts, ch 145, §286  
Terminology change applied

#### **490.1701 Application to existing corporations.**

1. Except as provided in this subsection or chapter 504, Code 1989, or chapter 504A, this chapter does not apply to or affect entities subject to chapter 504, Code 1989, or chapter 504A. Such entities continue to be governed by all laws of this state applicable to them before December 31, 1989, as those laws are amended. This chapter does not derogate or limit the powers to which such entities are entitled.

2. Unless otherwise provided, this chapter does not apply to an entity subject to chapter 174, 176, 497, 498, 499, 499A, 524, 533, or 534 or a corporation organized on the mutual plan under chapter 491, or a telephone company organized as a corporation under chapter 491 qualifying pursuant to an internal revenue service letter ruling under Internal Revenue Code § 501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to a chapter 499 corporation, unless such entity voluntarily elects to adopt the provisions of this chapter and complies with the procedure prescribed by subsection 3 of this section.

A corporation organized under chapter 496C may voluntarily elect to adopt the provisions of this chapter by complying with the provisions prescribed by subsection 3.

3. The procedure for the voluntary election referred to in subsection 2 is as follows:

a. The corporation shall amend or restate its articles of incorporation to indicate that the corporation adopts this chapter and to designate the address of its initial registered office and the name of its registered agent or agents at that office and, if the name of the corporation is not in compliance with the requirements of this chapter, to change the name of the corporation to one complying with the requirements of this chapter.

b. The instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office. If the corporation was organized under chapter 176, 524, or 533, the instrument shall also be filed and recorded in the office of the county recorder. The corporation shall

at the time it files the instrument with the secretary of state deliver also to the secretary of state for filing in the secretary of state's office any biennial report which is then due.

If the county of the initial registered office as stated in the instrument for a corporation organized under chapter 176, 524, or 533 is one which is other than the county where the principal place of business of the corporation, as designated in its articles of incorporation, was located, the corporation shall forward to the county recorder of the county in which the principal place of business of the corporation was located a copy of the instrument and the corporation shall forward to the recorder of the county in which the initial registered office of the corporation is located, in addition to a copy of the original instrument, a copy of the articles of incorporation of the corporation together with all amendments to them as then on file in the secretary of state's office. The corporation shall, through an officer or director, certify to the secretary of state that a copy has been sent to each applicable county recorder, including the date each copy was sent.

c. Upon the filing of the instrument by a corporation all of the following apply:

(1) All of the provisions of this chapter apply to the corporation.

(2) The secretary of state shall issue a certificate as to the filing of the instrument and deliver the certificate to the corporation or its representative.

(3) The secretary of state shall not file the instrument with respect to a corporation unless at the time of filing the corporation is validly existing and in good standing in that office under the chapter under which it is incorporated. The corporation shall be considered validly existing and in good standing for the purpose of this chapter for a period of three months following the expiration date of the corporation, provided all biennial reports due have been filed and all fees due in connection with the biennial reports have been paid.

d. The provisions of this chapter becoming applicable to a corporation voluntarily electing to be governed by this chapter do not affect any right accrued or established, or any liability or penalty incurred, under the chapter under which it is incorporated prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election by the corporation to adopt the provisions of this chapter as provided in this subsection.

4. Except as specifically provided in this chapter, this chapter applies to all domestic corporations in existence on December 31, 1989, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute

under which the corporation was incorporated was reserved.

5. A corporation subject to this chapter which does not have a registered office or registered agent or both designated on the records of the secretary of state is subject to all of the following provisions:

a. The office of the corporation set forth in its first biennial report filed under this chapter shall be deemed its registered office until December 31, 1990, or until it files a designation of registered office with the secretary of state, whichever is earlier.

b. The person signing the first biennial report of the corporation filed under this chapter shall be deemed the registered agent until December 31, 1990, or a statement designating a registered agent has been filed with the secretary of state, whichever is earlier.

c. Section 490.502 does not apply to the corporation until December 31, 1990, or until the corporation files a designation of registered office and registered agent at that office with the secretary of state, whichever is earlier.

6. A corporation subject to this chapter is not subject to chapter 491, 492, 493, or 495.

2003 Acts, ch 66, §1, 2; 2003 Acts, ch 108, §91  
For future amendment to subsection 2 effective July 1, 2005, see 2002 Acts, ch 1017, §5, 8  
Subsection 1 amended  
Subsection 2, NEW unnumbered paragraph 2  
Subsection 3, paragraph b amended

#### **490.1703 Savings provisions.**

1. Except as provided in subsection 2, the repeal of a statute by 1989 Iowa Acts, chapter 288, and the amendment or repeal of a statute by 2002 Iowa Acts, chapter 1154, does not affect:

a. The operation of the statute or any action taken under it before its amendment or repeal.

b. Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its amendment or repeal.

c. Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its amendment or repeal.

d. Any proceeding, reorganization, or dissolution commenced under the statute before its amendment or repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been amended or repealed.

2. If a penalty or punishment imposed for violation of a statute repealed by 1989 Iowa Acts, chapter 288, is reduced by 1989 Iowa Acts, chapter 288, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

2003 Acts, ch 66, §3  
Subsection 1 amended

## CHAPTER 490A

### LIMITED LIABILITY COMPANIES

#### **490A.707 Limitation of liability of managers.**

The articles of organization may contain a provision eliminating or limiting the personal liability of a manager to the limited liability company or to its members or of the members with whom the management of the limited liability company is vested pursuant to section 490A.702, to the limited liability company or to its members for money damages for any action taken, or any failure to take action, as a manager or a member with whom management of the limited liability company is vested, except for liability for any of the following:

1. The amount of a financial benefit received by a manager or member to which the manager or member is not entitled.
2. An intentional infliction of harm on the limited liability company or its members.
3. A violation of section 490A.807.
4. An intentional violation of criminal law.

A provision shall not eliminate or limit the liability of a manager or member with whom management of the limited liability company is vested

for an act or omission occurring prior to the date when the provision in the articles of organization becomes effective.

2003 Acts, ch 66, §4  
Section amended

#### **490A.1508 Issuance of membership interests.**

Membership interests of a professional limited liability company shall be issued only to individuals who are licensed to practice in any state a profession which the professional limited liability company is authorized to practice. Membership interests of a professional limited liability company shall not at any time be issued in, transferred into, or held in joint tenancy, tenancy in common, or any other form of joint ownership or co-ownership. The Iowa uniform securities Act as provided in chapter 502 shall not be applicable to nor govern any transaction relating to any membership interests of a professional limited liability company.

2003 Acts, ch 108, §92  
Section amended

## CHAPTER 491

### CORPORATIONS FOR PECUNIARY PROFIT

Reorganization option for cooperative associations, §499.43B

#### **491.5 Articles adopted and filed.**

Before commencing any business except their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators. Said articles shall then be forwarded to the secretary of state. Upon the filing of such articles, the secretary of state shall issue a certificate of incorporation and record said articles in a book kept for that purpose.

Such articles shall contain:

1. Name of corporation and its principal place of business.
2. The objects for which it is formed.
3. The amount of authorized capital stock, the classes of stock and number of shares authorized, with the par value and conditions of each class of such shares, and the time when and conditions under which it is to be paid in.
4. The time of commencement and existence of the corporation.
5. The names and addresses of the incorporators and the officers or persons its affairs are to be conducted by, and the times when and manner in which such officers will be elected.
6. Whether private property is to be exempt

from corporate debts.

7. The manner in which the articles may be amended.

8. Any provision eliminating or limiting the personal liability of a director to the corporation or its shareholders or members for money damages as provided in section 490.202, subsection 2, paragraph “d”, except that section 490.202, subsection 2, paragraph “d”, subparagraph (3), shall have no application.

9. Any provision permitting or making obligatory indemnification of a director as provided in section 490.202, subsection 2, paragraph “e”, except that section 490.202, subsection 2, paragraph “e”, subparagraph (3), shall have no application.

2003 Acts, ch 66, §5, 6  
Subsection 8 stricken and rewritten  
NEW subsection 9

#### **491.16A Directors and officers — duties and liabilities.**

Sections 490.830 through 490.842 apply to corporations organized under or subject to this chapter.

2003 Acts, ch 66, §7  
NEW section

## CHAPTER 496C

## PROFESSIONAL CORPORATIONS

**496C.14 Required purchase by professional corporation of its own shares.**

Notwithstanding any other statute or rule of law, a professional corporation shall purchase its own shares as provided in this section; and the shareholders of a professional corporation and their executors, administrators, legal representatives, and successors in interest shall sell and transfer the shares held by them as provided in this section.

The corporation may validly purchase its own shares even though its net assets are less than its stated capital, or even though by so doing its net assets would be reduced below its stated capital.

Upon the death of a shareholder, the professional corporation shall immediately purchase all shares held by the deceased shareholder.

In order to remain a shareholder of a professional corporation, a shareholder shall at all times be licensed to practice in this state a profession which the corporation is authorized to practice. Whenever any shareholder does not have or ceases to have this qualification, the corporation shall immediately purchase all shares held by that shareholder.

Whenever any person other than the shareholder of record becomes entitled to have shares of a corporation transferred into that person's name or to exercise voting rights, except as a proxy, with respect to shares of the corporation, the corporation shall immediately purchase such shares. Without limiting the generality of the foregoing, this section shall be applicable whether the event occurs as a result of the appointment of a guardian or conservator for a shareholder or the shareholder's property, transfer of shares by operation of law, involuntary transfer of shares, judicial proceedings, execution, levy, bankruptcy proceedings, receivership proceedings, foreclosure or enforcement of a pledge or encumbrance, or any other situation or occurrence. However, this section does not apply to any voluntary transfer of shares as defined in this chapter.

Shares purchased by the corporation under the provisions of this section shall be transferred to the corporation as of the close of business on the date of the death or other event which requires purchase. The shareholder and the shareholder's executors, administrators, legal representatives, or successors in interest shall promptly do all things which may be necessary or convenient to cause transfer to be made as of the transfer date. However, the shares shall promptly be transferred on the stock transfer books of the corporation as of the transfer date, notwithstanding any delay in transferring or surrendering the shares or certificates representing the shares, and the transfer shall be valid and effective for all purposes as of

the close of business on the transfer date. The purchase price for such shares shall be paid as provided in this chapter, but the transfer of shares to the corporation as provided in this section shall not be delayed or affected by any delay or default in making payment.

Notwithstanding the foregoing provisions of this section, purchase by the corporation is not required upon the occurrence of any event other than death of a shareholder if the corporation is dissolved or voluntarily elects to adopt the provisions of the Iowa business corporation Act, as provided in section 490.1701, subsection 2, within sixty days after the occurrence of the event. The articles of incorporation or bylaws may provide that purchase is not required upon the death of a shareholder if the corporation is dissolved within sixty days after the death. Notwithstanding the foregoing provisions of this section, purchase by the corporation is not required upon the death of a shareholder if the corporation voluntarily elects to adopt the provisions of the Iowa business corporation Act, as provided in section 490.1701, subsection 2, within sixty days after death.

Unless otherwise provided in the articles of incorporation or bylaws or in an agreement among all shareholders of the professional corporation:

1. The purchase price for shares shall be their book value as of the end of the month immediately preceding the death or other event which requires purchase. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by the corporation, uniformly and consistently applied. Adjustments to book value shall be made, if necessary, to take into account work in process and accounts receivable. Any final determination of book value made in good faith by any independent certified public accountant or firm of certified public accountants employed by the corporation for the purpose shall be conclusive on all persons.

2. The purchase price shall be paid in cash as follows: Upon the death of a shareholder, thirty percent of the purchase price shall be paid within ninety days after death, and the balance shall be paid in three equal annual installments on the first three anniversaries of the death. Upon the happening of any other event referred to in this section, one-tenth of the purchase price shall be paid within ninety days after the date of such event, and the balance shall be paid in three equal annual installments on the first three anniversaries of the date of the event.

3. Interest from the date of death or other event shall be payable annually on principal payment dates, at the rate of six percent per annum

on the unpaid balance of the purchase price.

4. All persons who are shareholders of the professional corporation on the date of death or other event, and their executors, administrators, and legal representatives, shall, to the extent the corporation fails to meet its obligations hereunder, be jointly liable for the payment of the purchase price and interest in proportion to their percentage of ownership of the corporation's shares, disregarding shares of the deceased or withdrawing shareholder.

5. The part of the purchase price remaining unpaid after the initial payment shall be evidenced by a negotiable promissory note, which shall be executed by the corporation and all shareholders liable for payment. Any person liable on the note shall have the right to prepay the note in full or in part at any time.

6. If the person making any payment is not reasonably able to determine which of two or more persons is entitled to receive a payment, or if the payment is payable to a person who is unknown, or who is under disability and there is no person legally competent to receive the payment, or who cannot be found after the exercise of reasonable diligence by the person making the payment, it shall be deposited with the treasurer of state and shall be subject to the provisions of the Iowa business corporation Act, chapter 490, with respect to funds deposited with the treasurer of state upon the voluntary or involuntary dissolution of a corporation.

7. Notwithstanding the provisions of this section, no part of the purchase price shall be required to be paid until the certificates representing such shares have been surrendered to the corporation.

8. Notwithstanding the provisions of this section, payment of any part of the purchase price for shares of a deceased shareholder shall not be required until the executor or administrator of the deceased shareholder provides any indemnity, release, or other document from any taxing authority, which is reasonably necessary to protect the corporation against liability for estate, inheritance, and death taxes.

The articles of incorporation or bylaws or an agreement among all shareholders of a professional corporation may provide for a different purchase price, a different method of determining the purchase price, a different interest rate or no interest, and other terms, conditions, and schedules of payment.

The articles of incorporation or bylaws or an agreement among all shareholders of a professional corporation may provide for the optional or mandatory purchase of its own shares by the cor-

poration in other situations, subject to any applicable law regarding such purchase.

2003 Acts, ch 66, §8  
Unnumbered paragraph 7 amended

#### **496C.16 Management.**

All directors of a professional corporation and all officers of a professional corporation, except assistant officers, shall at all times be individuals who are licensed to practice in this state a profession which the corporation is authorized to practice. However, upon the occurrence of any event that requires the corporation either to be dissolved or to elect to adopt the provisions of the Iowa business corporation Act, as provided in section 496C.19, provided the corporation ceases to practice the profession that the corporation is authorized to practice, as provided in section 496C.19, then individuals who are not licensed to practice in this state a profession that the corporation is authorized to practice may be appointed as officers and directors for the sole purpose of carrying out the dissolution of the corporation or, if applicable, the voluntary election of the corporation to adopt the provisions of the Iowa business corporation Act, as provided in section 496C.19.

2003 Acts, ch 66, §9  
Section amended

#### **496C.19 Dissolution or liquidation.**

Violation of any provision of this chapter by a professional corporation or any of its shareholders, directors, or officers shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court, as provided in the Iowa business corporation Act, chapter 490. Upon the death of the last remaining shareholder of a professional corporation, or whenever the last remaining shareholder is not licensed or ceases to be licensed to practice in this state a profession which the corporation is authorized to practice, or whenever any person other than the shareholder of record becomes entitled to have all shares of the last remaining shareholder of the corporation transferred into that person's name or to exercise voting rights, except as a proxy, with respect to such shares, the corporation shall not practice any profession and it shall either be promptly dissolved or shall promptly elect to adopt the provisions of the Iowa business corporation Act, as provided in section 490.1701, subsection 2. However, if prior to such dissolution all outstanding shares of the corporation are acquired by one or more persons licensed to practice in this state a profession which the corporation is authorized to practice, the corporation need not be dissolved and may practice the profession as provided in this chapter.

2003 Acts, ch 66, §10  
Section amended

## CHAPTER 497

### COOPERATIVE ASSOCIATIONS

#### 497.33 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon any action taken, or any failure to take action in the discharge of the per-

son's duties, except for the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm on the association or its members, or an intentional violation of criminal law.

2003 Acts, ch 66, §11  
Section amended

## CHAPTER 498

### NONPROFIT COOPERATIVE ASSOCIATIONS

#### 498.35 Personal liability.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the association's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon any action taken, or any failure to take action in the discharge of the per-

son's duties, except for the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm on the association or its members, or an intentional violation of criminal law.

2003 Acts, ch 66, §12  
Section amended

## CHAPTER 499

### COOPERATIVE ASSOCIATIONS

Applicable to associations electing to be under this chapter pursuant to §499.43 - 499.43B

#### 499.37 Officers.

1. The board of directors of the association shall select the association's officers as provided in its articles of incorporation or bylaws, and shall fill vacancies in such offices. The articles of incorporation or bylaws shall delegate to an officer the responsibility for all of the following:

- a. Preparing minutes of meetings of the directors and the shareholders.
  - b. Authenticating the association's records.
2. Unless the association's articles of incorporation or bylaws otherwise provide, the association's officers shall serve for annual terms beginning at the close of the first regular meeting of members in each year.

2003 Acts, ch 66, §13  
Section amended

#### 499.43B Existing cooperatives organized under chapter 490 or 491 — option.

A cooperative association organized under chapter 490 or 491 may elect to be governed by and to comply with the provisions of this chapter. The election shall be governed by the following proce-

dures:

1. The board of directors and shareholders must adopt a resolution reciting that the cooperative association elects to be governed by and to comply with this chapter. The cooperative association, to the extent necessary, shall change its name to comply with the provisions of this chapter. The resolution shall be adopted according to the same procedures as provided in section 499.41. Upon the adoption of the resolution, the cooperative association shall execute an instrument on forms prescribed by the secretary of state. The instrument must be signed by the president and secretary and verified by one of the officers signing the instrument. The instrument shall include all of the following:

- a. The name of the cooperative association, before and after this election.
  - b. A description of each resolution adopted by the cooperative association pursuant to this section, including the date each resolution was adopted.
2. The instrument shall be filed with the secretary of state. The cooperative association shall

amend its articles of incorporation pursuant to section 499.41 to comply with the provisions of this chapter. The secretary of state shall not file the instrument unless the cooperative association is in compliance with the provisions of the chapter in which it was organized at the time of filing. A cooperative association shall file a biennial report which is due pursuant to section 499.49. Upon filing the instrument with the secretary, all of the following shall apply:

*a.* The cooperative association shall be deemed to be organized under this chapter and the provisions of this chapter shall apply to the cooperative association.

*b.* The secretary of state shall issue a certificate to the cooperative association acknowledging that it is deemed to be organized under this chapter.

3. The application of this chapter to the cooperative association does not affect a right accrued or established, or liability or penalty in-

curred pursuant to the chapter in which the cooperative association was formally organized, prior to the filing of the instrument with the secretary of state.

2003 Acts, ch 59, §1  
NEW section

#### **499.59 Personal liability.**

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the association's debts or obligations, and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon any action taken, or any failure to take action in the discharge of the person's duties, except for the amount of a financial benefit received by the person to which the person is not entitled, an intentional infliction of harm on the association or its members, or an intentional violation of criminal law.

2003 Acts, ch 66, §14  
Section amended

## CHAPTER 501

### CLOSED COOPERATIVES

#### **501.407 Personal liability — indemnification.**

1. The articles may contain a provision eliminating or limiting the personal liability of a director, officer, or interest holder of the cooperative for money damages for any action taken, or any failure to take action as a director, officer, or interest holder, except liability for any of the following:

*a.* An intentional infliction of harm on the cooperative or its members.

*b.* An intentional violation of criminal law.

*c.* The amount of a financial benefit received by the person to which the person is not entitled.

*d.* An act or omission occurring prior to the date when the provision in the articles becomes effective.

2. The articles may contain a provision permitting or making obligatory indemnification of a director or officer for liability, as defined in section 501.411, to any person for any action taken, or any failure to take any action, as a director or officer, except liability for any of the following:

*a.* Receipt of a financial benefit to which the person is not entitled.

*b.* An intentional infliction of harm on the corporation or its shareholders.

*c.* An intentional violation of criminal law.

2003 Acts, ch 66, §15  
Section amended

#### **501.411 Definitions.**

As used in this part, unless the context otherwise requires:

1. "*Cooperative*" includes any domestic or for-

eign predecessor entity of a cooperative in a merger.

2. "*Director*" or "*officer*" means an individual who is or was a director or officer, respectively, of a cooperative who, while a director or officer of the cooperative, is or was serving at the cooperative's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign cooperative, corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the cooperative's request if the director's or officer's duties to the cooperative also impose duties on, or otherwise involve services by, that director or officer to the plan or to participants in or beneficiaries of the plan. "*Director*" or "*officer*" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

3. "*Disinterested director*" means a director who at the time of a vote referred to in section 501.414, subsection 3, or a vote or selection referred to in section 501.416, subsection 2 or 3, is not either of the following:

*a.* A party to the proceeding.

*b.* An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

4. “*Expenses*” includes counsel fees.

5. “*Liability*” means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

6. “*Official capacity*” means:

a. When used with respect to a director, the office of director in a cooperative.

b. When used with respect to an officer, as contemplated in section 501.417, the office in a cooperative held by the officer.

“*Official capacity*” does not include service for any other domestic or foreign cooperative or any corporation, partnership, joint venture, trust, employee benefit plan, or other entity.

7. “*Party*” means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

8. “*Proceeding*” means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

2003 Acts, ch 66, §16  
Section amended

#### 501.412 Permissible indemnification.

1. Except as otherwise provided in this section, a cooperative may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if either of the following apply:

a. All of the following apply:

(1) The individual acted in good faith.

(2) The individual reasonably believed:

(a) In the case of conduct in the individual’s official capacity, that the individual’s conduct was in the best interests of the cooperative.

(b) In all other cases, that the individual’s conduct was at least not opposed to the best interests of the cooperative.

(3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual’s conduct was unlawful.

b. The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of organization as authorized by section 501.407, subsection 2.

2. A director’s conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection 1, paragraph “a”, subparagraph (2), subparagraph subdivision (b).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

4. Unless ordered by a court pursuant to section 501.415, subsection 1, paragraph “c”, a cooperative shall not indemnify a director in either of the following circumstances:

a. In connection with a proceeding by or in the right of the cooperative, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1, paragraph “a”.

b. In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director’s official capacity.

2003 Acts, ch 66, §17  
Section amended

#### 501.413 Mandatory indemnification.

A cooperative shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the cooperative.

2003 Acts, ch 66, §18  
Section amended

#### 501.414 Advance for expenses.

1. A cooperative may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because the person is a director if the person delivers all of the following to the cooperative:

a. A written affirmation of the director’s good faith belief that either the director has met the relevant standard of conduct described in section 501.412 or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of organization as authorized by section 501.407, subsection 1.

b. The director’s written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification under section 501.413 and it is ultimately determined that the director has not met the relevant standard of conduct described in section 501.412.

2. The undertaking required by subsection 1, paragraph “b”, must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

3. Authorizations under this section shall be made according to either of the following:

a. By the board of directors, according to one of the following:

(1) If there are two or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote.

(2) If there are fewer than two disinterested directors, if a quorum is present when the vote is taken, by the affirmative vote of a majority of the directors present, unless the articles or bylaws require the vote of a greater number of directors, in which authorization directors who do not qualify as disinterested directors may participate.

*b.* By the members, but voting interests owned by or voted under the control of a director who at the time does not qualify as a disinterested director shall not be voted on the authorization.

2003 Acts, ch 66, §19  
Section amended

#### **501.415 Court-ordered indemnification.**

1. A director who is a party to a proceeding because the person is a director may apply to the court conducting the proceeding or to another court of competent jurisdiction for indemnification or an advance for expenses. After receipt of an application, and after giving any notice the court considers necessary, the court shall proceed according to the following:

*a.* Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 501.413.

*b.* Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section 501.419, subsection 1.

*c.* Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to do one of the following:

(1) To indemnify the director.

(2) To advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in section 501.412, subsection 1, failed to comply with section 501.414, or was adjudged liable in a proceeding referred to in section 501.412, subsection 4, paragraph “*a*” or “*b*”, but if the director was adjudged so liable the director’s indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

2. If the court determines that the director is entitled to indemnification under subsection 1, paragraph “*a*”, or to indemnification or advance for expenses under subsection 1, paragraph “*b*”, the court shall also order the cooperative to pay the director’s reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection 1, paragraph “*c*”, the court may also order the cooperative to pay the director’s reasonable expenses to obtain court-ordered indemnification or advance for expenses.

2003 Acts, ch 66, §20  
Section amended

#### **501.416 Determination and authorization of indemnification.**

1. A cooperative shall not indemnify a director under section 501.412 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the relevant standard of conduct set forth in section 501.412.

2. The determination shall be made by one of the following:

*a.* If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote.

*b.* By special legal counsel.

(1) The special legal counsel shall be selected in the manner described in paragraph “*a*”.

(2) If there are fewer than two disinterested directors, special legal counsel shall be selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate.

*c.* By the members, but voting interests owned by or voted under the control of a director who at the time does not qualify as a disinterested director shall not be voted on the determination.

3. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subsection 2, paragraph “*b*”, to select special legal counsel.

2003 Acts, ch 66, §21  
Section amended

#### **501.417 Indemnification of officers.**

1. A cooperative may indemnify and advance expenses under this part to an officer of the cooperative who is a party to the proceeding because the person is an officer, according to both of the following:

*a.* To the same extent as to a director.

*b.* If the person is an officer but not a director, to such further extent as may be provided by the articles of association, the bylaws, a resolution of the board of directors, or contract, except for either of the following:

(1) Liability in connection with a proceeding by or in the right of the cooperative other than for reasonable expenses incurred in connection with the proceeding.

(2) Liability arising out of conduct that constitutes any of the following:

(a) Receipt by the officer of a financial benefit to which the officer is not entitled.

(b) An intentional infliction of harm on the cooperative or the interest holders.

(c) An intentional violation of criminal law.

2. The provisions of subsection 1, paragraph “b”, shall apply to an officer who is also a director if the basis on which the officer is made a party to a proceeding is an act or omission solely as an officer.

3. An officer of a cooperative who is not a director is entitled to mandatory indemnification under section 501.413, and may apply to a court under section 501.415 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or an advance for expenses under those provisions.

2003 Acts, ch 66, §22  
Section amended

#### **501.418 Insurance.**

A cooperative may purchase and maintain insurance on behalf of an individual who is a director or officer of the cooperative, or who, while a director or officer of the cooperative, serves at the cooperative's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign cooperative, corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director or officer, whether or not the cooperative would have power to indemnify or advance expenses to that individual against the same liability under this part.

2003 Acts, ch 66, §23  
Section amended

#### **501.419 Variation by corporate action — application of this part.**

1. A cooperative may, by a provision in its articles of organization or bylaws or in a resolution adopted or a contract approved by its board of directors or members, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 501.412 or advance funds to pay for or reimburse expenses in accordance with section 501.414. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 501.414, subsection 3, and in section 501.416, subsection 3. Any such provision that obligates the cooperative to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the cooperative to advance funds to pay for or reimburse expenses in accordance with section 501.414 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

2. Any provision pursuant to subsection 1 shall not obligate the cooperative to indemnify or advance expenses to a director of a predecessor of the cooperative, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification

or advance for expenses in the articles of organization, bylaws, or a resolution of the board of directors or members of a predecessor of the cooperative in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 501.618, subsection 3.

3. A cooperative may, by a provision in its articles of organization, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

4. This part does not limit a cooperative's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the director or officer is not a party.

5. This part does not limit a cooperative's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

2003 Acts, ch 66, §24  
Section amended

#### **501.420 Exclusivity.**

A cooperative may provide indemnification or advance expenses to a director or an officer only as permitted by this chapter.

2003 Acts, ch 66, §25  
NEW section

#### **501.813 Reinstatement following administrative dissolution.**

1. A cooperative administratively dissolved under section 501.812 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the cooperative at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

c. State a name that satisfies the requirements of section 501.104.

d. State the federal tax identification number of the cooperative.

2. a. The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the department of revenue. The department of revenue shall report to the secretary of state the tax status of the cooperative. If the department reports to the secretary of state that a filing delinquency or liability exists against the cooperative, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

b. If the secretary of state determines that the application contains the information required by subsection 1, and that a delinquency or liability reported pursuant to paragraph “a” has been satisfied, and that the information is correct, the secretary of state shall cancel the certificate of dissolution.

tion and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the cooperative under section 501.106. If the name of the cooperative as provided in subsection 1, paragraph "c", is different than the name in subsection 1, paragraph "a", the certificate of reinstatement

shall constitute an amendment to the articles of association insofar as it pertains to the name.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 502

### UNIFORM SECURITIES ACT (Blue Sky Law)

#### 502.102 Definitions.

When used in this chapter, unless the context otherwise requires:

1. "Administrator" means the commissioner of insurance or the deputy appointed pursuant to section 502.601.

2. An "affiliate" of, or a person "affiliated" with, a specified person, means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

3. "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents:

a. An issuer in doing any of the following:

(1) Effecting transactions in a security exempted by section 502.202, subsection 1, 2, 3, 4, 6, 10, 11, 12, 13, or 16, or a security issued by an industrial loan company licensed under chapter 536A.

(2) Effecting transactions exempted by section 502.203.

(3) Effecting transactions in a federal covered security as described in sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933 as amended in Pub. L. No. 104-290, if a commission or other remuneration is not either directly or indirectly paid any person for soliciting in this state.

(4) Effecting transactions with an existing employee, member, manager, partner, or director of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

b. A broker-dealer in effecting a transaction in this state which is limited to a transaction provided in section 15(h)(2) of the Securities Exchange Act of 1934.

"Agent" also does not include any other individual who is not within the intent of this subsection whom the administrator by rule or order designates. A partner, member, manager, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar

functions, is an agent only if such person otherwise comes within this definition.

4. "Agricultural cooperative association" means any one of the following:

a. An association of persons organized pursuant to chapter 497 for purposes of conducting an agricultural or dairy business on a cooperative plan, as described in section 497.1.

b. A cooperative association organized pursuant to chapter 498 for purposes of conducting an agricultural, livestock, horticultural, or dairy business on a cooperative plan and acting as a cooperative selling agency, as described in section 498.2.

c. An agricultural association as defined in section 499.2, and organized pursuant to chapter 499.

d. Any other entity which is organized on a cooperative basis under the laws of this state for the purpose of engaging in the activities of an agricultural association as defined in section 499.2.

5. "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for such person's own account. "Broker-dealer" does not include:

a. An agent;

b. An issuer;

c. A bank when acting on its own account or when exercising trust or fiduciary powers permitted for banks under applicable state or federal laws and regulations providing for the organization, operation, supervision, and examination of such banks;

d. An insurance company which effects transactions in its own accounts;

e. Other persons not within the intent of this subsection whom the administrator by rule or order designates.

6. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80(b) et seq. "Federal covered adviser" does not include a person who is excluded from the definition of "investment adviser" as provided in subsection 11, paragraph "c", subparagraphs (1) through (7).

7. “*Federal covered security*” means any security that is a covered security under section 18(b) of the Securities Act of 1933 or rules or regulations adopted under the Securities Act of 1933.

8. “*Fraud*”, “*deceit*” and “*defraud*” are not limited to common law deceit.

9. “*Guaranteed*” means guaranteed as to payment of principal, interest or dividends.

10. “*Interest at the legal rate*” means the interest rate for judgments specified in section 535.3.

11. *a.* “*Investment adviser*” means any person who, for compensation, does any of the following:

(1) Engages in the business of providing investment advisory services by advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

(2) As a part of a regular business, issues or promulgates analyses or reports concerning securities.

*b.* “*Investment adviser*” includes a financial planner or other person who, as an integral component of other financially related services, does either of the following:

(1) Provides investment advisory services to others for compensation and as part of a business.

(2) Holds oneself out as providing investment advisory services to others for compensation.

*c.* “*Investment adviser*” does not include a person who is any of the following:

(1) An investment adviser representative.

(2) A bank, savings institution, or trust company.

(3) An attorney licensed to practice law in this state, a certified public accountant licensed pursuant to chapter 542, a professional engineer licensed pursuant to chapter 542B, or a certified teacher, if the person’s performance of these services is solely incidental to the practice of the person’s profession.

(4) An attorney licensed to practice law in this state or a certified public accountant licensed pursuant to chapter 542 who does not do any of the following:

(a) Exercise investment discretion regarding the assets of a client or maintain custody of the assets of a client for the purpose of investing the assets, except when the person is acting as a bona fide fiduciary in a capacity such as an executor, administrator, trustee, estate or trust agent, guardian, or conservator.

(b) Accept or receive directly or indirectly any commission, fee, or other remuneration contingent upon the purchase or sale of any specific security by a client of such person.

(c) Provide advice regarding the purchase or sale of specific securities. However, this subparagraph subdivision (c) shall not apply when the advice about specific securities is based on a financial statement analysis or tax considerations that are reasonably related to and in connection with

the person’s profession.

(5) A broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them.

(6) A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.

(7) A person who is excluded from the definition of “*investment adviser*” under section 202(a)(11) of the Investment Advisers Act of 1940.

(8) A person who is a federal covered adviser.

(9) A person not within the intent of this subsection as the administrator may by rule or order designate.

*d.* As used in this subsection, “*compensation*” does not include a commission, fee, or a combination of a commission and a fee, which is paid to an insurance producer licensed under chapter 522B, if the insurance producer receives the commission, fee, or the combination of a commission and a fee, for the sale of insurance as regulated pursuant to Title XIII, subtitle 1.

12. *a.* “*Investment adviser representative*” means an individual including but not limited to a partner, officer, director, or an individual occupying a similar status or performing similar functions as a partner, officer, or director, except clerical or ministerial personnel, if both of the following apply:

(1) The individual is employed by or associated with an investment adviser that is registered or required to be registered under this chapter, or who is employed by or associated with a federal covered adviser.

(2) The individual does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities.

(b) Manages accounts or portfolios of clients.

(c) Determines which recommendation or advice regarding securities should be given.

(d) Solicits, offers, or negotiates for the sale of or sells investment advisory services.

(e) Supervises employees who perform any of the functions in subparagraphs (a) through (d).

*b.* “*Investment adviser representative*” does not include any other person not within the intent of this subsection as the administrator may by rule or order designate.

13. “*Issuer*” means any person who issues or proposes to issue any security, except that

*a.* With respect to certificates of deposit, voting trust certificates, or collateral trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term “*issuer*” means the

person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and

b. With respect to a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty, the term “*issuer*” means the owner of an interest in the lease or payments out of production under a lease, right, or royalty, whether whole or fractional, who creates fractional interests for the purpose of sale.

c. With respect to a viatical settlement investment contract, “*issuer*” means a person involved in creating, transferring, or selling to an investor any interest in such a contract, including but not limited to fractional or pooled interests, but does not include an agent or a broker-dealer.

14. “*Nonissuer*” means not directly or indirectly for the benefit of the issuer.

15. “*Person*” means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, a fiduciary, an unincorporated organization, a government, or a political subdivision of a government.

16. a. “*Sale*” or “*sell*” includes every contract of sale of, contract to sell, or disposition or exchange of, a security or interest in a security for value.

b. “*Offer*” or “*offer to sell*” includes every attempt or offer to exchange or dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

c. A security given or delivered with, or as a bonus on account of, a purchase of a security or any other thing is offered and sold for value as part of the subject of the purchase.

d. A purported gift of assessable stock is considered to involve an offer and sale.

e. Except to the extent that the administrator provides otherwise by rule or order, an offer or sale of a security that is convertible into or entitles its holder to acquire another security of the same or another issuer is an offer also of the other security, whether the right to convert or acquire is exercisable immediately or in the future.

f. The terms defined in this subsection do not include:

(1) Any bona fide pledge or loan; or

(2) Any stock split, other than a reverse stock split, or security dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation, provided nothing of value, including the surrender of a right or an option to receive a cash or property dividend, is given by security holders for the security dividend.

17. “*Securities Act of 1933*”, “*Securities Exchange Act of 1934*”, “*Public Utility Holding Company Act of 1935*”, “*Investment Advisers Act of 1940*”, “*Investment Company Act of 1940*”, “*Inter-*

*nal Revenue Code*”, and “*Agricultural Marketing Act*” mean the federal statutes of those names.

18. “*Securities and exchange commission*” means the United States securities and exchange commission as established pursuant to 15 U.S.C. § 78(d).

19. “*Security*” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement investment contract, or any fractional or pooled interest in such contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under such a lease, right, or royalty; an interest in a limited liability company or in a limited liability partnership or any class or series of such interest, including any fractional or other interest in such interest; or, in general, any interest or instrument commonly known as a “*security*”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “*Security*” does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period. “*Security*” also does not include an interest in a limited liability company or a limited liability partnership if the person claiming that such an interest is not a security proves that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company or limited liability partnership, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company or limited liability partnership. “*Security*” is any of the foregoing as provided in this subsection whether or not it is evidenced by a written instrument.

20. “*State*” means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

21. “*Viatical settlement investment contract*” means a contract entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in the death benefits of a life insurance policy, which contract is entered into for the purpose of deriving economic benefit.

22. For the purposes of sections 502.211 through 502.218, unless the context otherwise requires:

a. “Associate” means a person acting jointly or in concert with another for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of a target company.

b. “Beneficial owner” includes, but is not limited to, any person who directly or indirectly, through any contract, arrangement, understanding, or relationship, has or shares the power to vote or direct the voting of a security or has or shares the power to dispose of or otherwise direct the disposition of the security. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate or associate of the person.

c. “Beneficial ownership” includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities. The securities subject to these options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

d. “Equity security” means any stock or similar security, and includes the following:

(1) Any security convertible, with or without consideration, into a stock or similar security.

(2) Any warrant or right to subscribe to or purchase a stock of similar security.

(3) Any security carrying a warrant or right to subscribe to or purchase a stock or similar security.

(4) Any other security which the administrator deems to be of a similar nature and considers necessary or appropriate, according to rules prescribed by the administrator for the public interest and protection of investors, to be treated as an equity security.

e. “Offeree” means the beneficial owner, who is a resident of this state, of equity securities which an offeror offers to acquire in connection with a takeover offer.

f. “Offeror” means a person who makes or in any manner participates in making a takeover offer. It does not include a supervised financial institution or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any supervised financial institution, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and who does not otherwise participate in the takeover offer.

g. “Takeover offer”:

(1) Means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer either of the following are true:

(a) The offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(b) The beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five percent. However, this provision does not apply if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(2) Does not include the following:

(a) An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the target company, would not result in the offeror having acquired more than two percent of this class of securities during the preceding twelve-month period.

(b) An offer by the target company to acquire its own equity securities if such offer is subject to section 13(e) of the Securities Exchange Act of 1934.

(c) An offer in which the target company is an insurance company or insurance holding company subject to regulation by the commissioner of insurance, a financial institution subject to regulation by the superintendent of banking or the superintendent of savings and loan associations, or a public utility subject to regulation by the utilities division of the department of commerce.

h. “Target company” means an issuer of publicly traded equity securities which has at least twenty percent of its equity securities beneficially held by residents of this state and has substantial assets in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or on the over-the-counter market.

2003 Acts, ch 44, §89; 2003 Acts, ch 108, §130  
Subsection 13, paragraph c amended

### 502.202 Exempt securities.

The following securities are exempted from sections 502.201 and 502.602:

1. Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing. However, this

exemption shall not include any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such payments are or will be made or unconditionally guaranteed by a person whose securities are exempt from registration under this chapter by (a) subsection 7, 8, or 17, or (b) subsection 9, provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by order disallow the exemption within fifteen days thereafter.

2. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

3. Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank or trust company organized and supervised under the laws of this state.

4. Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any savings and loan or similar association organized and supervised under the laws of this state.

5. Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do business in this state.

6. Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state.

7. Any security issued or guaranteed by a public utility or holding company which is any of the following:

a. A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act.

b. Regulated in respect of its rates and charges by a governmental authority of the United States or any state.

c. Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province.

8. Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or any other national securities exchange registered under the Securities Exchange Act of 1934 and designated by rule of the administrator; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or ap-

proved; or any warrant or right to purchase or subscribe to any of the foregoing.

9. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association; provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by order disallow the exemption within fifteen days thereafter.

10. Commercial paper which is a promissory note, draft, bill of exchange, or banker's acceptance which satisfies the following criteria:

a. It evidences an obligation to pay cash within nine months after the date of issuance, exclusive of days of grace.

b. It is issued in denominations of at least fifty thousand dollars.

c. It receives a rating in one of the three highest rating categories from a nationally recognized statistical rating organization.

The exemption under this subsection applies to a renewal of an obligation under this subsection which is likewise limited, and to a guarantee of such an obligation or of a renewal.

11. A security issued in connection with an employee stock purchase, option, savings, pension, profit sharing or similar benefit plan.

12. A stock or similar security, including a patronage refund certificate, issued by:

a. A cooperative housing corporation described in paragraph 1 of subsection "b" of section 216, of the Internal Revenue Code, if its activities are limited to the ownership, leasing, management, or construction of residential properties for its members, and activities incidental thereto; or

b. A mutual or cooperative organization, including a cooperative association organized in good faith under and for any of the purposes enumerated in chapters 497, 498, 499, and 501 that deals in commodities or supplies goods or services in transactions primarily with and for the benefit of its members, if:

(1) Such stock or similar security is part of a class issuable only to persons who deal in commodities with, or obtain goods or services from, the issuer;

(2) Such stock or similar security is transferable only to the issuer or a successor in interest of the transferor who qualifies for membership in such mutual or cooperative organization; and

(3) No dividends other than patronage refunds are payable to holders of such stock or similar security except on a complete or partial liquidation.

13. A security issued by an agricultural cooperative association, provided the following conditions are satisfied:

a. A commission or remuneration must not be paid or provided either directly or indirectly for the sale, except as permitted by the administrator

by rule or by order issued upon written application showing good cause for allowance of a commission or other remuneration.

*b.* If the securities to be issued are notes or other evidences of indebtedness and are issued after July 1, 1991, the issuer must file with the administrator a written notice specifying the name of the issuer, the date of the issuer's organization, the name of a contact person, a copy of the issuer's current audited financial statement, the types of security or securities to be offered, and the class of persons to whom the offer will be made in accordance with such rules as prescribed by the administrator.

14. Any security issued by a corporation formed under chapter 496B.

15. Any security issued by the agricultural development authority under chapter 175.

16. Any security representing a membership camping contract which is registered pursuant to section 557B.2 or exempt under section 557B.4.

17. On or after January 1, 1989, a security designated or approved for designation upon notice of issuance on the national association of securities dealers automated quotations — national market system (NASDAQ/NMS); any other security of the same issuer which is of senior or substantially equal rank; a security called for by subscription rights or warrants designated or approved for designation upon notice of issuance on the NASDAQ/NMS; or a warrant or right to purchase or subscribe to any of the foregoing categories in this subsection.

18. Any security representing a time-share interval as defined in section 557A.2.

19. A viatical settlement investment contract, or fractional or pooled interest in such contract, provided any of the following conditions are satisfied:

*a.* The assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract, is made by the viator to an insurance company as provided under Title 13, subtitle 1.

*b.* The assignment, transfer, sale, devise, or bequest of a life insurance policy or contract, for any value less than the expected death benefit, is made by the viator to a family member or other person who enters into no more than one such agreement in a calendar year.

*c.* A life insurance policy or contract is assigned to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan.

*d.* Accelerated benefits are exercised as pro-

vided in the life insurance policy or contract and consistent with applicable law.

*e.* The assignment, transfer, sale, devise, or bequest of the death benefit or ownership of a life insurance policy or contract made by the policyholder or contract owner to a viatical settlement provider, if the viatical settlement transaction complies with chapter 508E, including rules adopted pursuant to that chapter.

2003 Acts, ch 44, §90

Subsection 19, unnumbered paragraph 1 amended

### **502.601 Administration.**

1. This chapter shall be administered by the commissioner of insurance of the state of Iowa. The administrator shall appoint a deputy administrator who shall be exempt from the merit system provided for in chapter 8A, subchapter IV. The deputy administrator is the principal operations officer of the securities bureau and is responsible to the administrator for the routine administration of the chapter and the management of the securities bureau. In the absence of the administrator, whether because of vacancy in the office, by reason of absence, physical disability, or other cause, the deputy administrator shall be the acting administrator and shall, for the time being, have and exercise the authority conferred upon the administrator. The administrator may by order from time to time delegate to the deputy administrator any or all of the functions assigned to the administrator in this chapter. The administrator shall employ officers, attorneys, accountants, and other employees as needed for the administration of the chapter.

2. It is unlawful for the administrator or any officer or employee of the securities bureau to use for personal benefit any information which is filed with or obtained by the administrator and which is not made public. This chapter does not authorize the administrator or any such officer or employee to disclose any such information except among themselves or to other securities administrators, regulatory authorities, or governmental agencies, or when necessary or appropriate in a proceeding or investigation under this chapter. This chapter neither creates nor derogates from any privileges which exist at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the administrator or any officer or employee of the securities bureau.

2003 Acts, ch 145, §268

Subsection 1 amended

## **CHAPTER 504A**

### **IOWA NONPROFIT CORPORATION ACT**

#### **504A.63 Deposit with state treasurer.**

1. Upon the voluntary or involuntary dissolu-

tion of a corporation the portion of the assets distributable to any person who is known, or who is

under disability and there is no person legally competent to receive such distributive portion, or who cannot be found after the exercise of reasonable diligence by the person or persons responsible for the distribution in liquidation of the corporation's assets, shall be reduced to cash and deposited with the state treasurer, together with a statement giving the name of the person, if known, entitled to such fund, that person's last known address, the amount of that person's distributive portion, and such other information about such person as the state treasurer may reasonably require, whereupon the person or persons responsible for the distribution in liquidation of the corporation's assets shall be released and discharged from any further liability with respect to the funds so deposited. The state treasurer shall issue the treasurer of state's receipt for such fund and shall deposit same in a special account to be maintained by the treasurer.

2. On receipt of satisfactory written and verified proof of ownership of or right to such fund within twenty years from the date such fund was so deposited, the state treasurer shall certify such fact to the director of the department of administrative services, who shall issue proper warrant therefor drawn on the state treasurer in favor of the person or persons then entitled thereto. If no claimant has made satisfactory proof of right to such fund within twenty years from the time of such deposit, the state treasurer shall then cause to be published in one issue of a newspaper of general circulation in the county of the last registered office of the corporation, as shown by the records of the secretary of state, a notice of the proposed escheat of such fund, giving the name of the person apparently entitled thereto, that person's last known address, if any, the amount of the fund so deposited, and the name of the dissolved corporation from whose assets such fund was derived. If no claimant makes satisfactory proof of right to such fund within two months from the time of such publication, the fund so unclaimed shall thereupon automatically escheat to and become the property of the general fund of the state.

2003 Acts, ch 145, §286  
Terminology change applied

#### **504A.85 Fees for filing documents and issuing certificates.**

The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, twenty dollars.
2. Filing statement of election to accept the chapter, five dollars.
3. Filing articles of amendment and issuing a certificate of amendment, ten dollars.
4. Filing restated articles of incorporation, twenty dollars.

5. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty dollars.

6. Filing an application to reserve a corporate name, ten dollars.

7. Filing a notice of transfer of a reserved corporate name, ten dollars.

8. Filing articles of dissolution, five dollars.

9. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, twenty-five dollars.

10. Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, twenty-five dollars.

11. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, five dollars.

12. Filing any other statement or report, except a statement of change of registered office or registered agent, of a domestic or foreign corporation, five dollars.

Authority to refund fees; 2003 Acts, ch 181, §16  
Section not amended; footnote revised

#### **504A.100 Application to existing corporations.**

1. Except for this subsection, this chapter shall not apply to or affect corporations subject to the provisions of chapters 176, 497, 498, 499, or 512B. Such corporations shall continue to be governed by all laws of this state heretofore applicable thereto and as the same may hereafter be amended. This chapter shall not be construed as in derogation of or as a limitation on the powers to which such corporations may be entitled.

2. This chapter shall not apply to any domestic corporation heretofore organized or existing under the provisions of chapter 504, Code 1989, nor, for a period of two years from and after July 4, 1965, to any foreign corporation holding a permit under the provisions of said chapter on the said date, unless such domestic or foreign corporation shall voluntarily elect to adopt the provisions of this chapter and shall comply with the procedure prescribed by the provisions of subsection 3 of this section.

3. Any domestic corporation organized or existing under the provisions of chapter 504, Code 1989, may voluntarily elect to adopt the provisions of this chapter and thereby become subject to its provisions and, during the period of two years from and after the effective date of this chapter, any foreign corporation holding a permit under the provisions of said chapter on said date may voluntarily elect to adopt the provisions of this chapter and thereby become subject to the provisions of this chapter. The procedure for electing to adopt the provisions of this chapter shall be as follows:

a. A resolution reciting that the corporation voluntarily adopts this chapter and designating the address of its initial registered office and the name of its registered agent or agents at that address and, if the name of the corporation does not comply with this chapter, amending the articles of incorporation of the corporation to change the name of the corporation to one complying with the requirements of this chapter, shall be adopted by the procedure prescribed by this chapter for the amendment of articles of incorporation. If the corporation has issued shares of stock, the resolution shall contain a statement of that fact including the number of shares authorized, the number issued and outstanding, and a statement that all issued and outstanding shares of stock have been delivered to the corporation to be canceled upon the adoption of this chapter by the corporation, or will be canceled upon receipt by the corporation, and that from and after the effective date of adoption the authority of the corporation to issue shares of stock is terminated. As to foreign corporations, a resolution shall be adopted by the board of directors, reciting that the corporation voluntarily adopts this chapter, and designating the address of its registered office in this state and the name of its registered agent or agents at that address and, if the name of the corporation does not comply with this chapter, setting forth the name of the corporation with the changes which it elects to make in the name conforming to the requirements of this chapter for use in this state.

b. Upon adoption of the required resolution or resolutions, an instrument shall be executed by the corporation which shall set forth both of the following:

- (1) The name of the corporation.
- (2) Each such resolution adopted by the corporation and the date of its adoption.

c. As to domestic corporations such instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office.

d. As to foreign corporations, such instrument shall be delivered to the secretary of state for filing in the secretary of state's office and the corporation shall at the same time deliver also to the secretary of state for filing in the secretary of state's office any biennial report which is then due.

e. The secretary of state shall not file such instrument with respect to a domestic corporation unless at the time thereof such corporation is validly existing and in good standing in that office under the provisions of chapter 504, Code 1989. If the articles of incorporation of such corporation have not heretofore been filed in the office of the secretary of state, but are on file in the office of a county recorder, no such instrument of adoption shall be accepted by the secretary of state until the corporation shall have caused its articles of incorporation and all amendments duly certified by the proper county recorder to be recorded in the office

of the secretary of state. Upon the filing of such instrument the secretary of state shall issue a certificate as to the filing of such instrument and deliver such certificate to the corporation or its representative.

Upon the issuance of such certificate by the secretary of state:

(1) All of the provisions of this chapter shall thereafter apply to the corporation and thereupon every such foreign corporation shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter, and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter.

(2) In the case of any corporation with issued shares of stock, the holders of such issued shares who surrender them to the corporation to be canceled upon the adoption of this chapter by the corporation becoming effective, shall be and become members of the corporation with one vote for each share of stock so surrendered until such time as the corporation by proper corporate action relative to the election, qualification, terms and voting power of members shall otherwise prescribe.

4. Any domestic corporation which elects to adopt the provisions of this chapter by complying with the provisions of subsection 3 of this section may, at the same time, amend or restate its articles of incorporation by complying with the provisions of this chapter with respect to amending articles of incorporation or restating articles of incorporation, as the case may be.

5. The provisions of this chapter becoming applicable to any domestic or foreign corporation shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of chapter 504, Code 1989, prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election of such corporation to adopt the provisions of this chapter as provided in subsection 3 of this section.

6. Except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply to: all domestic corporations organized after the date on which this chapter became effective; domestic corporations organized or existing under chapter 504, Code 1989, which voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this section; all foreign corporations conducting or seeking to conduct affairs within this state and not holding, July 4, 1965, a valid permit so to do; foreign corporations holding, on the date the chapter becomes effective, a valid permit under the provisions of chapter 504, Code 1989, which, during the period of two years from and after said date, voluntarily elect to adopt the provisions of this chapter and comply with the provisions of subsection 3 of this

section; and, upon the expiration of the period of two years from and after July 4, 1965, all foreign corporations holding such a permit on July 4, 1965.

7. Upon the expiration of a period of two years from and after the date on July 4, 1965, except for the exceptions and limitations of subsection 1 of this section, this chapter shall apply to every foreign corporation holding a valid permit to do business within this state or seeking to conduct affairs within this state. Every foreign corporation holding a valid permit to do business within this state on July 4, 1965, which has not meanwhile adopted this chapter by complying with the provisions of subsection 3 of this section, shall at the expiration of two years from and after said date be deemed to have elected to adopt this chapter by not voluntarily withdrawing from the state, and thereupon every such foreign corporation, subject to the limitations set forth in its certificate of authority, shall be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter, and shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to conduct affairs in this state under this chapter.

8. Within eight months after this chapter becomes applicable to any foreign corporation pursuant to the provisions of subsection 7, the board of directors of such foreign corporation shall adopt a resolution designating the address of its registered office in this state and the name of its registered agent or agents at such address and, if the name of the corporation does not comply with this chapter, setting forth the name of the corporation with the changes which the board elects to make to the name conforming to the requirements of this chapter for use in this state.

Upon adoption of the required resolution or resolutions, an instrument or instruments shall be executed by the foreign corporation by its president or a vice president and by its secretary or assistant secretary and verified by one of the officers signing such instrument, which shall set forth the

name of the corporation, each resolution adopted as required by the provisions of this subsection, and the date of the adoption of each resolution. The instrument shall be delivered to the secretary of state for filing in the secretary of state's office. Upon the filing of such instrument by a foreign corporation the secretary of state shall issue a certificate as to the filing of the instrument and deliver the certificate to the corporation or its representative. The secretary of state shall not file any biennial report of any foreign corporation subject to this subsection unless and until the corporation has fully complied with the provisions of this paragraph and, in such event, the foreign corporation is subject to the penalties prescribed in this chapter for failure to file the report within the time as provided in this chapter.

9. No corporation to which the provisions of this chapter apply shall be subject to the provisions of chapter 504, Code 1989.

10. The provisions of sections 504A.96 and 504A.97 shall apply to any action required or permitted to be taken under this section.

11. Except as otherwise provided in this section, existing corporations shall continue to be governed by the laws of this state heretofore applicable thereto.

12. Corporations existing under chapter 504, Code 1989, shall be subject to this chapter on July 1, 1990, except that the corporations shall be subject to sections 504A.8 and 504A.83 on January 1, 1997. A corporate existence of a corporation that is not in compliance on the records of the secretary of state with sections 504A.8 and 504A.83 on June 30, 1997, is terminated, effective July 1, 1997. A corporation whose existence is terminated pursuant to this subsection may be reinstated. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the termination of its corporate existence as if such termination had never occurred. The secretary of state shall adopt rules governing the reinstatement of a corporation pursuant to this subsection.

2003 Acts, ch 108, §93  
For future amendment to subsection 1 effective July 1, 2005, see 2002 Acts, ch 1017, §6, 8  
Subsection 2 amended

## CHAPTER 504B

### NONPROFIT CORPORATIONS AND FEDERAL TAX LIABILITY

#### 504B.1 Corporations applicable.

This chapter shall apply to every corporation organized under chapter 504, Code 1989, or chapter 504A, which corporation is deemed to be a private foundation as defined in section 509 of the Internal Revenue Code, which is incorporated in the state of Iowa after December 31, 1969, and as to any such corporation organized in this state before

January 1, 1970, it shall apply only for its federal taxable years beginning on or after January 1, 1972.

2003 Acts, ch 108, §94  
Section amended

#### 504B.6 Certain powers not limited.

Nothing in this chapter shall limit the power of

any nonprofit corporation organized under chapter 504, Code 1989, or organized under chapter 504A:

1. To at any time amend its articles of incorporation or other instrument governing such corporation by any amendment process allowable under the laws of this state to provide that some or all provisions of sections 504B.2 and 504B.3 shall have no application to such corporation, or

2. In the case of any such corporation formed after July 1, 1971, to include any specific provisions in its original articles of incorporation, which provide that some or all provisions of sections 504B.2 and 504B.3 shall have no application to such corporation.

2003 Acts, ch 108, §95  
Unnumbered paragraph 1 amended

## CHAPTER 505

### INSURANCE DIVISION

#### 505.4 Deputy — assistants — bond.

The commissioner of insurance shall appoint a first and second deputy commissioner and such other clerks and assistants as shall be needed to assist the commissioner in the performance of the commissioner's duty, all of whom shall serve during the pleasure of the commissioner. Before entering upon the duties of their respective offices, deputy commissioners shall give a bond in the penal sum of ten thousand dollars.

The commissioner may appoint a deputy commissioner for supervision whom the commissioner may appoint as supervisory or special deputy pursuant to chapter 507C and who shall perform such other duties as may be assigned by the commissioner. The deputy commissioner for supervision shall receive a salary to be fixed by the commissioner. The deputy commissioner for supervision shall be exempt from the merit system provisions of chapter 8A, subchapter IV, under section 8A.412, subsection 17.

2003 Acts, ch 145, §269  
Unnumbered paragraph 2 amended

#### 505.7 Fees — expenses of division.

1. All fees and charges which are required by law to be paid by insurance companies, associations, and other regulated entities shall be payable to the commissioner of the insurance division of the department of commerce or department of revenue, as provided by law, whose duty it shall be to account for and pay over the same to the treasurer of state at the time and in the manner provided by law for deposit in the general fund of the state.

2. The commissioner shall account for receipts and disbursements according to the separate inspection and examination duties imposed upon the commissioner by the laws of this state and each separate inspection and examination duty shall be fiscally self-sustaining.

3. Forty percent of the nonexamination revenues payable to the division of insurance or the department of revenue in connection with the regulation of insurance companies or other entities

subject to the regulatory jurisdiction of the division shall be subject to annual appropriation to the division for its operations and is also subject to expenditure under subsection 6.

4. Except as otherwise provided in subsection 6, the insurance division may expend additional funds if those additional expenditures are actual expenses which exceed the funds budgeted for statutory duties of the division and directly result from the statutory duties of the division. The amounts necessary to fund the excess division expenses shall be collected from additional fees and other moneys collected by the division. The division shall notify in writing the legislative services agency and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed to the general fund, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

5. The insurance division may transfer moneys between budgeted line items of its appropriation, but such transfers may not reduce moneys budgeted for examinations or professional services, including but not limited to actuarial and legal services.

6. The insurance division may expend additional funds, including funds for additional personnel if those additional expenditures are actual expenses which exceed the funds budgeted for insurance solvency oversight under the following conditions:

a. The division may exceed the line item budgets for examinations and professional services, including but not limited to legal and actuarial services, provided that the division funds the increased expenditures through assessments or increased nonexamination revenues payable to the division under subsection 1 or otherwise. The amounts necessary to fund the excess expenses

may be collected from those regulated entities or classes of entities which either cause or benefit from the expenditure or encumbrance.

b. Before the division expends or encumbers an amount in excess of the funds budgeted for line items other than examinations and professional services, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses can be paid from nonexamination revenues payable to the division under subsection 1 or otherwise. Upon the approval of the director of the department of management the division may expend and encumber funds for the excess expenses. The amounts necessary to fund the excess expenses may be collected from those regulated entities or classes of entities which either cause or benefit from the expenditure or encumbrance.

The annual salaries of the deputy commissioner for supervision and the chief examiner appointed pursuant to section 507.5 shall be expenses of examination of insurance companies and shall be charged to insurance companies examined on a proportionate basis as provided by rule adopted by the commissioner. Insurance companies examined shall pay the proportion of the salaries of the deputy commissioner for supervision and the chief examiner charged to them as part of the costs of examination as provided in section 507.8.

7. The insurance division shall, by January 15 of each year, prepare estimates of projected receipts, refunds, and reimbursements to be generated by the examinations function of the division during the calendar year in which the report is due, and such receipts, refunds, and reimbursements shall be treated in the same manner as repayment receipts, as defined in section 8.2, subsection 8, and shall be available to the division to pay the expenses of the division's examination function.

8. The commissioner may assess the costs of an audit or examination to a health insurance purchasing cooperative, in the same manner as provided for insurance companies under sections 507.7 through 507.9, and may establish by rule reasonable filing fees to fund the cost of regulatory oversight.

9. The commissioner may retain funds collected during the fiscal year beginning July 1, 2003, pursuant to any settlement, enforcement action, or other legal action authorized under federal or state law for the purpose of reimbursing costs and expenses of the division.

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §135  
Deposit of fees, §12.10  
Terminology changes applied  
NEW subsection 9

### 505.8 General powers and duties.

1. The commissioner of insurance shall be the

head of the division, and shall have general control, supervision, and direction over all insurance business transacted in the state, and shall enforce all the laws of the state relating to such insurance.

2. The commissioner shall, subject to chapter 17A, establish, publish, and enforce rules not inconsistent with law for the enforcement of this subtitle and for the enforcement of the laws, the administration and supervision of which are imposed on the division, including rules to establish fees sufficient to administer the laws, where appropriate fees are not otherwise provided for in rule or statute.

3. The commissioner shall supervise all transactions relating to the organization, reorganization, liquidation, and dissolution of domestic insurance corporations, and all transactions leading up to the organization of such corporations.

4. The commissioner shall also supervise the sale in the state of all stock, certificates, or other evidences of interest, either by domestic or foreign insurance companies or organizations proposing to engage in any insurance business.

5. The commissioner shall supervise all health insurance purchasing cooperatives providing services or operating within the state and the organization of domestic cooperatives. The commissioner may admit nondomestic health insurance purchasing cooperatives under the same standards as domestic cooperatives.

6. a. Notwithstanding chapter 22, the commissioner shall keep confidential both information obtained in the course of an investigation and information submitted to the insurance division pursuant to chapters 514J and 515D.

b. The commissioner shall adopt rules protecting the privacy of information held by an insurer or an agent consistent with the federal Gramm-Leach-Bliley Act, Pub. L. No. 106-102.

c. However, notwithstanding paragraphs "a" and "b", if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other regulatory authorities or governmental agencies or may publish information concerning a violation of this chapter or a rule or order under this chapter. Such information may be redacted so that personally identifiable information is not made available.

d. The commissioner may adopt rules protecting the privacy of information submitted to the insurance division consistent with this section.

7. Notwithstanding chapter 22, the commissioner may keep confidential any social security number, residence address, and residence telephone number that is contained in a record filed as part of a licensing, registration, or filing process if disclosure is not required in the performance of any duty or is not otherwise required under law.

2003 Acts, ch 91, §2  
See also §523A.801  
Subsection 6 amended

**505.24 Sale of policy term information by consumer reporting agency.**

1. For purposes of this section, unless the context otherwise requires, “*consumer reporting agency*” means any person that for monetary fees, dues, or on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

2. A consumer reporting agency shall not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer’s credit information or a request for a credit report or insurance score. Information submitted

in conjunction with an insurance inquiry about a consumer includes, but is not limited to, the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer’s insurance may expire and the terms and conditions of the consumer’s insurance coverage.

3. The restrictions provided in subsection 2 do not apply to data or lists supplied by a consumer reporting agency to an insurance producer from whom information was received, the insurer on whose behalf such producer acted, or such insurer’s affiliates or holding companies.

4. This section shall not be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

2003 Acts, ch 91, §3  
NEW section

## CHAPTER 505A

### INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

**505A.1 Interstate insurance product regulation compact.**

The interstate insurance product regulation compact is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

#### ARTICLE I — PURPOSES

The purposes of this compact are, through means of joint and cooperative action among the compacting states:

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products.

2. To develop uniform standards for insurance products covered under this compact.

3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states.

4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard.

5. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under this compact.

6. To create the interstate insurance product regulation commission.

7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

#### ARTICLE II — DEFINITIONS

For purposes of this compact, unless the context otherwise requires:

1. “*Advertisement*” means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

2. “*Bylaws*” means those bylaws established by the commission for its governance, or for directing or controlling the commission’s actions or conduct.

3. “*Commission*” means the interstate insurance product regulation commission established by this compact.

4. “*Commissioner*” means the chief insurance regulatory official of a state including, but not limited to, commissioner, superintendent, director, or administrator.

5. “*Compacting state*” means any state that has enacted this compact legislation and that has not withdrawn pursuant to article XIV, section 1, or been terminated pursuant to article XIV, section 2.

6. “*Domiciliary state*” means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

7. “*Insurer*” means any entity licensed by a state to issue contracts of insurance for any of the

lines of insurance covered by this compact.

8. “*Member*” means the person chosen by a compacting state as its representative to the commission, or the person’s designee.

9. “*Noncompacting state*” means any state which is not at the time a compacting state.

10. “*Operating procedures*” means procedures promulgated by the commission implementing a rule, uniform standard, or a provision of this compact.

11. “*Product*” means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

12. “*Rule*” means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to article VII, designed to implement, interpret, or prescribe law or policy, or describing the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

13. “*State*” means any state, district, or territory of the United States of America.

14. “*Third-party filer*” means an entity that submits a product filing to the commission on behalf of an insurer.

15. “*Uniform standard*” means a standard adopted by the commission for a product line, pursuant to article VII, and shall include all of the product requirements in aggregate, provided that each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product, and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

#### ARTICLE III — ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The compacting states hereby create and establish an entity known as the interstate insurance product regulation commission. Pursuant to article IV, the commission has the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards, provided it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance, and any such filing shall be subject to the laws of the state where filed.

2. The commission is a body corporate comprising each compacting state.

3. The commission is a not-for-profit entity, separate and distinct from the individual compacting states.

4. The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

5. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

#### ARTICLE IV — POWERS OF THE COMMISSION

The commission shall have the following powers:

1. To promulgate rules, pursuant to article VII, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

2. To exercise its rulemaking authority and establish reasonable uniform standards for products covered under this compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission, provided that a compacting state shall have the right to opt out of such uniform standard pursuant to article VII, to the extent and in the manner provided in this compact, and, provided further, that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the national association of insurance commissioners’ long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the long-term care insurance model act or long-term care insurance model regulation adopted by the national association of insurance commissioners require amending of the uniform standards established by the commission for long-term care insurance products.

3. To receive and review in an expeditious manner products filed with the commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law, and be binding on the compacting states to the extent and in the manner provided in the compact.

4. To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give ap-

proval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this article shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

5. To exercise its rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission.

6. To promulgate operating procedures, pursuant to article VII, which shall be binding in the compacting states to the extent and in the manner provided in this compact.

7. To bring and prosecute legal proceedings or actions in its name as the commission, provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected.

8. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

9. To establish and maintain offices.

10. To purchase and maintain insurance and bonds.

11. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state.

12. To hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties, and give them appropriate authority to carry out the purposes of this compact, and determine their qualifications, and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided that at all times the commission shall strive to avoid any appearance of impropriety.

14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed, provided that at all times the commission shall strive to avoid any appearance of impropriety.

15. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

16. To remit filing fees to compacting states as

may be set forth in the bylaws, rules, or operating procedures.

17. To enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws.

18. To provide for dispute resolution among compacting states.

19. To advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact.

20. To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments.

21. To establish a budget and make expenditures.

22. To borrow money.

23. To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws.

24. To provide and receive information from, and to cooperate with, law enforcement agencies.

25. To adopt and use a corporate seal.

26. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

#### ARTICLE V — ORGANIZATION OF THE COMMISSION

##### 1. *Membership, voting, and bylaws.*

*a.* Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

*b.* Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision herein to the contrary, no action of the commission with respect to the promulgation of a uniform standard shall be effective unless two-thirds of the members vote in favor thereof.

*c.* The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including, but not limited to:

(1) Establishing the fiscal year of the commission.

(2) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee.

(3) Providing reasonable standards and procedures:

(a) For the establishment of other committees.

(b) Governing any general or specific delegation of any authority or function of the commission.

(4) Providing reasonable procedures for calling and conducting meetings of the commission, and ensuring reasonable notice of each such meeting.

(5) Establishing the titles, duties, and authority, and reasonable procedures for the election of the officers of the commission.

(6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

(7) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.

2. *Management committee, officers, and personnel.*

a. A management committee comprising no more than fourteen members shall be established as follows:

(1) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the national association of insurance commissioners for the prior year.

(2) Four members from those compacting states with at least two percent of the market based on the premium volume described in subparagraph (1), other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws.

(3) Four members from those compacting states with less than two percent of the market, based on the premium volume described in subparagraph (1), with one selected from each of the four zone regions of the national association of insurance commissioners as provided in the bylaws.

b. The management committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission.

(2) Establishing and overseeing an organiza-

tional structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard, provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee.

(3) Overseeing the offices of the commission.

(4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

c. The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

d. The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

3. *Legislative and advisory committees.*

a. A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee, provided that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

b. The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

c. The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

4. *Corporate records of the commission.* The commission shall maintain its corporate books and records in accordance with the bylaws.

5. *Qualified immunity, defense, and indemnification.*

a. The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim

for damage to, or loss of, property, personal injury, or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities, provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

b. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing herein shall be construed to prohibit that person from retaining the person's own counsel; and, provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton misconduct.

c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

#### ARTICLE VI — MEETINGS AND ACTS OF THE COMMISSION

1. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

2. Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

#### ARTICLE VII — RULES AND OPERATING PROCEDURES — RULEMAKING FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS

1. *Rulemaking authority.* The commission shall promulgate reasonable rules, including uniform standards and operating procedures, in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, such an action by the commission shall be invalid and have no force and effect.

2. *Rulemaking procedure.* Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the model state administrative procedure act, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee or committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard.

3. *Effective date and opt out of a uniform standard.* A uniform standard shall become effective ninety days after its promulgation by the commission or such later date as the commission may determine, provided, however, that a compacting state may opt out of a uniform standard as provided in this article. "Opt out" means any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

4. *Opt-out procedure.* A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must do all of the following:

a. Give written notice to the commission no later than ten business days after the uniform standard is promulgated, or at the time the state becomes a compacting state.

b. Find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state.

The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of

the state outweigh both of the following:

(1) The intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this compact.

(2) The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

5. *Effect of opt out.* If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt-out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt out of a uniform standard by a compacting state becomes effective, as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under article XIV for withdrawals.

#### ARTICLE VIII — COMMISSION RECORDS AND ENFORCEMENT

1. The commission shall promulgate rules to establish conditions and procedures under which the commission shall make its information and official records available to the public for inspection or copying. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records, and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

2. Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission shall not be deemed to

waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

3. The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any non-complying compacting state in writing of its non-compliance with commission bylaws, rules, or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in article XIV.

4. The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise the commissioner's authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

a. With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, no activity of an insurer shall constitute a violation of the provisions, standards, or requirements of this compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

b. Before a commissioner may bring an action for violation of any provision, standard, or requirement of this compact relating to the use of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

5. *Stay of uniform standard.* If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension

thereof may postpone the effective date by up to ninety days, unless affirmatively extended by the commission, provided a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

6. Not later than thirty days after a rule or operating procedure is adopted, any person may file a petition for judicial review of the rule or operating procedure, provided that the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

#### ARTICLE IX — DISPUTE RESOLUTION

The commission shall attempt, upon the request of a member, to resolve any disputes or other issues which are subject to this compact and which may arise between two or more compacting states, or between compacting states and noncompacting states, and the commission shall promulgate an operating procedure providing for resolution of such disputes.

#### ARTICLE X — PRODUCT FILING AND APPROVAL

1. Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. Nothing in this compact shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

2. The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision herein to the contrary, the commission shall promulgate rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

3. Any product approved by the commission may be sold or otherwise issued in those compacting states in which the insurer is legally authorized to do business.

#### ARTICLE XI — REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

1. Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. The decision of the review panel shall be the final action of the commission and not subject to review by any court. Notwithstanding the foregoing, an allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with article III, section 5.

2. The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in section 1.

#### ARTICLE XII — FINANCE

1. The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

2. The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

3. The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in article VII.

4. The commission shall be exempt from all taxation in and by the compacting states.

5. The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

6. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts, any work papers related to any internal audit, and any work papers related to the independent audit, shall be confidential, provided that such materials may be shared with the commissioner of any compacting state and shall remain confidential pursuant to article VII.

7. A compacting state shall not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

ARTICLE XIII — COMPACTING STATES,  
EFFECTIVE DATE, AND AMENDMENT

1. Any state is eligible to become a compacting state.

2. This compact shall become effective and binding upon legislative enactment of this compact into law by two compacting states, provided the commission shall become effective for purposes of adopting uniform standards for reviewing, and giving approval or disapproval of, products filed with the commission that satisfy applicable uniform standards only after twenty-six states are compacting states or, alternatively, by states representing greater than forty percent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of this compact into law by that state.

3. Amendments to this compact may be proposed by the commission for enactment by the compacting states. An amendment shall not become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

ARTICLE XIV — WITHDRAWAL, DEFAULT,  
AND TERMINATION

1. *Withdrawal.*

a. Once effective, this compact shall continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from this compact by enacting a statute specifically repealing the statute which enacted the compact into law.

b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in paragraph "e".

c. The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

d. The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice.

e. The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

f. Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

2. *Default.*

a. If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension, pending a cure of the default. The commission shall stipulate the condi-

tions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from this compact and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

b. Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to section 1.

c. Reinstatement following termination of any compacting state requires a reenactment of this compact.

3. *Dissolution of compact.*

a. This compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in this compact to one compacting state.

b. Upon the dissolution of this compact, this compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XV — SEVERABILITY AND CONSTRUCTION

1. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of this compact shall be enforceable.

2. The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XVI — BINDING EFFECT OF COMPACT AND OTHER LAWS

1. *Other laws.*

a. Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in paragraph “b”.

b. For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to

the content, approval, and certification of such products. For advertisement that is subject to the commission’s authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, action taken by the commission shall not abrogate or restrict:

(1) The access of any person, including the attorney general, to state courts.

(2) Remedies available under state law related to breach of contract, tort, general consumer protection laws, or general consumer protection regulations that apply to the sale or advertisement of the product or other laws not specifically directed to the content of the product.

(3) State law relating to the construction of insurance contracts.

c. All insurance products filed with individual states shall be subject to the laws of those states.

2. *Binding effect of this compact.*

a. All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

b. All agreements between the commission and the compacting states are binding in accordance with their terms.

c. Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

2003 Acts, ch 91, §54; 2003 Acts, ch 179, §74  
NEW section

CHAPTER 507

EXAMINATION OF INSURANCE COMPANIES

507.5 **Chief examiner.**

The commissioner may appoint a chief examiner who shall supervise insurance company examinations and perform such other duties as may be assigned by the commissioner. The chief examiner shall receive a salary to be fixed by the

commissioner. The chief examiner shall be exempt from the merit system provisions of chapter 8A, subchapter IV, under section 8A.412, subsection 17.

2003 Acts, ch 145, §270  
Section amended

## CHAPTER 507A

### UNAUTHORIZED INSURERS

#### **507A.4 Transactions where law not applicable.**

The provisions of this chapter shall not apply to:

1. The lawful transaction of surplus lines insurance as permitted by sections 515.147 to 515.149.

2. The lawful transaction of reinsurance by insurers.

3. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

4. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state, covering subjects of insurance not resident located, or expressly to be performed in this state at the time of issue, and which transactions are subsequent to the issuance of the policy.

5. Transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.

6. Transactions in this state involving any policy of insurance issued prior to July 1, 1967.

7. Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy.

8. Transactions involving risks located in this state where the policy or contract of insurance for such risk was principally negotiated and delivered outside this state and was lawfully issued in a state or foreign country in which the foreign or alien insurer was authorized to do an insurance business, and where such insurer has no contact with this state except in connection with inspections or losses required by virtue of the contract or policy of insurance covering the risk located in this state.

9. *a.* Transactions involving a multiple employer welfare arrangement, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, if the multiple employer welfare arrangement meets all of the following conditions:

(1) The arrangement is administered by an au-

thorized insurer or an authorized third-party administrator.

(2) The arrangement has been in existence and provided health insurance in Iowa for at least five years prior to July 1, 1997.

(3) The arrangement was established by a trade, industry, or professional association of employers that has a constitution or bylaws, and has been organized and maintained in good faith for at least ten continuous years prior to July 1, 1997.

(4) The arrangement registers with and obtains a certificate of registration issued by the commissioner of insurance.

(5) The arrangement is subject to the jurisdiction of the commissioner of insurance, including regulatory oversight and solvency standards as established by rules adopted by the commissioner of insurance pursuant to chapter 17A.

*b.* A multiple employer welfare arrangement registered with the commissioner of insurance that does not meet the solvency standards established by rule adopted by the commissioner of insurance is subject to chapter 507C.

*c.* A multiple employer welfare arrangement that meets all of the conditions of paragraph "a" shall not be considered any of the following:

(1) An insurance company or association of any kind or character under section 432.1.

(2) A member of the Iowa individual health benefit reinsurance association under section 513C.10.

(3) A member insurer of the Iowa life and health insurance guaranty association under section 508C.5, subsection 8.

*d.* A multiple employer welfare arrangement registered with the commissioner of insurance shall file with the commissioner of insurance on or before March 1 of each year a copy of the report required to be filed with the United States department of labor pursuant to 29 C.F.R. § 2520.101-2.

*e.* When not otherwise provided, a foreign or domestic multiple employer welfare arrangement doing business in this state shall pay to the commissioner of insurance the fees as required in section 511.24.

2003 Acts, ch 91, §4; 2003 Acts, 1st Ex, ch 2, §39, 209  
Subsection 9, NEW paragraph e

## CHAPTER 507B

### INSURANCE TRADE PRACTICES

#### **507B.3 Unfair competition or unfair and deceptive acts or practices prohibited.**

1. A person shall not engage in this state in

any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or

deceptive act or practice in the business of insurance. The issuance of a qualified charitable gift annuity as provided in chapter 508F does not constitute a trade practice in violation of this chapter.

2. The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person

has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this section. The commissioner shall keep confidential the information submitted to the insurance division, or obtained by the insurance division in the course of an investigation pursuant to section 505.8, subsection 6.

2003 Acts, ch 91, §5  
Section amended

## CHAPTER 507D

### INSURANCE ASSISTANCE

#### 507D.3 Authorized assistance programs.

The commissioner of insurance is authorized to institute programs, order the institution of programs within the private sector, or to contract with or delegate authority to the department of administrative services for the institution of programs relating to insurance assistance including, but not limited to, the following:

1. The development and implementation of a market assistance program to facilitate, arrange, or provide for the acquisition of property, casualty, product, professional, or other liability insurance coverage for all persons or entities seeking such coverage but for which the coverage is presently unavailable or unobtainable to the person or entity.

2. The development and implementation of a mandatory risk allocation system for property, casualty, product, professional, or other liability insurance, except asbestos and environmental impairment liability, in order to assure that all persons or entities for which such insurance is essential may obtain such insurance from insurers authorized to do business within this state.

3. The development and implementation of a risk-sharing program to assist and advise persons or entities seeking property, casualty, product,

professional, or other liability insurance, except asbestos and environmental impairment liability, on the most efficient manner in which to share or pool similar risks in order to obtain essential insurance coverage at the minimum cost.

4. The development and implementation of a risk management program for persons or entities to which property, casualty, product, professional, or other liability insurance is essential, such program to include at a minimum the following:

a. Assistance in developing and maintaining loss and loss exposure data on such liability risks.

b. Recommendations regarding risk reduction and risk elimination programs.

c. Recommendations of those practices which will permit protection against such losses at the lowest costs, consistent with good underwriting practices and sound risk management techniques.

5. Subsections 2 and 3 shall have no application or effect after July 1, 1991.

6. An assistance program for the facilitation of insurance and financial responsibility coverage for owners and operators of underground storage tanks which store petroleum shall not be affected by the exceptions of subsections 2 and 3.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 508

### LIFE INSURANCE COMPANIES

#### 508.10 Foreign companies — capital or surplus — investments.

No company incorporated by or organized under the laws of any other state or government shall transact business in this state unless it is possessed of the actual amount of capital and surplus required of any company organized by the laws of this state, or, if it be a mutual company, of surplus equal in amount thereto, and the same is invested in bonds of the United States or of this state, or in

interest-paying bonds, when they are at or above par, of the state in which the company is located, or of some other state, or in notes or bonds secured by mortgages on unencumbered real estate within this or the state where such company is located, worth one and one-third times the amount loaned thereon, which securities shall, at the time, be on deposit with the commissioner of insurance, auditor, director of revenue, or chief financial officer of the state by whose laws the company is incorpo-

rated, or of some other state, and the commissioner of insurance is furnished with a certificate of such officer, under the officer's official seal, that the person as such officer holds in trust and on deposit for the benefit of all the policyholders of such company, the securities above mentioned. This certificate shall embrace the items of security so held, and show that such officer is satisfied that such securities are worth the amount stated in the certificate. Nothing herein contained shall invalidate the agency of any company incorporated in another state by reason of its having exchanged the bonds or securities so deposited with such officer for other bonds or securities authorized by this chapter, or by reason of its having drawn its interest and dividends on the same.

An alien insurer, with the approval of the commissioner, may be treated as a domestic insurer of this state in whole or in part, and if so approved is deemed to be organized under the laws of this state and is an Iowa domestic insurer as provided by rules adopted by the commissioner. The approval of the commissioner may be based upon such factors as:

1. Maintenance of an appropriate trust account, surplus account, or other financial mechanism in this state.
2. Maintenance of all books and records of United States operations in this state.
3. Maintenance of a separate financial reporting system for its United States operations.
4. Any other provisions deemed necessary by the commissioner.

A foreign company authorized to do business in this state shall not assumptively reinsure a block of business which includes policyholders residing in this state to a company not authorized to do business in this state without the prior written approval of the commissioner.

2003 Acts, ch 145, §286  
Terminology change applied

#### **508.11 Annual statement.**

The president or vice president and secretary or actuary, or a majority of the directors of each company organized under this chapter, shall annually, on or before the first day of March, prepare under oath and file in the office of the commissioner of insurance or a depository designated by the commissioner a statement of its affairs for the year terminating on the thirty-first day of December preceding, showing:

1. The name of the company and where located.
2. The names of officers.
3. The amount of capital, if a stock company.
4. The amount of capital paid in, if a stock company.
5. The value of real estate owned by the company.
6. The amount of cash on hand.
7. The amount of cash deposited in banks, giv-

ing the name of the bank or banks.

8. The amount of cash in the hands of agents, and in the course of transmission.

9. The amount of bank stock, with the name of each bank, giving par and market value of the same.

10. The amount of bonds of the United States, and all other bonds and securities, giving names and amounts, with the par and market value of each kind.

11. The amount of loans secured by first mortgage on real estate, and where such real estate is situated.

12. The amount of all other bonds, loans, how secured, and the rate of interest.

13. The amount of premium notes and their value on policies in force, if a mutual company.

14. The amount of notes given for unpaid stock, and their value in detail, if a stock company.

15. The amount of assessments unpaid on stock or premium notes.

16. The amount of interest due and unpaid.

17. The amount of all other securities.

18. The amount of losses due and unpaid.

19. The amount of losses adjusted but not due.

20. The amount of losses unadjusted.

21. The amount of claims for losses resisted.

22. The amount of money borrowed and evidences thereof.

23. The amount of dividends unpaid on stock.

24. The amount of dividends unpaid on policies.

25. The amount required to safely reinsure all outstanding risks.

26. The amount of all other claims against the company.

27. The amount of net cash premiums received.

28. The amount of notes received for premiums.

29. The amount of interest received from all sources.

30. The amount received from all other sources.

31. The amount paid for losses.

32. The amount of dividends paid to policyholders, and the amount to stockholders, if a stock company.

33. The amount of commissions and salaries paid to agents.

34. The amount paid to officers for salaries and other compensation.

35. The amount paid for taxes.

36. The amount of all other payments and expenditures.

37. The greatest amount insured on any one life.

38. The amount deposited in other states or territories as security for policyholders therein, stating the amount in each state or territory.

39. The amount of premiums received in this state during the year.

40. The amount paid for losses in this state during the year.

41. The whole number of policies issued during the year, with the amount of insurance effected thereby, and total amount of risk.

42. All other items of information necessary to enable the commissioner of insurance to correctly estimate the cash value of policies, or to judge of the correctness of the valuation thereof.

43. All other information as required by the national association of insurance commissioners' annual statement blank. The annual statement blank shall be prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

2003 Acts, ch 91, §6  
Unnumbered paragraph 1 amended

#### 508.31A Funding agreements.

1. A life insurance company organized under this chapter may issue funding agreements. The issuance of a funding agreement under this section is deemed to be doing insurance business. For purposes of this section, "funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies of the person to whom the funding agreement is issued. A funding agreement does not constitute life insurance, an annuity, or other insurance authorized by section 508.29, and does not constitute a security as defined in section 502.102.

2. a. Funding agreements may be issued to the following:

(1) A person authorized by a state or foreign country to engage in an insurance business or a subsidiary of such business.

(2) A person for the purpose of funding any of the following:

(a) Benefits under an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., maintained in the United States or in a foreign country.

(b) Activities of an organization exempt from taxation pursuant to section 501c of the Internal Revenue Code, or any similar organization in any foreign country.

(c) A program of the United States government, another state government or political subdivision of such state, or of a foreign country, or any agency or instrumentality of any such government, political subdivision, or foreign country.

(d) An agreement providing for periodic pay-

ments in satisfaction of a claim.

(e) A program of an institution which has assets in excess of twenty-five million dollars.

(3) A person other than a natural person that has assets of at least twenty-five million dollars.

(4) A person other than a natural person for the purpose of providing collateral security for securities registered with the federal securities and exchange commission.

b. A funding agreement issued pursuant to paragraph "a", subparagraph (1), (2), or (3), shall be for a total amount of not less than one million dollars.

c. An amount under a funding agreement shall not be guaranteed or credited except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class. Such funding agreements shall not provide for payments to the insurer based on mortality or morbidity contingencies.

d. Amounts paid to the insurer pursuant to a funding agreement, and proceeds applied under optional modes of settlement, may be allocated by the insurer to one or more separate accounts pursuant to section 508A.1.

3. A funding agreement is a class 2 claim under section 507C.42, subsection 2.

4. The commissioner may adopt rules to implement funding agreements.

2003 Acts, ch 91, §7; 2003 Acts, ch 179, §75; 2003 Acts, 1st Ex, ch 2, §28, 209

Section amended

#### 508.38 Standard nonforfeitures — deferred annuities.

This section shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities."

1. This section does not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the United States Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which is delivered outside this state through an agent or other representative of the company issuing the contract.

2. In the case of contracts issued on or after the operative date of this section as defined in subsection 11, no contract of annuity, except as stated in subsection 1, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions that in the opinion of the commissioner are at least

as favorable to the contract holder, upon cessation of payment of considerations under the contract:

*a.* That upon cessation of payment of considerations under a contract or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections 4, 5, 6, 7, and 9.

*b.* If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections 4, 5, 7, and 9. The company may reserve the right to defer the payment of such cash surrender benefit for a period not to exceed six months after demand therefore with surrender of the contract after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral.

*c.* A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

*d.* A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection 2, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

3. The minimum values as specified in subsections 4, 5, 6, 7, and 9 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

*a.* The minimum nonforfeiture amount at any time at or prior to the commencement of any annu-

ity payments shall be equal to an accumulation up to such time at rates of interest as indicated in paragraph "b" of the net considerations (as herein-after defined) paid prior to such time, decreased by the sum of all of the following:

(1) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in paragraph "b".

(2) An annual contract charge of fifty dollars, accumulated at rates of interest as indicated in paragraph "b".

(3) The amount of any indebtedness to the company on the contract, including interest due and accrued.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during the contract year.

*b.* The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and all of the following, which shall be specified in the contract if the interest rate will be reset:

(1) The five-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date under subparagraph (4).

(2) The result of subparagraph (1) shall be reduced by one hundred twenty-five basis points.

(3) The resulting interest guarantee shall not be less than one percent.

(4) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subparagraph (2), by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date and at each redetermination date thereafter of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

The commissioner may adopt rules to implement the provisions of subparagraph (4), and to provide for further adjustments to the calculation

of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

4. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

5. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

6. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

7. For the purpose of determining the benefits

calculated under subsections 5 and 6, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

8. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

9. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

10. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections 4, 5, 6, 7, and 9, additional benefits payable (a) in the event of total and permanent disability; (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

11. After July 1, 2003, a company may elect either to apply the provisions of this section as it existed prior to July 1, 2003, or to apply the provisions of this section as enacted\* by 2003 Acts, ch 91, § 8 – 10, to annuity contracts on a contract form-by-form basis before the second anniversary of the effective date of 2003 Acts, ch 91, § 8 – 10. In all other instances, this section shall become operative with respect to annuity contracts issued by

the company two years after July 1, 2003.

2003 Acts, ch 91, §8 – 10

\*The word “amended” probably intended; corrective legislation is pending

For future repeal of 2002 amendments to subsection 3, paragraph a, un-

numbered paragraph 1, and any intervening amendments not specifically excluded, effective July 1, 2004, see 2002 Acts, ch 1111, §10, 36

Subsection 2, unnumbered paragraph 1 and paragraphs a and b stricken and rewritten

Subsections 3 and 11 stricken and rewritten

## CHAPTER 508E

### VIATICAL SETTLEMENT CONTRACTS

#### 508E.3A Immunity from liability.

1. A person acting without malice, fraudulent intent, or bad faith is not liable civilly as a result of filing a report, or otherwise furnishing, orally or in writing, other information concerning alleged acts in violation of this chapter, or the administrative rules that implement this chapter, if the report or information is provided to or received from any of the following:

a. Law enforcement officials, and their agents or employees.

b. The national association of insurance commissioners, the insurance division of the department of commerce, a federal or state government-

tal agency or bureau established to detect and prevent fraudulent insurance or viatical settlement acts, or any other organization established for such purpose, and their agents, employees, or designees.

c. An authorized representative of the life insurer that issued the insurance policy covering the life of the insured.

2. This section does not affect in any way any common law or statutory privilege or immunity applicable to such person or entity.

2003 Acts, ch 44, §91

Subsection 1, paragraph b amended

## CHAPTER 509

### GROUP INSURANCE

#### 509.19 Claims and premium disclosure.

1. a. A person issuing a policy or contract providing group health benefit coverages to a group of fifty-one or more eligible employees as defined in chapter 513B shall provide to the policyholder, contract holder, or sponsor of the group health benefit plan, upon request, annually, but not more than three months prior to the policy renewal date, the total amount of actual claims identified as paid or incurred and paid, and the total amount of premiums by line of coverage. If premiums are not billed for each line of coverage, it is not necessary to artificially separate premiums for each line of coverage and will be acceptable to supply total premiums for the period.

b. For purposes of this section, “*line of coverage*” includes medical, prescription drug card program, dental, vision, long-term disability, and short-term disability.

c. The information required by paragraph “a” shall be provided by the carrier for two separate years, either policy years or rolling twelve-month periods.

d. The information required by paragraph “a” shall not disclose any confidential information or otherwise disclose the identity of an individual insured, subscriber, or enrollee, who has submitted

a claim within the time frame of the report.

2. For purposes of this section, “*person issuing a policy or contract providing group health benefit coverages*” includes all of the following:

a. A person issuing a group policy of accident or health insurance pursuant to this chapter.

b. A person issuing a group contract of a non-profit health service corporation pursuant to chapter 514.

c. A person issuing a group contract of a health maintenance organization pursuant to chapter 514B.

d. An organized delivery system authorized under 1993 Iowa Acts, chapter 158, licensed by the director of public health.

e. A multiple employer welfare arrangement, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, that meets the requirements of section 507A.4, subsection 9, paragraph “a”.

f. A plan for public employees established pursuant to chapter 509A.

g. A person issuing or sponsoring an association group policy under section 509.14.

2003 Acts, ch 91, §11

Subsection 1, paragraphs a and c amended

## CHAPTER 509A

## GROUP INSURANCE FOR PUBLIC EMPLOYEES

**509A.13A Continuation of group insurance covering spouses.**

1. As used in this section, unless the context otherwise requires:

*a. "Eligible retired state employee"* means a former employee of the government of the state of Iowa, including but not limited to any departments, agencies, boards, bureaus, or commissions of the state of Iowa, who is receiving the minimum level of retirement benefits for eligibility under this section and who is participating in a state health or medical group insurance plan which covers the former employee and the former employee's spouse at the time of the death of the former employee.

*b. "Minimum level of retirement benefits for eligibility under this section"* means any of the following:

(1) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 97A based upon the completion of at least twenty-two years of membership service.

(2) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 97B.

(3) The eligible retired state employee has received retirement benefits under the retirement system established in chapter 602, article 9.

*c. "State health or medical group insurance plan"* means a health or medical group insurance plan for employees of the state.

2. Notwithstanding any provision of law to the contrary, in the event of the death of an eligible retired state employee, the surviving spouse of the eligible retired state employee whose insurance would otherwise terminate because of the death of the eligible retired state employee may elect to continue to be a member of the state health or medical group insurance plan by requesting continuation in writing to the department of administrative services within thirty-one days after the death of the eligible retired state employee. The surviving spouse shall pay the total premium for the state health or medical group insurance plan and shall have the same rights to change programs or coverage as state employees.

2003 Acts, ch 145, §286  
Terminology change applied

**509A.15 Certification of self-insurance plans — exemption.**

1. Within ninety days following the end of a fiscal year, the governing body of a self-insurance plan of a political subdivision or a school corporation shall file with the commissioner of insurance a certificate of compliance, actuarial opinion, and

an annual financial report. The filing shall be accompanied by a fee of one hundred dollars. A penalty of fifteen dollars per day shall be assessed for failure to comply with the ninety-day filing requirement, except that the commissioner may waive the penalty upon a showing that special circumstances exist which justify the waiver. The certificate shall be signed and dated by the appropriate public official representing the governing body, and shall certify the following:

*a.* That the plan meets the requirements of this chapter and the applicable provisions of the Iowa administrative code.

*b.* That an actuarial opinion has been attached to the certificate which attests to the adequacy of reserves, rates, and financial condition of the plan. The actuarial opinion must include, but is not limited to, a brief commentary about the adequacy of the reserves, rates, and the financial condition of the plan, a test of the prior year claim reserve, a brief description of how the reserves were calculated, and whether or not the plan is able to cover all reasonably anticipated expenses. The actuarial opinion shall be prepared, signed, and dated by a person who is a member of the American academy of actuaries. If necessary, the actuary should assist the public body in preparing the annual financial report. The annual financial report shall be in a format as prescribed by the commissioner.

*c.* That a written complaint procedure has been implemented. The certificate shall also list the number of complaints filed by participants under the written complaint procedure, and the percentage of participants filing written complaints, in the prior fiscal year.

*d.* That the governing body has contracted or otherwise arranged with a third-party administrator who holds a current certificate of registration issued by the commissioner pursuant to section 510.21, or with a person not required to obtain the certificate as an administrator as defined in section 510.11, subsection 1.

2. The commissioner shall by rule require the maintenance of confidentiality of information held by the plan administrator.

3. The failure of the governing body to provide the certificate of compliance required by subsection 1, or the failure of the governing body or plan administrator to abide by a requirement of the plan, this chapter, or applicable rule, is grounds for action against the plan, including cause for disapproval or discontinuance of the plan.

4. One or more political subdivisions of the state or one or more school corporations maintaining self-insured plans with yearly claims that do not exceed one percent of each entity's general

fund budget shall be exempt from the requirements of this section where the plan insures employees for all or part of a deductible, coinsurance payments, drug costs, short-term disability benefits, vision benefits, or dental benefits.

The yearly claim amount shall be determined annually on the policy renewal date, or an alternative date established by rule, by a plan administrator or political subdivision or school corporation

employee to be designated by the plan administrator. The exemption shall not apply for the year following a year in which yearly claims are determined to exceed one percent of the political subdivision's or school corporation's general fund budget.

2003 Acts, ch 91, §12  
Subsection 4 stricken and rewritten

## CHAPTER 510A

### BUSINESS PRODUCER CONTROLLED PROPERTY AND CASUALTY INSURERS

#### 510A.2 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Accredited state"* means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established by the national association of insurance commissioners.

2. *"Control"* or *"controlled"* has the meaning ascribed in section 521A.1, subsection 3.

3. *"Controlled insurer"* means a licensed insurer that is controlled, directly or indirectly, by an insurance producer.

4. *"Controlling producer"* means an insurance producer who, directly or indirectly, controls an insurer.

5. *"Independent casualty actuary"* means a casualty actuary who is a member of the American academy of actuaries and who is not an employee, principal, the direct or indirect owner of, affiliated with, or in any way controlled by the insurer or insurance producer.

6. *"Insurance producer"* means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

7. *"Licensed insurer"* or *"insurer"* means any person duly licensed to transact a property and casualty insurance business in this state. The following are not licensed property and casualty insurers for the purposes of this chapter:

a. All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 U.S.C. § 3901 et seq. (1982 & Supp. 1986), or chapter 515E.

b. All residual market pools and joint underwriting authorities or associations.

c. All captive insurers. For the purposes of this chapter, captive insurers are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive pur-

pose is to insure risks of any group and association members and any affiliates.

2003 Acts, ch 91, §13 - 15  
Subsections 3 - 5 amended  
NEW subsection 6 and former subsection 6 renumbered as 7  
Former subsection 7 stricken

#### 510A.4 Minimum standards.

1. *Applicability of section.*

a. This section applies if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the preceding year.

b. Notwithstanding paragraph "a", this section does not apply if both of the following apply:

(1) The controlling producer does all of the following:

(a) Places insurance only with the controlled insurer, or only with the controlled insurer and members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary, and receives no compensation based upon the amount of premiums written in connection with such insurance.

(b) Accepts insurance placements only from nonaffiliated subproducers and not directly from insureds.

(2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from the controlling producer, a producer controlled by the controlled insurer, or an insurance producer that is a subsidiary of the controlled insurer.

2. *Required contract provisions.* A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party which has been approved by the board of directors of the controlled insurer and filed with the commissioner. The con-

tract must contain, at a minimum, the following provisions:

*a.* The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

*b.* The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer.

*c.* The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments of premiums collected shall be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract.

*d.* All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

*e.* The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

*f.* The contract shall not be assigned in whole or in part by the controlling producer.

*g.* The controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by an insurance producer other than the controlling producer.

*h.* The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph "g" of this subsection, "comparable business" includes the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

*i.* If the contract provides that the controlling producer, on insurance business placed with the controlled insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection 4, paragraph "a".

*j.* A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer which would exceed the limit. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

*k.* The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

*3. Audit committee.* A controlled insurer must establish an audit committee of the board of directors composed of independent directors. Prior to approval of the annual financial statement, the audit committee shall meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner, to review the adequacy of the insurer's loss reserves.

*4. Reporting requirements.*

*a.* In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or another independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end on business placed by the insurance producer, including incurred but not reported losses.

*b.* The controlled insurer shall annually report to the commissioner the amount of commissions paid to the insurance producer, the percentage

such amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

2003 Acts, ch 91, §16 – 18  
 Subsection 1, paragraph b, subparagraph (2) amended  
 Subsection 2, paragraph g amended  
 Subsection 4 amended

#### 510A.5 Disclosure.

The insurance producer, prior to the effective date of the policy, shall deliver written notice to

the prospective insured disclosing the relationship between the insurance producer and the controlled insurer; except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the insurance producer and that the subproducer has notified or will notify the insured.

2003 Acts, ch 91, §19  
 Section amended

## CHAPTER 511

### PROVISIONS APPLICABLE TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS

#### 511.8 Investment of funds.

A company organized under chapter 508 shall, at all times, have invested in the securities provided in this section, funds equivalent to its legal reserve. Legal reserve is the net present value of all outstanding policies and contracts involving life contingencies. This section does not prohibit a company or association from holding a portion of its legal reserve in cash.

The investment programs developed by companies shall take into account the safety of the company's principal, investment yield and return, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs and investment diversification.

1. *United States government obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality thereof.

2. *State, District of Columbia, territorial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the District of Columbia, or by any state, insular or territorial possession of the United States of America, or by any county, city, town, school, road, drainage, or other district located within any state, or insular or territorial possession of the United States of America, or by any civil subdivision or governmental authority of any such state, or insular or territorial possession, or by any instrumentality of any such state, or insular or territorial possession, civil subdivision, or governmental authority; provided that the obligations are valid, legally authorized and issued.

3. *Canadian government, provincial and municipal obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or by any province thereof, or by any municipality or district therein, provided that the obligations are valid, legally authorized and issued.

4. *International Bank bonds.* Bonds or other evidence of indebtedness issued, assumed or guaranteed by the International Bank for reconstruction and development, in an amount not to exceed two percent of its total assets as shown by the last annual report, or by the Inter-American Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report, by the Asian Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report or by the African Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report. However, the combined investment in bonds or evidences of indebtedness permitted by this subsection shall not exceed four percent of its total assets as shown by the last annual report.

5. *Corporate obligations.* Subject to the restrictions contained in subsection 8 hereof, bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. If fixed interest-bearing obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming or guaranteeing corporation applicable to such period, and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and have investment qualities and characteristics wherein the specula-

tive elements are not predominant.

However, with respect to fixed interest-bearing obligations which are issued, assumed or guaranteed by a financial company, the net earnings by the financial company available for its fixed charges for the period of five fiscal years preceding the date of acquisition of the obligations by the insurance company shall have averaged per year not less than one and one-fourth times such average annual fixed charges of the issuing, assuming or guaranteeing financial company applicable to such period, and, during at least one of the last two years of the period, its net earnings shall have been not less than one and one-fourth times its fixed charges for such year; or if, at the date of acquisition, the obligations are adequately secured and speculative elements are not predominant in their investment qualities and characteristics. As used in this paragraph, “*financial company*” means a corporation which on the average over its last five fiscal years preceding the date of acquisition of its obligations by the insurer, has had at least fifty percent of its net income, including income derived from subsidiaries, derived from the business of wholesale, retail, installment, mortgage, commercial, industrial or consumer financing, or from banking or factoring, or from similar or related lines of business.

b. If adjustment, income or other contingent interest obligations, the net earnings of the issuing, assuming or guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition of the obligations by such insurance company shall have averaged per year not less than one and one-half times such average annual fixed charges of the issuing, assuming or guaranteeing corporation and its average annual maximum contingent interest applicable to such period and, during at least one of the last two years of such period, its net earnings shall have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year, or if, at the date of acquisition, the obligations are adequately secured and have investment qualities and characteristics and speculative elements are not predominant.

The term “*net earnings available for fixed charges*” as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes other than any income taxes, depreciation and depletion, but nonrecurring items of income or expense may be excluded.

The term “*fixed charges*” as used herein shall include interest on unfunded debt and funded debt on a parity with or having a priority to the obligation under consideration.

The term “*corporation*” as used in this chapter includes a joint stock association, a limited liability company, a partnership, or a trust.

The securities, real estate, and mortgages described in this section include participations,

which means instruments evidencing partial or undivided collective interests in such securities, real estate, and mortgages.

6. *Preferred and guaranteed stocks.* Subject to the restrictions contained in subsection 8 hereof, preferred stocks of, or stocks guaranteed by, a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada, or any province thereof; and which meet the following qualifications:

a. Preferred stocks.

(1) All of the obligations and preferred stocks of the issuing corporation, if any, prior to the preferred stock acquired must be eligible as investments under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges and preferred dividends of the issuing corporation shall have been, for each of the five fiscal years immediately preceding the date of acquisition, not less than one and one-half times the sum of the annual fixed charges and contingent interest, if any, and the annual preferred dividend requirements as of the date of acquisition.

The term “*preferred dividend requirements*” shall mean cumulative or noncumulative dividends whether paid or not.

The term “*fixed charges*” shall be construed in accordance with subsection 5 above. The term “*net earnings available for fixed charges and preferred dividends*” as used herein shall mean the net income after deducting all operating and maintenance expenses, taxes, including any income taxes, depreciation and depletion, but nonrecurring items may be excluded.

b. Guaranteed stocks.

(1) All of the fixed interest-bearing obligations of the guaranteeing corporation, if any, must be eligible under this section as of the date of acquisition; and

(2) The net earnings available for fixed charges of the guaranteeing corporation shall meet the requirements outlined in paragraph “a” of subsection 5 above, except that all guaranteed dividends shall be included in “*fixed charges*”.

Any investments in preferred stocks or guaranteed stocks made under the provisions of this subsection shall be considered as moneys and credits for purposes of taxation and their assessment shall be subject to deductions for indebtedness as provided by law in the case of assessment of moneys and credits in general. This provision shall be effective as to assessments made during the year 1947 and thereafter.

7. *Equipment trust obligations.* Subject to the restrictions contained in subsection 8, bonds, certificates, or other evidences of indebtedness secured by any transportation equipment used wholly or in part in the United States of America or Canada, that provide a right to receive determined rental, purchase or other fixed obligatory

payments adequate to retire the obligations within twenty years from date of issue, and also provide:

*a.* For vesting of title to such equipment free from encumbrance in a corporate trustee, or

*b.* For creation of a first lien on such equipment.

8. *Further restrictions.* Securities included under subsections 5, 6, and 7 shall not be eligible:

*a.* If the corporation is in default on fixed obligations as of the date of acquisition. Securities provided in paragraph “*a*” of subsection 6 shall not be eligible if the issuing corporation is in arrears with respect to the payment of any preferred dividends as of the date of acquisition.

*b.* The investments of any company or association in such securities shall not be eligible in excess of the following percentages of the legal reserve of such company or association:

(1) With the exception of public securities, two percent of the legal reserve in the securities of any one corporation. Five percent of the legal reserve in the securities of any one public utility corporation.

(2) Seventy-five percent of the legal reserve in the securities described in subsection 5 issued by other than public utility corporations. Fifty percent of the legal reserve in the securities described in subsection 5 issued by public utility corporations.

(3) Ten percent of the legal reserve in the securities described in subsection 6.

(4) Ten percent of the legal reserve in the securities described in subsection 7.

*c.* Statements adjusted to show the actual condition at the time of acquisition or the effect of new financing, known commercially as pro forma statements, may be used in determining whether investments under subsections 5 and 6 are in compliance with requirements. Statements so adjusted or consolidated statements may be used in order to include the earnings of all predecessor, merged, consolidated, or purchased companies.

9. *Real estate bonds and mortgages.*

*a.* Bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first or second lien upon otherwise unencumbered real property and appurtenances thereto within the United States of America, or any insular or territorial possession of the United States, or the Dominion of Canada, and upon leasehold estates in real property where fifty years or more of the term including renewals is unexpired, provided that at the date of acquisition the total indebtedness secured by the first or second lien shall not exceed ninety percent of the value of the property upon which it is a lien. However, a company or organization shall not acquire an indebtedness secured by a first or second lien upon a single parcel of real property, or upon a leasehold interest in a single parcel of real property, in excess of two percent of its legal reserve. These limi-

tations do not apply to obligations described in paragraphs “*b*”, “*c*”, “*d*”, “*e*”, and “*f*” of this subsection.

Improvements and appurtenances to real property shall not be considered in estimating the value of the property unless the owner contracts to keep the property adequately insured during the life of the loan in some reliable fire insurance companies, or associations, the insurance to be made payable in case of loss to the mortgagee, trustee, or assignee as its interest appears at the time of the loss.

For the purpose of this subsection a mortgage or deed of trust is not other than a first or second lien upon property by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when the real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

*b.* Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of Congress of the United States of America approved June 27, 1934, entitled the “*National Housing Act*”\*, as heretofore and hereafter amended.

*c.* Bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with the terms and provisions of Title III of an Act of Congress of the United States of America approved June 22, 1944, known as Public Law 346 — Seventy-eighth Congress, Chapter 268 — 2nd Session, cited as the “*Service-men’s Readjustment Act of 1944*”\*\*, as heretofore and hereafter amended.

*d.* Contracts of sale, purchase money mortgages or deeds of trust secured by property obtained through foreclosure, or in settlement or satisfaction of any indebtedness, or in the acquisition or disposition of real property acquired pursuant to subsection 14.

*e.* Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued or guaranteed, in whole or in part, in accordance with Title I of the Bankhead-Jones Farm Tenant Act, an Act of the Congress of the United States, cited as the “*Farmers Home Administration Act of 1946*”\*\*\*, as heretofore or hereafter amended.

*f.* Bonds, notes, obligations or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered personal or real property or both personal and real property, including a leasehold of real estate, within the United States of America, or any insular or territorial possession of the United States of America, or the Dominion of Canada, under lease,

purchase contract, or lease purchase contract to any governmental body or instrumentality whose obligations qualify under subsection 1, 2 or 3 of this section, or to a corporation whose obligations qualify under paragraph "a" of subsection 5 of this section, if the terms of the bond, note or other evidence of indebtedness provide for the amortization during the initial, fixed period of the lease or contract of one hundred percent of the indebtedness and there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, ground rents and taxes other than the income taxes of the borrower; provided, however, that where the security consists of a first mortgage or deed of trust lien on a fee interest in real property only, the bond, note or other evidence of indebtedness may provide for the amortization during the initial, fixed period of the lease or contract of less than one hundred percent of the indebtedness if there is to be left unamortized at the end of such period an amount not greater than the appraised value of the land only, exclusive of all improvements, and if there is pledged or assigned, as additional security for the loan, sufficient of the rentals payable under the lease, or of contract payments, to provide the required payments on the loan necessary to permit such amortization, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower. Investments made in accordance with the provisions of this paragraph shall not be eligible in excess of twenty-five percent of the legal reserve, nor shall any one such investment in excess of five percent of the legal reserve be eligible.

g. Bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed, or insured, in accordance with the terms and provisions of an Act of the federal Parliament of the Dominion of Canada approved March 18, 1954, cited as the "*National Housing Act, 1954*", as heretofore and hereafter amended.

10. *Real estate.*

a. Real estate in this state which is necessary for the accommodation of the company or association as a home office or in the transaction of its business. In the erection of buildings for such purposes, there may be added rooms for rent. Before the company or association invests any of its funds in accordance with this paragraph it shall first obtain the consent of the commissioner. The maximum amount which a company or association shall be permitted to invest in accordance with these provisions shall not exceed ten percent of the legal reserve. However, a stock company may invest such portion of its paid-up capital, in addition to ten percent of the legal reserve, as is not held to constitute a part of its legal reserve, under section

508.36, and the total legal reserve of the company shall be equal to or exceed the amount of its paid-up capital stock.

b. Any real estate acquired through foreclosure, or in settlement or satisfaction of any indebtedness. Any company or association may improve real estate so acquired or remodel existing improvements and exchange such real estate for other real estate or securities, and real estate acquired by such exchange may be improved or the improvements remodeled.

11. *Certificates of sale.* Certificates of sale obtained through foreclosure of liens on real estate.

12. *Policy loans.* Loans upon the security of the policies of the company or association and constituting a lien thereon in an amount not exceeding the legal reserve thereon.

13. *Collateral loans.* Loans secured by collateral consisting of any securities qualified in this section, provided the amount of the loan is not in excess of ninety percent of the value of the securities.

Provided further that subsection 8 of this section shall apply to the collateral securities pledged to the payment of loans authorized in this subsection.

14. *Urban real estate and personal property.* Personal or real property or both located within the United States or the Dominion of Canada, other than real property used or to be used primarily for agricultural, horticultural, ranching or mining purposes, which produces income or which by suitable improvement will produce income. However, personal property acquired under this subsection shall be acquired for the purpose of entering into a contract for the sale or for a use under which the contractual payments may reasonably be expected to result in the recovery of the investment and an investment return within the anticipated useful life of the property. Legal title to the real property may be acquired subject to a contract of sale. "*Real property*" as used in this subsection includes a leasehold of real estate, an undivided interest in a leasehold of real estate, and an undivided interest in the fee title of real estate. Investments under this subsection are not eligible in excess of ten percent of the legal reserve.

15. *Railroad obligations.* Bonds or other evidences of indebtedness which carry a fixed rate of interest and are issued, assumed or guaranteed by any railroad company incorporated under the laws of the United States of America, or of any state, district, insular or territorial possessions thereof, not in reorganization or receivership at the time of such investment, provided that the railroad company:

a. Shall have had for the three-year period immediately preceding investment, for which the necessary data for the railroad company shall have been published, a balance of income available for fixed charges which shall have averaged

per year not less than one and one-quarter times the fixed charges for the latest year of the period; and

b. Shall have had for the three-year period immediately preceding investment, for which the necessary data for both the railroad company and all class I railroads shall have been published:

(1) A balance of income available for the payment of fixed charges at least as many times greater than the fixed charges for the latest year of the period as the balance of income available for the payment of fixed charges of all class I railroads for the same three-year period is times greater than the amount of all fixed charges for such class I railroads for the latest year of the period; and

(2) An amount of railway operating revenues remaining after deduction of three times the fixed charges for the latest year of the period from the balance of income available for the payment of fixed charges for the three-year period, which amount is as great a proportion of its railway operating revenues for the same three-year period as is the proportion of railway operating revenues remaining for all class I railroads, determined in the same manner and for the same period as for the railroad.

The terms "*class I railroads*", "*balance of income available for the payment of fixed charges*", "*fixed charges*" and "*railway operating revenues*" when used in this subsection, are to be given the same meaning as in the accounting reports filed by a railroad company in accordance with the regulations for common carriers by rail of the Interstate Commerce Act; 24 Stat. L. 379; 49 U.S.C. § 1 to 40 inc., 1001 to 1100 inc., provided that the "*balance of income available for the payment of fixed charges*" and "*railway operating revenues remaining*", as the terms are used in this subsection, shall be computed before deduction of federal income or excess profits taxes; and that in computing "*fixed charges*" there shall be excluded interest and amortization charges applicable to debt called for redemption or which will otherwise mature within six months from the time of investment and for the payment of which funds have been or currently are being specifically set aside.

The eligibility of railroad obligations described in the first sentence of this subsection shall be determined exclusively as provided herein, without regard to the provisions for qualification contained in subsections 5 and 8 of this section. Provisions for qualification contained in this section shall not be construed as applying to equipment trust obligations, guaranteed stocks, or contingent interest bonds of railroad companies. Investments made in accordance with the provisions of this subsection shall not be eligible in excess of ten percent of the legal reserve.

16. *Deposit of securities.* Securities in an amount not less than the legal reserve as defined in this section shall be deposited and the deposit maintained with the commissioner of insurance

or at such places as the commissioner may designate as will properly safeguard them. There may be included in the deposit an amount of cash on hand not in excess of five percent of the deposit required, that deposit to be evidenced by a certified check, certificate of deposit, or other evidence satisfactory to the commissioner of insurance. Deposits of securities may be made in excess of the amounts required by this section. A stock company organized under the laws of this state shall not be required to make a deposit until the legal reserve, as ascertained by the commissioner, exceeds the amount deposited by it as capital. Real estate may be made a part of the deposit by furnishing evidence of ownership satisfactory to the commissioner and by conveying the real estate to the commissioner or the commissioner's successors in office by warranty deed. The commissioner and the successors in office shall hold the real estate in trust for the benefit of the policyholders of the company or members of the association. Real estate mortgage loans and policy loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner, which statement is subject to check at the discretion of the commissioner.

The securities comprising the deposit of a company or association against which proceedings are pending under section 508.18 shall vest in the state for the benefit of all policyholders of the company or association.

Securities or title to real estate on deposit may be withdrawn at any time and other eligible securities may be substituted, provided the amount maintained on deposit is equal to the sum of the legal reserve and twenty-five thousand dollars. In the case of real estate the commissioner shall execute and deliver to the company or association a quitclaim deed to the real estate. Any company or association shall, if requested by the commissioner, at the time of withdrawing any securities on deposit, designate for what purpose the same are being withdrawn.

Companies or associations having securities or title to real estate on deposit with the commissioner of insurance shall have the right to collect all dividends, interest, rent, or other income from the deposit unless proceedings against the company or association are pending under section 508.18, in which event the commissioner shall collect such interest, dividends, rent, or other income and add the same to the deposit.

Any company or association receiving payments or partial payments of principal on any securities deposited with the commissioner of insurance shall notify the commissioner of such fact at such times and in such manner as the commissioner may prescribe, giving the amount and date of payment.

The commissioner of insurance may receive on deposit securities or title to real estate of alien companies authorized to do business in the state

of Iowa, for the purpose of securing its policyholders in the state of Iowa and the United States. The provisions hereof not inconsistent with the deposit agreement shall apply to the deposits of such alien companies.

17. *Rules of valuation.*

a. All bonds or other evidences of debt having a fixed term and rate of interest, if amply secured and not in default as to principal or interest, may be valued as follows:

(1) If purchased at par, at the par value.

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

In applying the above rule, the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

b. Certificates of sale obtained by foreclosure of liens on real estate shall be valued in an amount not greater than the unpaid principal of the defaulted indebtedness plus any amounts actually expended for taxes and acquisition costs.

c. All investments, except those for which a specific rule is provided in this subsection, shall be valued at their market value, or at their appraised value, or at prices determined by the commissioner of insurance as representing their fair market value, or at a value as determined under rules adopted by the national association of insurance commissioners.

The commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rules, but no company or association shall be prevented from valuing any asset at an amount less than that provided by this subsection.

18. *Common stocks or shares.*

a. Common stocks or shares issued by solvent corporations or institutions are eligible if the total investment in stocks or shares in the corporations or institutions does not exceed ten percent of legal reserve, provided not more than one-half percent of the legal reserve is invested in stocks or shares of any one corporation. However, the stocks or shares shall be listed or admitted to trading on an established foreign securities exchange or a securities exchange in the United States or shall be publicly held and traded in the “*over-the-counter market*” and market quotations shall be readily available, and further, the investment shall not create a conflict of interest for an officer or director of the company between the insurance company and the corporation whose stocks or shares are purchased.

b. Common stocks or shares in a subsidiary corporation, the acquisition or purchase of which is authorized by section 508.33 are eligible if the total investment in these stocks or shares does not exceed five percent of the legal reserve. These stocks or shares are eligible even if the stocks or

shares are not listed or admitted to trading on a securities exchange in the United States and are not publicly held and have not been traded in the “*over-the-counter market*”. The stocks or shares shall be valued at their book value.

19. *Other foreign government or corporate obligations.* Bonds or other evidences of indebtedness, not to include currency, issued, assumed, or guaranteed by a foreign government other than Canada, or by a corporation incorporated under the laws of a foreign government other than Canada. Such governmental obligations must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Such corporate obligations must meet the qualifications established in subsection 5 for bonds and other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or Canada. Foreign investments authorized by this subsection are not eligible in excess of ten percent of the legal reserve of the life insurance company or association. Investments in obligations of a foreign government other than Canada are not eligible in excess of two percent of the legal reserve in the securities of foreign governments of any one foreign nation. Investments in a corporation incorporated under the laws of a foreign government other than Canada are not eligible in excess of two percent of the legal reserve in the securities of any one foreign corporation.

Eligible investments in foreign obligations under this subsection are limited to the types of obligations specifically referred to in this subsection. This subsection in no way limits or restricts investments in Canadian obligations and securities specifically authorized in other subsections of this section.

This subsection shall not authorize investment in evidences of indebtedness issued, assumed, or guaranteed by a foreign government which engages in a consistent pattern of gross violations of human rights.

20. *Venture capital funds.* Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the funds in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its legal reserve under this subsection. For purposes of this subsection, “*venture capital fund*” means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small busi-

ness. “*Equity interests*” means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

“*Venture capital fund*” includes an equity interest in the Iowa fund of funds as defined in section 15E.62.

21. *Use of custodian banks, clearing corporations, and the federal reserve book-entry system.*

a. As used in this subsection:

(1) “*Clearing corporation*” means a corporation as defined in section 554.8102.

(2) “*Custodian bank*” means a federal or state bank or trust company regulated under the Iowa banking laws or the federal reserve system, which maintains an account in its name in a clearing corporation and acts as custodian of securities owned by a domestic insurer.

(3) “*Federal reserve book-entry system*” means the computerized system sponsored by the United States department of the treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and its agencies and instrumentalities, in the federal reserve banks through national banks, state banks, or trust companies, which either are members of the federal reserve system or otherwise have access to the computerized systems.

b. Securities deposited by a domestic insurance company with a custodian bank, or redeposited by a custodian bank with a clearing corporation, or held in the federal reserve book-entry system may be used to meet the deposit requirements of subsection 16. The commissioner shall adopt rules necessary to implement this section which:

(1) Establish guidelines on which the commissioner determines whether a custodian bank qualifies as a bank in which securities owned by an insurer may be deposited for the purpose of satisfying the requirements of subsection 16.

(2) Designate those clearing corporations in which securities owned by insurers may be deposited.

(3) Set forth provisions that custodian agreements executed between custodian banks and insurers shall contain. These shall include provisions stating that minimum deposit levels shall be maintained and that the parties agree securities in deposits with custodian banks shall vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

(4) Establish other safeguards applicable to the use of custodian banks and clearing corporations by insurers which the commissioner believes necessary to protect the policyholders of the insurers.

c. A security owned by a domestic insurer and deposited in a custodian bank or clearing corporation does not qualify for purposes of its legal re-

serve deposit unless the custodian bank and clearing corporation are approved by the commissioner for that purpose.

22. *Financial instruments used in hedging transactions.*

a. As used in this subsection, unless the context otherwise requires:

(1) “*Financial instrument*” means an agreement, option, instrument, or any series or combination agreement, option, or instrument that provides for either of the following:

(a) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu of such delivery or relinquishment.

(b) Which has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

(2) “*Financial instrument transaction*” means a transaction involving the use of one or more financial instruments.

(3) “*Hedging transaction*” means a financial instrument transaction which is entered into and maintained to reduce either of the following:

(a) The risk of a change in the value, yield, price, cash flow, or quality of assets or liabilities which the domestic insurer has acquired and maintains as qualified assets in its legal reserve deposit or which liabilities the domestic insurer has incurred and form the basis for calculation of its legal reserve.

(b) The currency exchange-rate risk or the degree of exposure as to assets or liabilities which the domestic insurer has acquired or incurred.

b. Financial instruments used in hedging transactions must meet the qualifications established in subsection 5 for bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States or Canada, or the qualifications established in subsection 19 for bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of a foreign government other than Canada.

c. Investments in financial instruments used in hedging transactions are not eligible in excess of two percent of the legal reserve in the financial instruments of any one corporation, less any securities of that corporation owned by the company or association and in which its legal reserve is invested, except insofar as the financial instruments are collateralized by cash or United States government obligations as authorized by subsection 1 deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in

the state in accordance with section 508.18 whenever proceedings under that section are instituted.

*d.* Investments in financial instruments used in hedging transactions are not eligible in excess of ten percent of the legal reserve, except insofar as the financial instruments are collateralized by cash or United States government obligations as authorized by subsection 1 deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

*e.* Investments in financial instruments of foreign governments or foreign corporate obligations, other than Canada, used in hedging transactions are not eligible in excess of ten percent of the legal reserve, less any foreign investment authorized by subsection 19 owned by the company or association and in which its legal reserve is invested, except insofar as the financial instruments are collateralized by cash or United States government obligations as authorized by subsection 1 deposited with a custodian bank as defined in subsection 21, and held under a written agreement with the custodian bank that complies with subsection 21 and provides for the proceeds of the collateral, subject to the terms and conditions of the applicable collateral or other credit support agreement, to be remitted to the legal reserve deposit of the company or association and to vest in the state in accordance with section 508.18 whenever proceedings under that section are instituted.

*f.* Prior to engaging in hedging transactions under this subsection, a domestic insurer shall develop and adequately document policies and procedures regarding hedging transaction strategies and objectives. Such policies and procedures shall address authorized hedging transactions, limitations, internal controls, documentation, and authorization and approval procedures. Such policies and procedures shall also provide for review of hedging transactions by the domestic insurer's board of directors or the board of directors' designee.

*g.* A domestic insurer shall be able to demonstrate to the commissioner the intended hedging characteristics of hedging transactions under this subsection and the ongoing effectiveness of each hedging transaction or combination of hedging transactions.

*h.* Financial instruments used in hedging

transactions shall only be eligible in accordance with this subsection after the commissioner has adopted rules pursuant to chapter 17A regulating hedging transactions under this subsection.

2003 Acts, ch 91, §20

Similar provisions, §515.35

\*48 Stat. L. 1246; 12 U.S.C. §1701 et seq.

\*58 Stat. L. 291; recodified, 72 Stat. L. 1105, 1273; now covered by 38 U.S.C. §3701 et seq.

\*\*\*60 Stat. L. 1062; repealed by Pub. L. No. 87-128, §341(a); see 7 U.S.C. §1921 et seq.

Subsection 20, NEW unnumbered paragraph 2

#### **511.27 Commissioner as process agent.**

Every life insurance company and association shall, before receiving a certificate to do business in this state or any renewal of a certificate to do business in this state, file in the office of the commissioner of insurance a power of attorney and an agreement in writing that service of notice or process of any kind may be made on the commissioner that shall be as valid, binding, and effective for all purposes as if served upon the company according to the laws of this or any other state, and waiving all claim or right of error due to the filing of the power of attorney and the agreement regarding service of notice or process.

2003 Acts, ch 91, §21

Section amended

**511.30 Intoxication as defense.** Repealed by 2003 Acts, ch 91, § 51.

#### **511.40 Employer — insurable interest.**

1. As used in this section, "employees" includes officers, managers, and directors of an employer, and the shareholders, partners, members, proprietors, or other owners of the employer.

2. An employer and a trust established by the employer for the benefit of the employer or for the benefit of the employer's active or retired employees has an insurable interest in each of the lives of the employer's active or retired employees and may insure their lives on an individual or group basis.

3. The amount of coverage on the lives of non-management or nonkey employees shall be reasonably related to the benefit provided to the employees.

4. On and after July 1, 2003, an employer or trust shall obtain the written consent of each employee being insured by an employer and trust pursuant to this section before insuring the employee's life. The consent shall include an acknowledgment by the employee that the employer or trust may maintain the life insurance after the employee is no longer employed by the employer. An employer shall not retaliate in any manner against an employee who refuses to consent.

2003 Acts, ch 91, §22

NEW section

## CHAPTER 512B

### FRATERNAL BENEFIT SOCIETIES

#### 512B.33 Service of process.

1. A society authorized to do business in this state shall file in the office of the commissioner a power of attorney and an agreement in writing that service of process in any action or proceeding against the society may be served on the commissioner and shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of the power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original.

2. Service of process shall only be made upon the commissioner, or if absent, upon the person in

charge of the commissioner's office. Service shall be made in triplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall promptly forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer of the society. A society shall not be required to file its answer, pleading, or defense in less than thirty days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner provided in this section.

2003 Acts, ch 91, §23  
Section amended

## CHAPTER 513C

### INDIVIDUAL HEALTH INSURANCE MARKET REFORM

#### 513C.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Actuarial certification*" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that an individual carrier is in compliance with the provisions of section 513C.5 which is based upon the actuary's or individual's examination, including a review of the appropriate records and the actuarial assumptions and methods used by the carrier in establishing premium rates for applicable individual health benefit plans.

2. "*Affiliate*" or "*affiliated*" means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

3. "*Basic or standard health benefit plan*" means the core group of health benefits developed pursuant to section 513C.8.

4. "*Block of business*" means all the individuals insured under the same individual health benefit plan.

5. "*Carrier*" means any entity that provides individual health benefit plans in this state. For purposes of this chapter, carrier includes an insurance company, a group hospital or medical service corporation, a fraternal benefit society, a health maintenance organization, and any other entity providing an individual plan of health insurance or health benefits subject to state insurance regu-

lation. "*Carrier*" does not include an organized delivery system.

6. "*Commissioner*" means the commissioner of insurance.

7. "*Director*" means the director of public health appointed pursuant to section 135.2.

8. "*Eligible individual*" means an individual who is a resident of this state and who either has qualifying existing coverage or has had qualifying existing coverage within the immediately preceding thirty days, or an individual who has had a qualifying event occur within the immediately preceding thirty days.

9. "*Established service area*" means a geographic area, as approved by the commissioner and based upon the carrier's certificate of authority to transact business in this state, within which the carrier is authorized to provide coverage or a geographic area, as approved by the director and based upon the organized delivery system's license to transact business in this state, within which the organized delivery system is authorized to provide coverage.

10. "*Filed rate*" means, for a rating period related to each block of business, the rate charged to all individuals with similar rating characteristics for individual health benefit plans.

11. "*Individual health benefit plan*" means any hospital or medical expense incurred policy or certificate, hospital or medical service plan, or health maintenance organization subscriber contract sold to an individual, or any discretionary group trust or association policy, whether issued within

or outside of the state, providing hospital or medical expense incurred coverage to individuals residing within this state. Individual health benefit plan does not include a self-insured group health plan, a self-insured multiple employer group health plan, a group conversion plan, an insured group health plan, accident-only, specified disease, short-term hospital or medical, hospital confinement indemnity, credit, dental, vision, Medicare supplement, long-term care, or disability income insurance coverage, coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, or automobile medical payment insurance.

12. "Organized delivery system" means an organized delivery system licensed by the director.

13. "Premium" means all moneys paid by an individual and eligible dependents as a condition of receiving coverage from a carrier or an organized delivery system, including any fees or other contributions associated with an individual health benefit plan.

14. "Qualifying event" means any of the following:

a. Loss of eligibility for medical assistance provided pursuant to chapter 249A or Medicare coverage provided pursuant to Title XVIII of the federal Social Security Act.

b. Loss or change of dependent status under qualifying previous coverage.

c. The attainment by an individual of the age of majority.

d. Loss of eligibility for the hawk-i program authorized in chapter 514I.

15. "Qualifying existing coverage" or "qualifying previous coverage" means benefits or coverage provided under any of the following:

a. Any group health insurance that provides benefits similar to or exceeding benefits provided under the standard health benefit plan, provided that such policy has been in effect for a period of at least one year.

b. An individual health insurance benefit plan, including coverage provided under a health maintenance organization contract, a hospital or medical service plan contract, or a fraternal benefit society contract, that provides benefits similar to or exceeding the benefits provided under the standard health benefit plan, provided that such policy has been in effect for a period of at least one year.

c. An organized delivery system that provides benefits similar to or exceeding the benefits provided under the standard health benefit plan, provided that the benefits provided by the organized delivery system have been in effect for a period of at least one year.

16. "Rating characteristics" means demographic characteristics of individuals which are considered by the carrier in the determination of premium rates for the individuals and which are approved by the commissioner.

17. "Rating period" means the period for which premium rates established by a carrier are in effect.

18. "Restricted network provision" means a provision of an individual health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier or the organized delivery system to provide health care services to covered individuals.

2003 Acts, ch 108, §131

Organized delivery systems authorized; see 93 Acts, ch 158, §3

Terminology change applied

### 513C.7 Availability of coverage.

1. A carrier or an organized delivery system, as a condition of issuing individual health benefit plans in this state, shall make available a basic or standard health benefit plan to an eligible individual who applies for a plan and agrees to make the required premium payments and to satisfy other reasonable provisions of the basic or standard health benefit plan. A carrier or an organized delivery system is not required to issue a basic or standard health benefit plan to an individual who meets any of the following criteria:

a. The individual is covered or is eligible for coverage under a health benefit plan provided by the individual's employer or is covered as the spouse or dependent of another individual covered or eligible for coverage under a health benefit plan provided by that individual's employer.

b. An eligible individual who does not apply for a basic or standard health benefit plan within sixty-three days of a qualifying event or within sixty-three days upon becoming ineligible for qualifying existing coverage.

c. The individual is covered or is eligible for any continued group coverage under section 4980b of the Internal Revenue Code, sections 601 through 608 of the federal Employee Retirement Income Security Act of 1974, sections 2201 through 2208 of the federal Public Health Service Act, or any state-required continued group coverage. For purposes of this subsection, an individual who would have been eligible for such continuation of coverage, but is not eligible solely because the individual or other responsible party failed to make the required coverage election during the applicable time period, is deemed to be eligible for such group coverage until the date on which the individual's continuing group coverage would have expired had an election been made.

2. A carrier or an organized delivery system shall issue the basic or standard health benefit plan to an individual currently covered by an underwritten benefit plan issued by that carrier or an organized delivery system at the option of the individual. This option must be exercised within sixty-three days of notification of a premium rate increase applicable to the underwritten benefit plan.

3. *a.* A carrier shall file with the commissioner, in a form and manner prescribed by the commissioner, the basic or standard health benefit plan. A basic or standard health benefit plan filed pursuant to this paragraph may be used by a carrier beginning thirty days after it is filed unless the commissioner disapproves of its use.

The commissioner may at any time, after providing notice and an opportunity for a hearing to the carrier, disapprove the continued use by a carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

*b.* An organized delivery system shall file with the director, in a form and manner prescribed by the director, the basic or standard health benefit plan to be used by the organized delivery system. A basic or standard health benefit plan filed pursuant to this paragraph may be used by the organized delivery system beginning thirty days after it is filed unless the director disapproves of its use.

The director may at any time, after providing notice and an opportunity for a hearing to the organized delivery system, disapprove the continued use by an organized delivery system of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this chapter.

4. *a.* The individual basic or standard health benefit plan shall not deny, exclude, or limit benefits for a covered individual for losses incurred more than twelve months following the effective date of the individual's coverage due to a preexisting condition. A preexisting condition shall not be defined more restrictively than any of the following:

(1) A condition that would cause an ordinarily prudent person to seek medical advice, diagnosis, care, or treatment during the twelve months immediately preceding the effective date of coverage.

(2) A condition for which medical advice, diagnosis, care, or treatment was recommended or received during the twelve months immediately preceding the effective date of coverage.

(3) A pregnancy existing on the effective date of coverage.

*b.* A carrier or an organized delivery system shall waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services in an individual health benefit plan for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than sixty-three days prior to the effective date of the new coverage. For purposes of this section, periods of coverage under medical assistance provided pursuant to chapter 249A or 514I, or Medicare coverage provided pursuant to Title XVIII of the federal Social Security Act shall not be counted

with respect to the sixty-three-day requirement.

5. A carrier or an organized delivery system is not required to offer coverage or accept applications pursuant to subsection 1 from any individual not residing in the carrier's or the organized delivery system's established geographic access area.

6. A carrier or an organized delivery system shall not modify a basic or standard health benefit plan with respect to an individual or dependent through riders, endorsements, or other means to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

2003 Acts, ch 91, §24  
Subsection 4, paragraph b amended

### **513C.10 Iowa individual health benefit reinsurance association.**

1. The Iowa individual health benefit reinsurance association is established as a nonprofit corporation.

*a.* All persons that provide health benefit plans in this state including insurers providing accident and sickness insurance under chapter 509, 514, or 514A, whether on an individual or group basis; fraternal benefit societies providing hospital, medical, or nursing benefits under chapter 512B; and health maintenance organizations, organized delivery systems, and all other entities providing health insurance or health benefits subject to state insurance regulation shall be members of the association.

*b.* The association shall be incorporated under chapter 504A, shall operate under a plan of operation established and approved pursuant to chapter 504A, and shall exercise its powers through the board of directors established under chapter 514E.

2. Rates for basic and standard coverages as provided in this chapter shall be determined by each carrier or organized delivery system as the product of a basic and standard factor and the lowest rate available for issuance by that carrier or organized delivery system adjusted for rating characteristics and benefits. Basic and standard factors shall be established annually by the Iowa comprehensive health insurance association board with the approval of the commissioner. Multiple basic and standard factors for a distinct grouping of basic and standard policies may be established. A basic and standard factor is limited to a minimum value defined as the ratio of the average of the lowest rate available for issuance and the maximum rate allowable by law divided by the lowest rate available for issuance. A basic and standard factor is limited to a maximum value defined as the ratio of the maximum rate allowable by law divided by the lowest rate available for issuance. The maximum rate allowable by law and the lowest rate available for issuance is determined based on the rate restrictions under this

chapter. For policies written after January 1, 2002, rates for the basic and standard coverages as provided in this chapter shall be calculated using the basic and standard factors and shall be no lower than the maximum rate allowable by law. However, to maintain assessable loss assessments at or below one percent of total health insurance premiums or payments as determined in accordance with subsection 6, the Iowa comprehensive health insurance association board with the approval of the commissioner may increase the value for any basic and standard factor greater than the maximum value.

The Iowa individual health benefit reinsurance association may, with the approval of the commissioner, increase cost sharing provisions including, but not limited to, basic and standard plan deductibles, coinsurance, or copayments.

3. Following the close of each calendar year, the association, in conjunction with the commissioner, shall require each carrier or organized delivery system to report the amount of earned premiums and the associated paid losses for all basic and standard plans issued by the carrier or organized delivery system. The reporting of these amounts must be certified by an officer of the carrier or organized delivery system.

4. The board shall develop procedures and make assessments and distributions as required to equalize the individual carrier and organized delivery system gains or losses so that each carrier or organized delivery system receives the same ratio of paid claims to ninety percent of earned premiums as the aggregate of all basic and standard plans insured by all carriers and organized delivery systems in the state.

5. If the statewide aggregate ratio of paid claims to ninety percent of earned premiums is greater than one, the dollar difference between ninety percent of earned premiums and the paid claims shall represent an assessable loss.

6. The assessable loss plus necessary operating expenses for the association, plus any additional expenses as provided by law, shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums or payments for subscriber contracts received in Iowa during the second preceding calendar year, or with paid losses in the year, coinciding with or ending during the calendar year, or on any other equitable basis as provided in the plan of operation. In sharing losses, the association may abate or defer any part of the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for an initial or interim assessment against the members of the association to meet the operating expenses of the association until the next calendar year is completed. For purposes of this subsection,

“total health insurance premiums” and “payments for subscriber contracts” include, without limitation, premiums or other amounts paid to or received by a member for individual and group health plan care coverage provided under any chapter of the Code or Acts, and “paid losses” includes, without limitation, claims paid by a member operating on a self-funded basis for individual and group health plan care coverage provided under any chapter of the Code or Acts. For purposes of calculating and conducting the assessment, the association shall have the express authority to require members to report on an annual basis each member’s total health insurance premiums and payments for subscriber contracts and paid losses. A member is liable for its share of the assessment calculated in accordance with this section regardless of whether it participates in the individual insurance market.

7. The board shall develop procedures for distributing the assessable loss assessments to each carrier and organized delivery system in proportion to the carrier’s and organized delivery system’s respective share of premium for basic and standard plans to the statewide total premium for all basic and standard plans.

8. The board shall ensure that procedures for collecting and distributing assessments are as efficient as possible for carriers and organized delivery systems. The board may establish procedures which combine, or offset, the assessment from, and the distribution due to, a carrier or organized delivery system.

9. A carrier or an organized delivery system may petition the association board to seek remedy from writing a significantly disproportionate share of basic and standard policies in relation to total premiums written in this state for health benefit plans. Upon a finding that a carrier or organized delivery system has written a disproportionate share, the board may agree to compensate the carrier or organized delivery system either by paying to the carrier or organized delivery system an additional fee not to exceed two percent of earned premiums from basic and standard policies for that carrier or organized delivery system or by petitioning the commissioner or director, as appropriate, for remedy.

10. *a.* The commissioner, upon a finding that the acceptance of the offer of basic and standard coverage by individuals pursuant to this chapter would place the carrier in a financially impaired condition, shall not require the carrier to offer coverage or accept applications for any period of time the financial impairment is deemed to exist.

*b.* The director, upon a finding that the acceptance of the offer of basic and standard coverage by individuals pursuant to this chapter would place the organized delivery system in a financially impaired condition, shall not require the organized delivery system to offer coverage or accept applica-

tions for any period of time the financial impairment is deemed to exist.

2003 Acts, ch 91, §25, 26, 53  
2003 amendments to subsection 1, paragraph a, and subsection 6 take

effect April 28, 2003, and apply retroactively to July 1, 1995; 2003 Acts, ch 91, §53

Subsection 1, paragraph a amended  
Subsection 6 amended

## CHAPTER 514

### NONPROFIT HEALTH SERVICE CORPORATIONS

#### 514.1 Applicability — definitions.

A corporation organized under chapter 504, Code 1989, or chapter 504A for the purpose of establishing, maintaining, and operating a nonprofit hospital service plan, whereby hospital service may be provided by the corporation or by a hospital with which it has a contract for service, to the public who become subscribers to this plan under a contract which entitles each subscriber to hospital service; or a corporation organized for the purpose of establishing, maintaining, and operating a plan whereby health care service may be provided at the expense of this corporation, by licensed physicians and surgeons, dentists, podiatric physicians, osteopathic physicians, osteopathic physicians and surgeons or chiropractors, to subscribers under contract, entitling each subscriber to health care service, as provided in the contract; or a corporation organized for the purpose of establishing, maintaining, and operating a nonprofit pharmaceutical service plan or optometric service plan, whereby pharmaceutical or optometric service may be provided by this corporation or by a licensed pharmacy with which it has a contract for service, to the public who become subscribers to this plan under a contract which entitles each subscriber to pharmaceutical or optometric service; shall be governed by this chapter and is exempt from all other provisions of the insurance laws of this state, unless specifically designated in this chapter, not only in governmental relations with the state but for every other purpose, and additions enacted after July 1, 1939, shall not apply to these corporations unless they are expressly designated in the additions.

For the purposes of this chapter, “subscriber” means an individual who enters into a contract for health care services with a corporation subject to this chapter and includes a person eligible for medical assistance or additional medical assistance as defined under chapter 249A, with respect to whom the department of human services has entered into a contract with a firm operating under chapter 514. For purposes of this chapter, “provider” means a person as defined in section 4.1, subsection 20, which is licensed or authorized in this state to furnish health care services. “Health care” means that care necessary for the purpose of preventing, alleviating, curing, or healing human physical or mental illness, injury, or

disability.

2003 Acts, ch 108, §96  
Unnumbered paragraph 1 amended

#### 514.2 Incorporation.

Persons desiring to form a nonprofit hospital service corporation, or a nonprofit medical service corporation, or a nonprofit pharmaceutical or optometric service corporation shall incorporate under the provisions of chapter 504, Code 1989, or chapter 504A, as supplemented and amended herein and any acts amendatory thereof.

2003 Acts, ch 108, §97  
Section amended

#### 514.2A Service of process.

A nonprofit health service corporation authorized to do business in this state shall file in the office of the commissioner a power of attorney and an agreement in writing that service of process in any action or proceeding against the corporation may be served on the commissioner and shall be of the same legal force and validity as if served upon the corporation, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of the power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original.

2003 Acts, ch 91, §27  
NEW section

#### 514.5 Contracts for service.

A hospital service corporation organized under chapter 504, Code 1989, or chapter 504A may enter into contracts for the rendering of hospital service to any of its subscribers with hospitals maintained and operated by the state or any of its political subdivisions, or by any corporation, association, or individual. Such hospital service corporation may also contract with an ambulatory surgical facility to provide surgical services to the corporation’s subscribers. Hospital service is meant to include bed and board, general nursing care, use of the operating room, use of the delivery room, ordinary medications and dressings and other customary routine care. Ambulatory surgical facility means a facility constructed and operated for the specific purpose of providing surgery to patients admitted to and discharged from the facility with-

in the same day.

A medical service corporation organized under this chapter may enter into contracts with subscribers to furnish health care service through physicians and surgeons, dentists, podiatric physicians, osteopathic physicians, osteopathic physicians and surgeons, or chiropractors.

Any pharmaceutical or optometric service corporation organized under the provisions of said chapter may enter into contracts for the rendering of pharmaceutical or optometric service to any of

its subscribers. Membership in any pharmaceutical service corporation shall be open to all pharmacies licensed under chapter 155A.

A hospital service corporation or medical service corporation organized under this chapter may enter into contracts with subscribers and providers to furnish health care services not otherwise allocated by this section.

2003 Acts, ch 108, §98  
Unnumbered paragraph 1 amended

## CHAPTER 514B

### HEALTH MAINTENANCE ORGANIZATIONS

#### **514B.3 Application for a certificate of authority.**

An application for a certificate of authority shall be verified by an officer or authorized representative of the health maintenance organization, shall be in a form prescribed by the commissioner, and shall set forth or be accompanied by the following:

1. A copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all of its amendments.

2. A copy of the bylaws, rules or similar document, if any, regulating the conduct of the internal affairs of the applicant.

3. A list of the names, addresses and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers if a corporation and the partners or members if a partnership or association.

4. A copy of any contract made or to be made between any providers or persons listed in subsection 3 and the applicant.

5. A statement generally describing the health maintenance organization including, but not limited to, a description of its facilities and personnel.

6. A copy of the form of evidence of coverage.

7. A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees or other organizations.

8. Financial statements showing the applicant's assets, liabilities and sources of financial support. If the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement shall satisfy this requirement unless the commissioner directs that additional financial information is required for the proper administration of this chapter.

9. A description of the proposed method of

marketing the plan, a financial plan which includes a three-year projection of operating results anticipated, and a statement as to the sources of funding.

10. A power of attorney executed by any applicant appointing the commissioner, the commissioner's successors in office, and deputies to receive process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state.

11. A statement reasonably describing the geographic area to be served.

12. A description of the complaint procedures to be utilized as required under section 514B.14.

13. A description of the procedures and programs to be implemented to meet the requirements for quality of health care as determined by the director of public health under section 514B.4.

14. A description of the mechanism by which enrollees shall be allowed to participate in matters of policy and operation as required by section 514B.7.

15. Other information the commissioner finds reasonably necessary to make the determinations required in section 514B.5.

A health maintenance organization shall, unless otherwise provided for in this chapter, file notice with the commissioner and receive approval from the commissioner before modifying the operations described in the information required by this section.

Upon receipt of an application for a certificate of authority, the commissioner shall immediately transmit copies of the application and accompanying documents to the director of public health and the affected regional health planning council, as authorized by Public Law 89-749 (42 U.S.C. 246(b) 2b), for their nonbinding consultation and advice.

2003 Acts, ch 91, §28  
Subsection 10 amended

#### **514B.12 Annual report.**

A health maintenance organization shall annu-

ally on or before the first day of March file with the commissioner or a depository designated by the commissioner a report verified by at least two of its principal officers and covering the preceding calendar year. The report shall be on forms prescribed by the commissioner and shall include:

1. Financial statements of the organization including a balance sheet as of the end of the preceding calendar year and statement of profit and loss for the year then ended, certified by a certified public accountant or an independent public accountant.

2. Any material changes in the information submitted pursuant to section 514B.3.

3. The number of persons enrolled during the year, the number of enrollees as of the end of the year and the number of enrollments terminated during the year.

4. Other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out the commissioner's duties under this chapter.

2003 Acts, ch 91, §29

Unnumbered paragraph 1 amended

#### **514B.33 Establishment of limited service organizations.**

1. A person may apply to the commissioner for and obtain a certificate of authority to establish

and operate a limited service organization in compliance with this chapter. A person shall not establish or operate a limited service organization in this state, or sell, offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a limited service organization without obtaining a certificate of authority under this chapter.

2. When not otherwise provided, a foreign or domestic limited service organization doing business in this state shall pay the commissioner the fees as required in section 511.24.

3. The commissioner shall adopt rules pursuant to chapter 17A establishing a certification process for limited service organizations.

4. *a.* For purposes of this section, "limited service organization" means an organization providing dental care services, vision care services, mental health services, substance abuse services, pharmaceutical services, podiatric care services, or such other services as may be determined by the commissioner.

*b.* "Limited service organization" does not include an organization providing hospital, medical, surgical, or emergency services, except as such services are provided incident to those services identified in paragraph "a".

2003 Acts, ch 91, §30

NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and

4

## CHAPTER 514C

### SPECIAL HEALTH AND ACCIDENT INSURANCE COVERAGES

#### **514C.4 Mandated coverage for mammography.**

1. A policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide minimum mammography examination coverage, including, but not limited to, the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state.

*a.* Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

*b.* An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

*c.* An individual or group health maintenance organization contract regulated under chapter 514B.

*d.* An individual or group Medicare supplemental policy, unless coverage pursuant to such policy is preempted by federal law.

A long-term care policy or contract is specifically excluded from regulation under this section.

2. As used in this section, "*minimum mam-*

*mography examination coverage*" means benefits which are better than or equal to the following minimum requirements:

*a.* One baseline mammogram for any woman who is thirty-five through thirty-nine years of age, or more frequent mammograms if recommended by the woman's physician.

*b.* A mammogram every two years for any woman who is forty through forty-nine years of age, or more frequently if recommended by the woman's physician.

*c.* A mammogram every year for any woman who is fifty years of age or older, or more frequently if recommended by the woman's physician.

3. Mammogram benefits may be subject to any policy or contract provisions which apply generally to other services covered by the policy or contract.

4. The commissioner of insurance shall adopt rules under chapter 17A necessary to implement this section.

2003 Acts, ch 135, §1 - 3

Subsection 1, unnumbered paragraph 1 amended

Subsection 2, paragraphs a and c amended

Subsection 4 amended

## CHAPTER 514D

### ACCIDENT AND SICKNESS INSURANCE POLICIES

#### **514D.5 Disclosure, Medicare information, and advertising.**

1. Except as otherwise provided in subsection 3, in order to provide for full and fair disclosure in the sale of individual accident and sickness insurance policies or subscriber contracts a policy or contract shall not be delivered or issued for delivery in this state unless the outline of coverage described in subsection 2 either accompanies the policy or contract or is delivered to the applicant at the time application is made and unless an acknowledgment of receipt or certificate of delivery of the outline is provided the insurer. In the event the policy or contract is issued on a basis other than that applied for, the outline of coverage properly describing the policy or contract must accompany the policy or contract when it is delivered and must clearly state that it is not the policy or contract for which application was made.

2. The commissioner shall prescribe the format and content of the outline of coverage required by subsection 1. “*Format*” means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. The outline of coverage shall include all of the following:

*a.* A statement identifying the applicable category or categories of coverage provided by the policy or contract as prescribed in section 514D.4.

*b.* A description of the principal benefits and coverage provided in the policy or contract.

*c.* A statement of the exceptions, reductions, and limitations contained in the policy or contract.

*d.* A statement of the renewal provisions including any reservation by the insurer of a right to change premiums.

*e.* A statement that the outline is a summary of the policy or contract issued or applied for and that the policy or contract should be consulted to determine governing contractual provisions.

If payment will not be made for services per-

formed by a chiropractor acting within the scope of the chiropractor’s license when those services would be compensable if performed by a medical doctor, then a statement that services performed by a chiropractor are not compensable shall be included in the outline of coverage.

3. The commissioner shall prescribe disclosure rules for Medicare supplement coverage which are determined to be in the public interest and which are designed to adequately inform the prospective insured of the need for and extent of coverage offered as Medicare supplement coverage. For Medicare supplement coverage, the outline of coverage required by subsection 2 shall be furnished to the prospective insured with the application form.

4. The commissioner shall further prescribe by rule a standard form for and the contents of an informational brochure for persons eligible for Medicare by reason of age, which is intended to improve the buyer’s ability to select the most appropriate coverage and to improve the buyer’s understanding of Medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that this informational brochure be provided to prospective insureds eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by rule that this brochure must be provided to prospective insureds eligible for Medicare by reason of age upon request, but not later than at the time of delivery of the policy or contract.

5. The commissioner shall adopt rules prohibiting the advertising of forms titled as “nursing home” forms or inferring coverage for custodial care in a nursing facility as defined in section 135C.1 unless such forms provide coverage for custodial care in a nursing facility as defined in section 135C.1.

2003 Acts, ch 141, §15  
Subsections 3 and 4 amended

## CHAPTER 514E

### IOWA COMPREHENSIVE HEALTH INSURANCE ASSOCIATION

#### **514E.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “*Association*” means the Iowa comprehensive health insurance association established by section 514E.2.

2. “*Association policy*” means an individual or group policy issued by the association that provides the coverage specified in section 514E.4.

3. “*Carrier*” means an insurer providing accident and sickness insurance under chapter 509, 514 or 514A and includes a health maintenance or-

ganization established under chapter 514B if payments received by the health maintenance organization are considered premiums pursuant to section 514B.31 and are taxed under chapter 432. "Carrier" also includes a corporation which becomes a mutual insurer pursuant to section 514.23 and any other person as defined in section 4.1, subsection 20, who is or may become liable for the tax imposed by chapter 432.

4. "Church plan" means the same as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 3(33).

5. "Commissioner" means the commissioner of insurance.

6. "Creditable coverage" means health benefits or coverage provided to an individual under any of the following:

- a. A group health plan.
- b. Health insurance coverage.
- c. Part A or Part B Medicare pursuant to Title XVIII of the federal Social Security Act.
- d. Medicaid pursuant to Title XIX of the federal Social Security Act, other than coverage consisting solely of benefits under section 1928 of that Act.
- e. 10 U.S.C. ch. 55.
- f. A health or medical care program provided through the Indian health service or a tribal organization.
- g. A state health benefits risk pool.
- h. A health plan offered under 5 U.S.C. ch. 89.
- i. A public health plan as defined under federal regulations.
- j. A health benefit plan under section 5(e) of the federal Peace Corps Act, 22 U.S.C. § 2504(e).
- k. An organized delivery system licensed by the director of public health.
- l. The hawk-i program authorized by chapter 514I.

7. "Director" means the director of public health.

8. "Eligible expenses" means the usual, customary and reasonable charges for the health care services specified in section 514E.4.

9. "Federally eligible individual" means an individual who satisfies the following:

- a. For whom, as of the date on which the individual seeks coverage under this chapter, the aggregate of the periods of creditable coverage is eighteen or more months with no more than a sixty-three day lapse of coverage, and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan, or health insurance coverage offered in connection with any such plan.
- b. Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the federal Social Security Act, or a state plan under Title XIX of that Act, or any successor program, and does not have other health insurance coverage.
- c. With respect to whom the most recent cover-

age within the coverage period described in paragraph "a" was not terminated based on a nonpayment of premiums or fraud.

d. If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, and elected such coverage.

e. Who, if the individual elected continuation coverage as provided in paragraph "d", has exhausted the continuation coverage under the provision or program.

10. "Governmental plan" means as defined under section 3(32) of the federal Employee Retirement Income Security Act of 1974 and any federal governmental plan.

11. a. "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the federal Employee Retirement Income Security Act of 1974, to the extent that the plan provides medical care including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

b. For purposes of this subsection, "medical care" means amounts paid for any of the following:

- (1) The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting a structure or function of the body.
- (2) Transportation primarily for and essential to medical care referred to in subparagraph (1).
- (3) Insurance covering medical care referred to in subparagraph (1) or (2).

c. For purposes of this chapter, the following apply:

(1) A plan, fund, or program established or maintained by a partnership which, but for this subsection, would not be an employee welfare benefit plan, shall be treated as an employee welfare benefit plan which is a group health plan to the extent that the plan, fund, or program provides medical care, including items and services paid for as medical care for present or former partners in the partnership or to the dependents of such partners, as defined under the terms of the plan, fund, or program, either directly or through insurance, reimbursement, or otherwise.

(2) With respect to a group health plan, the term "employer" includes a partnership with respect to a partner.

(3) With respect to a group health plan, the term "participant" includes the following:

(a) With respect to a group health plan maintained by a partnership, an individual who is a partner in the partnership.

(b) With respect to a group health plan maintained by a self-employed individual under which one or more of the self-employed individual's employees are participants, the self-employed individual, if that individual is, or may become, eligible to receive benefits under the plan or the individual's dependents may be eligible to receive

benefits under the plan.

12. “*Health care facility*” means a health care facility as defined in section 135C.1, a hospital as defined in section 135B.1, or a community mental health center established under chapter 230A.

13. “*Health care services*” means services, the coverage of which is authorized under chapter 509, chapter 514, chapter 514A, or chapter 514B as limited by sections 514E.4 and 514E.5, and includes services for the purposes of preventing, alleviating, curing, or healing human illness, injury or physical disability.

14. “*Health insurance*” means accident and sickness insurance authorized by chapter 509, 514 or 514A.

15. *a.* “*Health insurance coverage*” means health insurance coverage offered to individuals.

*b.* “*Health insurance coverage*” does not include any of the following:

(1) Coverage for accident-only, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers’ compensation or similar insurance.

(5) Automobile medical-payment insurance.

(6) Credit-only insurance.

(7) Coverage for on-site medical clinic care.

(8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance coverage or benefits.

*c.* “*Health insurance coverage*” does not include benefits provided under a separate policy as follows:

(1) Limited-scope dental or vision benefits.

(2) Benefits for long-term care, nursing home care, home health care, or community-based care.

(3) Any other similar limited benefits as provided by rule of the commissioner.

*d.* “*Health insurance coverage*” does not include benefits offered as independent noncoordinated benefits as follows:

(1) Coverage only for a specified disease or illness.

(2) A hospital indemnity or other fixed indemnity insurance.

*e.* “*Health insurance coverage*” does not include Medicare supplemental health insurance as defined under section 1882(g)(1) of the federal Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. ch. 55 and similar supplemental coverage provided to coverage under group health insurance coverage.

16. “*Insured*” means an individual who is provided qualified comprehensive health insurance under an association policy, which policy may include dependents and other covered persons.

17. “*Involuntary termination*” includes, but is not limited to, termination of coverage when a conversion policy is not available or where benefits under a state or federal law providing for continuation of coverage upon termination of employment will cease or have ceased.

18. “*Medicaid*” means the federal-state assistance program established under Title XIX of the federal Social Security Act.

19. “*Medicare*” means the federal government health insurance program established under Title XVIII of the Social Security Act.

20. “*Organized delivery system*” means an organized delivery system as licensed by the director of the department of public health.

21. “*Policy*” means a contract, policy, or plan of health insurance.

22. “*Policy year*” means a consecutive twelve-month period during which a policy provides or obligates the carrier to provide health insurance.

23. “*Preexisting condition exclusion*”, with respect to coverage, means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

2003 Acts, ch 108, §131

Organized delivery systems authorized, see 93 Acts, ch 158, §3  
Terminology change applied

#### **514E.2 Iowa comprehensive health insurance association.**

1. The Iowa comprehensive health insurance association is established as a nonprofit corporation. The association shall assure that health insurance, as limited by sections 514E.4 and 514E.5, is made available to each eligible Iowa resident and each federally eligible individual applying to the association for coverage. The association shall also be responsible for administering the Iowa individual health benefit reinsurance association pursuant to all of the terms and conditions contained in chapter 513C.

*a.* All carriers as defined in section 514E.1, subsection 3, and all organized delivery systems licensed by the director of public health providing health insurance or health care services in Iowa shall be members of the association.

*b.* The association shall operate under a plan of operation established and approved under subsection 3 and shall exercise its powers through a board of directors established under this section.

2. The board of directors of the association shall consist of all of the following:

*a.* Two members who shall be representatives of the two largest domestic carriers of individual health insurance in the state as of the calendar year ending December 31, 2000, based on earned premium standards.

*b.* Three members who shall be representatives of the three largest carriers of health insur-

ance in the state, based on earned premium standards, excluding Medicare supplement coverage premiums, that are not otherwise represented.

c. Two members selected by the members of the association, one of whom shall be a representative from a corporation operating pursuant to chapter 514 on July 1, 1989, or any successor in interest, and one of whom shall be a representative of an organized delivery system or an insurer providing coverage pursuant to chapter 509 or 514A.

d. Four public members selected by the governor.

e. The commissioner or the commissioner's designee from the division of insurance.

f. Two members of the general assembly, one of whom shall be appointed by the speaker of the house and one of whom shall be appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, who shall be ex officio, nonvoting members.

The composition of the board of directors shall be in compliance with sections 69.16 and 69.16A. The governor's appointees shall be chosen from a broad cross-section of the residents of this state.

Members of the board may be reimbursed from the moneys of the association for expenses incurred by them as members, but shall not be otherwise compensated by the association for their services.

3. The association shall submit to the commissioner a plan of operation for the association and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation becomes effective upon approval in writing by the commissioner prior to the date on which the coverage under this chapter must be made available. After notice and hearing, the commissioner shall approve the plan of operation if the plan is determined to be suitable to assure the fair, reasonable, and equitable administration of the association, and provides for the sharing of association losses, if any, on an equitable and proportionate basis among the member carriers. If the association fails to submit a suitable plan of operation within one hundred eighty days after the appointment of the board of directors, or if at any later time the association fails to submit suitable amendments to the plan, the commissioner shall adopt, pursuant to chapter 17A, rules necessary to implement this section. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner. In addition to other requirements, the plan of operation shall provide for all of the following:

a. The handling and accounting of assets and moneys of the association.

b. The amount and method of reimbursing

members of the board.

c. Regular times and places for meeting of the board of directors.

d. Records to be kept of all financial transactions, and the annual fiscal reporting to the commissioner.

e. Procedures for selecting the board of directors and submitting the selections to the commissioner for approval.

f. The periodic advertising of the general availability of health insurance coverage from the association.

g. Additional provisions necessary or proper for the execution of the powers and duties of the association.

4. The plan of operation may provide that the powers and duties of the association may be delegated to a person who will perform functions similar to those of the association. A delegation under this section takes effect only upon the approval of both the board of directors and the commissioner. The commissioner shall not approve a delegation unless the protections afforded to the insured are substantially equivalent to or greater than those provided under this chapter.

5. The association has the general powers and authority enumerated by this subsection and executed in accordance with the plan of operation approved by the commissioner under subsection 3. The association has the general powers and authority granted under the laws of this state to carriers licensed to issue health insurance. In addition, the association may do any of the following:

a. Enter into contracts as necessary or proper to carry out this chapter.

b. Sue or be sued, including taking any legal action necessary or proper for recovery of any assessments for, on behalf of, or against participating carriers.

c. Take legal action necessary to avoid the payment of improper claims against the association or the coverage provided by or through the association.

d. Establish or utilize a medical review committee to determine the reasonably appropriate level and extent of health care services in each instance.

e. Establish appropriate rates, scales of rates, rate classifications, and rating adjustments, which rates shall not be unreasonable in relation to the coverage provided and the reasonable operations expenses of the association.

f. Pool risks among members.

g. Issue association policies on an indemnity or provision of service basis providing the coverage required by this chapter.

h. Administer separate pools, separate accounts, or other plans or arrangements considered appropriate for separate members or groups of members.

*i.* Operate and administer any combination of plans, pools, or other mechanisms considered appropriate to best accomplish the fair and equitable operation of the association.

*j.* Appoint from among members appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the association, policy and other contract design, and any other functions within the authority of the association.

*k.* Hire independent consultants as necessary.

*l.* Develop a method of advising applicants of the availability of other coverages outside the association, and shall promulgate a list of health conditions the existence of which would make an applicant eligible without demonstrating a rejection of coverage by one carrier.

*m.* Include in its policies a provision providing for subrogation rights by the association in a case in which the association pays expenses on behalf of an individual who is injured or suffers a disease under circumstances creating a liability upon another person to pay damages to the extent of the expenses paid by the association but only to the extent the damages exceed the policy deductible and coinsurance amounts paid by the insured. The association may waive its subrogation rights if it determines that the exercise of the rights would be impractical, uneconomical, or would work a hardship on the insured.

6. Rates for coverages issued by the association shall not be unreasonable in relation to the benefits provided, the risk experience, and the reasonable expenses of providing coverage. Separate scales of rates based on age may apply for individual risks. Rates must take into consideration the extra morbidity and administration expenses, if any, for risks insured in the association. The rates for a given classification shall not be more than one hundred fifty percent of the average premium or payment rate for that classification charged by the five carriers with the largest health insurance premium or payment volume in the state during the preceding calendar year. In determining the average rate of the five largest carriers, the rates or payments charged by the carriers shall be actuarially adjusted to determine the rate or payment that would have been charged for benefits similar to those issued by the association.

7. Following the close of each calendar year, the association shall determine the net premiums and payments, the expenses of administration, and the incurred losses of the association for the year. The association shall certify the amount of any net loss for the preceding calendar year to the commissioner of insurance and director of revenue. Any loss shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums or payments for subscriber contracts received in Iowa

during the second preceding calendar year, or with paid losses in the year, coinciding with or ending during the calendar year or on any other equitable basis as provided in the plan of operation. In sharing losses, the association may abate or defer in any part the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for an initial or interim assessment against members of the association if necessary to assure the financial capability of the association to meet the incurred or estimated claims expenses or operating expenses of the association until the next calendar year is completed. Net gains, if any, must be held at interest to offset future losses or allocated to reduce future premiums.

8. The association shall conduct periodic audits to assure the general accuracy of the financial data submitted to the association, and the association shall have an annual audit of its operations, made by an independent certified public accountant.

9. The association is subject to examination by the commissioner of insurance. Not later than April 30 of each year, the board of directors shall submit to the commissioner a financial report for the preceding calendar year in a form approved by the commissioner.

10. The association is subject to oversight by the legislative fiscal committee of the legislative council. Not later than April 30 of each year, the board of directors shall submit to the legislative fiscal committee a financial report for the preceding year in a form approved by the committee.

11. All policy forms issued by the association must be filed with and approved by the commissioner before their use.

12. The association is exempt from payment of all fees and all taxes levied by this state or any of its political subdivisions.

13. A member who, after July 1, 1986, has paid one or more assessments levied under this chapter may take a credit against the premium taxes, or similar taxes, upon revenues or income of the member that are imposed by the state on health insurance premiums pursuant to chapter 432 or payments subject to taxation under section 514B.31, up to the amount of twenty percent of those taxes due, for each of the five calendar years following the year for which an assessment was paid, or until the aggregate of those assessments has been offset by credits against those taxes if this occurs first. If a member ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 514I

### HEALTHY AND WELL KIDS IN IOWA PROGRAM

(hawk-i program)  
Establishment of hawk-i trust fund in state  
treasury; 98 Acts, ch 1218, §48

#### 514I.1 Intent of the general assembly.

1. It is the intent of the general assembly to provide health care coverage to eligible children that improves access to preventive, diagnostic, and treatment health services which result in improved health status using in part resources made available from the passage of Title XXI of the federal Social Security Act.

2. It is the intent of the general assembly that the program be implemented and administered in compliance with Title XXI of the federal Social Security Act. If, as a condition of receiving federal funds for the program, federal law requires implementation and administration of the program in a manner not provided in this chapter, during a period when the general assembly is not in session, the department, with the approval of the hawk-i board, shall proceed to implement and administer those provisions, subject to review by the next regular session of the general assembly.

3. It is the intent of the general assembly, recognizing the importance of outreach to the successful utilization of the program by eligible children, that within the limitations of funding allowed for outreach and administration expenses, the maximum amount possible be used for outreach.

4. It is the intent of the general assembly that the hawk-i program be an integral part of the continuum of health insurance coverage and that the program be developed and implemented in such a manner as to facilitate movement of families between health insurance providers and to facilitate the transition of families to private sector health insurance coverage.

2003 Acts, ch 108, §131  
Terminology change applied

#### 514I.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Administrative contractor*” means the person with whom the department enters a contract to administer the hawk-i program under this chapter.

2. “*Benchmark benefit package*” means any of the following:

a. The standard blue cross/blue shield preferred provider option service benefit plan, described in and offered under 5 U.S.C. § 8903(1).

b. A health benefits coverage plan that is offered and generally available to state employees in this state.

c. The plan of a health maintenance organiza-

tion as defined in 42 U.S.C. § 300e, with the largest insured commercial, nonmedical assistance enrollment of covered lives in the state.

3. “*Cost sharing*” means the payment of a premium or copayment as provided for by Title XXI of the federal Social Security Act and section 514I.10.

4. “*Department*” means the department of human services.

5. “*Director*” means the director of human services.

6. “*Eligible child*” means an individual who meets the criteria for participation in the program under section 514I.8.

7. “*Hawk-i board*” or “*board*” means the entity which adopts rules and establishes policy for, and directs the department regarding, the hawk-i program.

8. “*Hawk-i program*” or “*program*” means the healthy and well kids in Iowa program created in this chapter to provide health insurance coverage to eligible children.

9. “*Health insurance coverage*” means health insurance coverage as defined in 42 U.S.C. § 300gg(91).

10. “*Participating insurer*” means any entity licensed by the division of insurance of the department of commerce to provide health insurance in Iowa or an organized delivery system licensed by the director of public health that has contracted with the department to provide health insurance coverage to eligible children under this chapter.

11. “*Qualified child health plan*” or “*plan*” means health insurance coverage provided by a participating insurer under this chapter.

2003 Acts, ch 108, §131  
Terminology change applied

#### 514I.3 Hawk-i program — established.

1. The hawk-i program, a statewide program designed to improve the health of children and to provide health insurance coverage to eligible children on a regional basis which complies with Title XXI of the federal Social Security Act, is established and shall be implemented January 1, 1999.

2. Health insurance coverage under the program shall be provided by participating insurers and through qualified child health plans.

3. The department of human services is designated to receive the state and federal funds appropriated or provided for the program, and to submit and maintain the state plan for the program, which is approved by the centers for Medicare and Medicaid services of the United States depart-

ment of health and human services.

4. Nothing in this chapter shall be construed or is intended as, or shall imply, a grant of entitlement for services to persons who are eligible for participation in the program based upon eligibility consistent with the requirements of this chapter. Any state obligation to provide services pursuant to this chapter is limited to the extent of the funds appropriated or provided for this chapter.

5. Participating insurers under this chapter are not subject to the requirements of chapters 513B and 513C.

2003 Acts, ch 108, §131  
Terminology change applied

#### **514I.4 Director and department — duties — powers.**

1. The director, with the approval of the hawk-i board, shall implement this chapter. The director shall do all of the following:

*a.* At least every six months, evaluate the scope of the program currently being provided under this chapter, project the probable cost of continuing the program, and compare the probable cost with the remaining balance of the state appropriation made for payment of assistance under this chapter during the current appropriation period. The director shall report the findings of the evaluation to the board and shall annually report findings to the governor and the general assembly by January 1.

*b.* Establish premiums to be paid to participating insurers for provision of health insurance coverage.

*c.* Contract with participating insurers to provide health insurance coverage under this chapter.

*d.* Recommend to the board proposed rules necessary to implement the program.

*e.* Recommend to the board individuals to serve as members of the clinical advisory committee.

2. The director, with the approval of the board, may contract with participating insurers to provide dental-only services.

3. The director, with the concurrence of the board, shall enter into a contract with an administrative contractor. Such contract shall be entered into in accordance with the criteria established by the board.

4. The department may enter into contracts with other persons whereby the other person provides some or all of the functions, pursuant to rules adopted by the board, which are required of the director or the department under this section. All contracts entered into pursuant to this section shall be made available to the public.

5. The department shall do or shall provide for all of the following:

*a.* Develop a program application form not to exceed two pages in length, which is consistent with the rules of the board, which is easy to under-

stand, complete, and concise, and which, to the greatest extent possible, coordinates with the medical assistance program.

*b.* Establish the family cost sharing amounts of not less than ten dollars per individual and twenty dollars per family, if not otherwise prohibited by federal law, with the approval of the board.

*c.* Perform annual, random reviews of enrollee applications to ensure compliance with program eligibility and enrollment policies. Quality assurance reports shall be made to the board and the department based upon the data maintained by the administrative contractor.

*d.* Perform other duties as determined by the department with the approval of the board.

2003 Acts, ch 108, §131; 2003 Acts, ch 124, §1; 2003 Acts, ch 175, §38  
Terminology change applied  
NEW subsection 2 and former subsections 2 – 4 renumbered as 3 – 5  
Subsection 5 amended

#### **514I.5 Hawk-i board.**

1. A hawk-i board for the hawk-i program is established. The board shall meet not less than six and not more than twelve times annually, for the purposes of establishing policy for, directing the department on, and adopting rules for the program. The board shall consist of seven members, including all of the following:

*a.* The commissioner of insurance, or the commissioner's designee.

*b.* The director of the department of education, or the director's designee.

*c.* The director of public health, or the director's designee.

*d.* Four public members appointed by the governor and subject to confirmation by the senate. The public members shall be members of the general public who have experience, knowledge, or expertise in the subject matter embraced within this chapter.

*e.* Two members of the senate and two members of the house of representatives, serving as ex officio members. The legislative members of the board shall be appointed by the majority leader of the senate, after consultation with the president of the senate, and by the minority leader of the senate, and by the speaker of the house, after consultation with the majority leader, and by the minority leader of the house of representatives. Legislative members shall receive compensation pursuant to section 2.12.

2. A public member shall not have a conflict of interest with the administrative contractor.

3. Members appointed by the governor shall serve two-year staggered terms as designated by the governor, and legislative members of the board shall serve two-year terms. The filling of positions reserved for the public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of the members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties. Public

members of the board are also eligible to receive compensation as provided in section 7E.6. The members shall select a chairperson on an annual basis from among the membership of the board.

4. The board shall approve any contract entered into pursuant to this chapter. All contracts entered into pursuant to this chapter shall be made available to the public.

5. The department of human services shall act as support staff to the board.

6. The board may receive and accept grants, loans, or advances of funds from any person and may receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of the program.

7. The hawk-i board shall do all of the following:

*a.* Develop the criteria to be included in a request for proposals for the selection of any administrative contractor for the program.

*b.* Define, in consultation with the department, the regions of the state for which plans are offered in a manner as to ensure access to services for all children participating in the program.

*c.* Approve the benefit package design, review the benefit package design on a periodic basis, and make necessary changes in the benefit design to reflect the results of the periodic reviews.

*d.* Develop, with the assistance of the department, an outreach plan, and provide for periodic assessment of the effectiveness of the outreach plan. The plan shall provide outreach to families of children likely to be eligible for assistance under the program, to inform them of the availability of and to assist the families in enrolling children in the program. The outreach efforts may include, but are not limited to, solicitation of cooperation from programs, agencies, and other persons who are likely to have contact with eligible children, including but not limited to those associated with the educational system, and the development of community plans for outreach and marketing.

*e.* In consultation with the clinical advisory committee, assess the initial health status of children participating in the program, establish a baseline for comparison purposes, and develop appropriate indicators to measure the subsequent health status of children participating in the program.

*f.* Review, in consultation with the department, and take necessary steps to improve interaction between the program and other public and private programs which provide services to the population of eligible children. The board, in consultation with the department, shall also develop and implement a plan to improve the medical assistance program in coordination with the hawk-i program, including but not limited to a provision to coordinate eligibility between the medical assistance program and the hawk-i program, and to provide for common processes and procedures un-

der both programs to reduce duplication and bureaucracy.

*g.* By January 1, annually, prepare, with the assistance of the department, and submit a report to the governor, the general assembly, and the council on human services, concerning the board's activities, findings, and recommendations.

*h.* Solicit input from the public regarding the program and related issues and services.

*i.* Establish and consult with a clinical advisory committee to make recommendations to the board regarding the clinical aspects of the hawk-i program.

*j.* Prescribe the elements to be included in a health improvement program plan required to be developed by a participating insurer. The elements shall include but are not limited to health maintenance and prevention and health risk assessment.

*k.* Establish an advisory committee to make recommendations to the board and to the general assembly by January 1 annually concerning the provision of health insurance coverage to children with special health care needs. The committee shall include individuals with experience in, knowledge of, or expertise in this area. The recommendations shall address, but are not limited to, all of the following:

(1) The definition of the target population of children with special health care needs for the purposes of determining eligibility under the program.

(2) Eligibility options for and assessment of children with special health care needs for eligibility.

(3) Benefit options for children with special health care needs.

(4) Options for enrollment of children with special health care needs in and disenrollment of children with special health care needs from qualified child health plans utilizing a capitated fee form of payment.

(5) The appropriateness and quality of care for children with special health care needs.

(6) The coordination of health services provided for children with special health care needs under the program with services provided by other publicly funded programs.

8. The hawk-i board, in consultation with the department of human services, shall adopt rules which address, but are not limited to addressing, all of the following:

*a.* Implementation and administration of the program.

*b.* The program application form. The form shall include a request for information regarding other health insurance coverage for each child.

*c.* Criteria for the selection of an administrative contractor for the program.

*d.* Qualifying standards for selecting participating insurers for the program.

*e.* The benefits to be included in a qualified

child health plan which are those included in a benchmark or benchmark equivalent plan and which comply with Title XXI of the federal Social Security Act. Benefits covered shall include but are not limited to all of the following:

(1) Inpatient hospital services including medical, surgical, intensive care unit, mental health, and substance abuse services.

(2) Nursing care services including skilled nursing facility services.

(3) Outpatient hospital services including emergency room, surgery, lab, and x-ray services and other services.

(4) Physician services, including surgical and medical, and including office visits, newborn care, well-baby and well-child care, immunizations, urgent care, specialist care, allergy testing and treatment, mental health visits, and substance abuse visits.

(5) Ambulance services.

(6) Physical therapy.

(7) Speech therapy.

(8) Durable medical equipment.

(9) Home health care.

(10) Hospice services.

(11) Prescription drugs.

(12) Dental services including preventive services.

(13) Medically necessary hearing services.

(14) Vision services including corrective lenses.

*f.* Standards for program eligibility. The standards shall not discriminate on the basis of diagnosis. Within a defined group of covered eligible children, the standards shall not cover children of higher income families without covering children of families with lower incomes. The standards shall not deny eligibility based on a child having a preexisting medical condition.

*g.* Presumptive eligibility criteria for the program.

*h.* The amount of any cost sharing under the program which shall be assessed based on family income and which complies with federal law.

*i.* The reasons for disenrollment including, but not limited to, nonpayment of premiums, eligibility for medical assistance or other insurance coverage, admission to a public institution, relocation from the area, and change in income.

*j.* Conflict of interest provisions applicable to the administrative contractor and participating insurers, and between public members of the board and the administrative contractor and participating insurers.

*k.* Penalties for breach of contract or other violations of requirements or provisions under the program.

*l.* A mechanism for participating insurers to report any rebates received to the department.

*m.* The data to be maintained by the administrative contractor including data to be collected for the purposes of quality assurance reports.

9. The hawk-i board may provide approval to the director to contract with participating insurers to provide dental-only services. In determining whether to provide such approval to the director, the board shall take into consideration the impact on the overall program of single source contracting for dental services.

2003 Acts, ch 108, §131; 2003 Acts, ch 124, §2-7; 2003 Acts, ch 175, §39 Confirmation, see §2.32

Monitoring and annual reporting until June 30, 2005, regarding effect and costs of eliminating standards for approval of program applications when employer-sponsored coverage ends less than six months before eligibility determination; 2003 Acts, ch 124, §13

Terminology change applied

Subsection 1, unnumbered paragraph 1 amended

Subsection 7, paragraphs d and e amended

Subsection 7, paragraph i stricken and former paragraphs j-1 redesignated as i-k

Subsection 7, paragraph k, unnumbered paragraph 1 amended

Subsection 8, paragraph h amended

Subsection 8, paragraph m stricken and former paragraph n redesignated as m

NEW subsection 9

#### **514I.6 Participating insurers.**

Participating insurers shall meet the qualifying standards established by rule under this chapter and shall perform all of the following functions:

1. Provide plan cards and membership booklets to qualifying families.

2. Provide or reimburse accessible, quality medical services.

3. Require that any plan provided by the participating insurer establishes and maintains a conflict management system that includes methods for both preventing and resolving disputes involving the health care needs of eligible children, and a process for resolution of such disputes.

4. Provide the administrative contractor with all of the following information pertaining to the participating insurer's plan:

*a.* A list of providers of medical services under the plan.

*b.* Information regarding plan rules relating to referrals to specialists.

*c.* Information regarding the plan's conflict management system.

*d.* Other information as directed by the board.

5. Submit a plan for a health improvement program to the department, for approval by the board.

6. Develop a plan for provider network development including criteria for access to pediatric subspecialty services.

2003 Acts, ch 108, §131; 2003 Acts, ch 124, §8

See Code editor's note to §2.9

Subsection 3 stricken and former subsections 4-7 renumbered as 3-6

#### **514I.7 Administrative contractor.**

1. An administrative contractor shall be selected by the hawk-i board through a request for proposals process.

2. The administrative contractor shall do all of the following:

*a.* Determine individual eligibility for program enrollment based upon review of completed applications and supporting documentation. The

administrative contractor shall not enroll a child who has group health coverage or any child who has dropped coverage in the previous six months, unless the coverage was involuntarily lost or unless the reason for dropping coverage is allowed by rule of the board.

*b.* Enroll qualifying children in the program with maintenance of a supporting eligibility file or database.

*c.* Forward names of children who appear to be eligible for medical assistance to the department of human services for follow-up and retain identifying data on children who are referred.

*d.* Monitor and assess the medical care provided through or by participating insurers as well as complaints and grievances.

*e.* Verify and forward to the department participating insurers' payment requests.

*f.* Develop and issue appropriate approval, denial, and cancellation notifications to inform applicants and enrollees of the status of the applicant's or enrollee's eligibility to participate in the program. Additionally, the administrative contractor shall process applications, including verifications and mailing of approvals and denials, within ten working days of receipt of the application, unless the application cannot be processed within this period for a reason that is beyond the control of the administrative contractor.

*g.* Create and maintain eligibility files that are compatible with the data system of the department including, but not limited to, data regarding beneficiaries, enrollment dates, disenrollments, and annual financial redeterminations.

*h.* Provide electronic access to the administrative contractor's database to the department.

*i.* Provide periodic reports to the department for administrative oversight and monitoring of federal requirements.

*j.* Perform annual financial reviews of eligibility for each beneficiary.

*k.* Receive completed applications and verifications at a central location.

*l.* Collect and track monthly family premiums to assure that payments are current.

*m.* Notify each participating insurer of new program enrollees who are enrolled by the administrative contractor in that participating insurer's plan.

*n.* Verify the number of program enrollees with each participating insurer for determination of the amount of premiums to be paid to each participating insurer.

*o.* Maintain data for the purpose of quality assurance reports as required by rule of the board.

2003 Acts, ch 108, §131; 2003 Acts, ch 124, §9, 10  
Terminology change applied  
Subsection 2, paragraph c amended  
Subsection 2, paragraph h stricken and former paragraphs i - p redesignated as h - o

any medical assistance program eligibility criteria to the contrary, medical assistance shall be provided to, or on behalf of, an eligible child under the age of nineteen whose family income does not exceed one hundred thirty-three percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services. Additionally, effective July 1, 2000, and notwithstanding any medical assistance program eligibility criteria to the contrary, medical assistance shall be provided to, or on behalf of, an eligible infant whose family income does not exceed two hundred percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

2. A child may participate in the hawk-i program if the child meets all of the following criteria:

*a.* Is less than nineteen years of age.

*b.* Is a resident of this state.

*c.* Is a member of a family whose income does not exceed two hundred percent of the federal poverty level, as defined in 42 U.S.C. § 9902(2), including any revision required by such section.

*d.* Is not eligible for medical assistance pursuant to chapter 249A.

*e.* Is not currently covered under a group health plan as defined in 42 U.S.C. § 300gg-91(a)(1) unless allowed by rule of the board.

*f.* Is not a member of a family that is eligible for health benefits coverage under a state health benefits plan on the basis of a family member's employment with a public agency in this state.

*g.* Is not an inmate of a public institution or a patient in an institution for mental diseases.

3. In accordance with the rules adopted by the board, a child may be determined to be presumptively eligible for the program pending a final eligibility determination. Following final determination of eligibility by the administrative contractor, a child shall be eligible for a twelve-month period. At the end of the twelve-month period, the administrative contractor shall conduct a review of the circumstances of the eligible child's family to establish eligibility and cost sharing for the subsequent twelve-month period.

4. Once an eligible child is enrolled in a plan, the eligible child shall remain enrolled in the plan unless a determination is made, according to criteria established by the board, that the eligible child should be allowed to enroll in another qualified child health plan or should be disenrolled. An enrollee may change plan enrollment once a year on the enrollee's anniversary date.

5. The board shall study and shall make recommendations to the governor and to the general assembly regarding the level of family income which is appropriate for application of the program, and the feasibility of allowing families with incomes above the level of eligibility for the pro-

#### **514I.8 Eligible child.**

1. Effective July 1, 1998, and notwithstanding

gram to purchase insurance for children through the program.

6. The board and the council on human services shall cooperate and seek appropriate coordination in administration of the program and the medical assistance program and shall develop a plan for a unified medical assistance and hawk-i program system which includes the use of a single health insurance card by enrollees of either program.

2003 Acts, ch 108, §131; 2003 Acts, ch 124, §11  
Terminology change applied  
Subsection 2, paragraph e amended

#### **514I.9 Program benefits.**

1. Until June 30, 1999, the benefits provided under the program shall be those benefits established by rule of the board and in compliance with Title XXI of the federal Social Security Act.

2. On or before June 30, 1999, the hawk-i board shall adopt rules to amend the benefits package based upon review of the results of the initial benefits package used.

3. Subsequent to June 30, 1999, the hawk-i board shall review the benefits package annually and shall determine additions to or deletions from the benefits package offered. The hawk-i board shall submit the recommendations to the general assembly for any amendment to the benefits package.

4. Benefits, in addition to those required by rule, may be provided to eligible children by a participating insurer if the benefits are provided at no additional cost to the state.

2003 Acts, ch 108, §131  
Terminology change applied

#### **514I.10 Cost sharing.**

1. Cost sharing for eligible children whose

family income is below one hundred fifty percent of the federal poverty level shall not exceed the standards permitted under 42 U.S.C. § 1396(o)(a)(3) or § 1396(o)(b)(1).

2. Cost sharing for eligible children whose family income equals or exceeds one hundred fifty percent of the federal poverty level may include a premium or copayment amount which does not exceed five percent of the annual family income. The amount of any premium or the copayment amount shall be based on family income and size.

2003 Acts, ch 124, §12  
Section amended

#### **514I.11 Hawk-i trust fund.**

1. A hawk-i trust fund is created in the state treasury under the authority of the department of human services, in which all appropriations and other revenues of the program such as grants, contributions, and participant payments shall be deposited and used for the purposes of the program. The moneys in the fund shall not be considered revenue of the state, but rather shall be funds of the program.

2. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the trust fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this chapter. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

2003 Acts, ch 108, §131  
Terminology change applied

## CHAPTER 514J

### EXTERNAL REVIEW OF HEALTH CARE COVERAGE DECISIONS

#### **514J.7 External review.**

The external review process shall meet the following criteria:

1. The carrier or organized delivery system, within three business days of a receipt of an eligible request for an external review from the commissioner, or within three business days of receipt of the commissioner's denial of the carrier's or organized delivery system's contest of the certification of the request under section 514J.5, subsection 3, whichever is later, shall do all of the following:

*a.* Select an independent review entity from the list certified by the commissioner. The independent review entity shall be an expert in the treatment of the medical condition under review.

The independent review entity shall not be a subsidiary of, or owned or controlled by, the carrier or organized delivery system, or owned or controlled by a trade association of carriers or organized delivery systems of which the carrier or organized delivery system is a member.

*b.* Notify in writing the enrollee, and the enrollee's treating health care provider, of the name, address, and telephone number of the independent review entity and of the enrollee's and treating health care provider's right to submit additional information.

*c.* Notify the selected independent review entity by facsimile that the carrier or organized delivery system has chosen it to do the independent review and provide sufficient descriptive informa-

tion to identify the type of experts needed to conduct the review.

*d.* Provide to the commissioner by facsimile a copy of the notices sent to the enrollee and to the selected independent review entity.

2. The independent review entity, within three business days of receipt of the notice, shall select a person to perform the external review and shall provide notice to the enrollee and the carrier containing a brief description of the person including the reasons the person selected is an expert in the treatment of the medical condition under review. The independent review entity does not need to disclose the name of the person. A copy of the notice shall be sent by facsimile to the commissioner. If the independent review entity does not have a person who is an expert in the treatment of the medical condition under review and certified by the commissioner to conduct an independent review, the independent review entity may either decline the review request or may request from the commissioner additional time to have such an expert certified. The independent review entity shall notify the commissioner by facsimile of its choice between these options within three business days of receipt of the notice from the carrier or organized delivery system. The commissioner shall provide a notice to the enrollee and carrier or organized delivery system of the independent review entity's decision and of the commissioner's decision as to how to proceed with the external review process within three business days of receipt of the independent review entity's decision.

3. The enrollee, or the enrollee's treating health care provider acting on behalf of the enrollee, may object to the independent review entity selected by the carrier or organized delivery system or to the person selected as the reviewer by the independent review entity by notifying the commissioner and carrier or organized delivery system within ten days of the mailing of the notice by the independent review entity. The commissioner shall have two business days from receipt of the objection to consider the reasons set forth in support of the objection to approve or deny the objection, to select an independent review entity if necessary, and to provide notice of the commissioner's decision to the enrollee, the enrollee's treating health care provider, and the carrier or organized delivery system.

4. The carrier or organized delivery system, within fifteen days of the mailing of the notice by the independent review entity, or within three business days of a receipt of notice by the commissioner following an objection by the enrollee, whichever is later, shall do all of the following:

*a.* Provide to the independent review entity any information submitted to the carrier or organized delivery system by the enrollee or the enrollee's treating health care provider in support of the request for coverage of a service or treatment under the carrier's or organized delivery system's ap-

peal procedures.

*b.* Provide to the independent review entity any other relevant documents used by the carrier or organized delivery system in determining whether the proposed service or treatment should have been provided.

*c.* Provide to the commissioner a confirmation that the information required in paragraphs "a" and "b" has been provided to the independent review entity, including the date the information was provided.

5. The enrollee, or the enrollee's treating health care provider, may provide to the independent review entity any information submitted under any internal appeal mechanisms provided under the carrier's or organized delivery system's evidence of coverage, and other newly discovered relevant information. The enrollee shall have ten business days from the mailing date of the notification of the person selected as the reviewer by the independent review entity to provide this information. The independent review entity may reasonably decide whether to consider any information provided by the enrollee or the enrollee's treating health care provider after the ten-day period.

6. The independent review entity shall notify the enrollee and the enrollee's treating health care provider of any additional medical information required to conduct the review within five business days of receipt of the documentation required under subsection 4. The enrollee or the enrollee's treating health care provider shall provide the requested information to the independent review entity within five days after receipt of the notification requesting additional medical information. The independent review entity may decide whether it is reasonable to consider any information provided by the enrollee or the enrollee's treating health care provider after the five-day period. The independent review entity shall notify the commissioner and the carrier or organized delivery system of this request.

7. The independent review entity shall submit its external review decision as soon as possible, but not later than thirty days from the date the independent review entity received the information required under subsection 4 from the carrier or organized delivery system. The independent review entity, for good cause, may request an extension of time from the commissioner. The independent review entity's external review decision shall be mailed to the enrollee or the treating health care provider acting on behalf of the enrollee, the carrier or organized delivery system, and the commissioner.

8. The confidentiality of any medical records submitted shall be maintained pursuant to applicable state and federal laws. Other than the sharing of information required by this chapter and the rules adopted pursuant to this chapter, the commissioner shall keep confidential the information obtained in the external review process pursuant

to section 505.8, subsection 6.

2003 Acts, ch 91, §31  
Subsection 8 amended

#### **514J.10 Reporting.**

The commissioner shall prepare an annual report containing all of the following:

1. The number of external reviews requested.
2. The number of the external reviews certified by the commissioner.
3. The number of coverage decisions which were upheld by an independent review entity.

The commissioner shall prepare the report by January 31 of each year.

2003 Acts, ch 91, §32  
Section amended

#### **514J.13 Effect of external review decision.**

1. The review decision by the independent review entity conducting the review is binding upon the carrier or organized delivery system. The external review process shall not be considered a contested case under chapter 17A, the Iowa administrative procedure Act.

2. The enrollee or the enrollee's treating health care provider acting on behalf of the enrollee may appeal the review decision by the independent review entity conducting the review by filing a petition for judicial review either in Polk county district court or in the district court in the county in which the enrollee resides. The petition for judicial review must be filed within fifteen business days after the issuance of the review decision. The petition shall name the enrollee or the enrollee's

treating health care provider as the petitioner. The respondent shall be the carrier or the organized delivery system. The petition shall not name the independent review entity as a party. The commissioner shall not be named as a respondent unless the petitioner alleges action or inaction by the commissioner under the standards articulated in section 17A.19, subsection 10. Allegations against the commissioner under section 17A.19, subsection 10, must be stated with particularity. The commissioner may, upon motion, intervene in the judicial review proceeding. The findings of fact by the independent review entity conducting the review are conclusive and binding on appeal.

3. The carrier or organized delivery system shall follow and comply with the review decision of the independent review entity conducting the review, or the decision of the court on appeal. The carrier or organized delivery system and the enrollee's treating health care provider shall not be subject to any penalties, sanctions, or award of damages for following and complying in good faith with the review decision of the independent review entity conducting the review or decision of the court on appeal.

4. The enrollee or the enrollee's treating health care provider may bring an action in Polk county district court or in the district court in the county in which the enrollee resides to enforce the review decision of the independent review entity conducting the review or the decision of the court on appeal.

2003 Acts, ch 91, §33  
Section amended

## CHAPTER 515

### INSURANCE OTHER THAN LIFE

#### **515.35 Investments.**

1. *General considerations.* The following considerations apply in the interpretation of this section:

*a.* This section applies to the investments of insurance companies other than life insurance companies.

*b.* The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of companies organized under this chapter. These standards, and the investment programs developed by companies, shall take into account the safety of the company's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs, and investment diversification.

*c.* Financial terms relating to insurance companies have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies other than insurance companies have the meanings assigned to them under generally accepted accounting principles.

*d.* Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

*e.* If an investment qualifies under more than one subsection, a company may elect to hold the investment under the subsection of its choice. This section does not prevent a company from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions.* For purposes of this section:

a. “Admitted assets”, for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the national association of insurance commissioner’s annual statement blank as admitted assets as of the December 31 immediately preceding the date the company acquires the investment.

b. “Clearing corporation” means as defined in section 554.8102.

c. “Custodian bank” means a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

d. “Issuer” means as defined in section 554.8201.

e. “Member bank” means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

f. “National securities exchange” means an exchange registered under section 6 of the Securities Exchange Act of 1934 or an exchange regulated under the laws of the Dominion of Canada.

g. “Obligations” includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

### 3. Investments in name of company or nominee and prohibitions.

a. A company’s investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the company making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nomi-

nee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the company provides that adequate evidence of the deposit is to be obtained and retained by the company or a custodian bank.

(2) A company may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the Securities Exchange Act of 1934 or a member bank. The loan must be evidenced by a written agreement which provides all of the following:

(a) That the loan will be fully collateralized by cash, cash equivalents, or obligations issued or guaranteed by the United States or an agency or an instrumentality of the United States, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

If the loan is fully collateralized by cash, the reinvestment of the cash may be made in either individual securities or a pooled fund comprised of individual securities. If such reinvestment is made in individual securities, such securities must mature in less than ninety days. If such reinvestment is made in a pooled fund, the average maturity of the securities comprising such pooled fund must be less than ninety days. Individual securities and securities comprising the pooled fund shall be investment grade.

(b) That the loan may be terminated by the company at any time, and that the borrower will return the loaned stocks or obligations or equivalent stocks or obligations within five business days after termination.

(c) That the company has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the company due to default that are not covered by the collateral.

(3) A company may participate through a member bank in the United States federal reserve book-entry system, and the records of the member bank shall at all times show that the investments are held for the company or for specific accounts of the company.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the company or the name of the custodian bank or the nominee of either and if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as

belonging solely to the company making the investment.

(5) Transfers of ownership of investments held as described in paragraph "a", subparagraph (1), subparagraph subdivision (c), and subparagraphs (3) and (4) may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of certificate, if any, evidencing the company's investment.

b. Except as provided in paragraph "a", subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the company's investment shall be obtained from the issuer or its transfer or recording agent and retained by the company, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the company.

4. *Investments.* Except as otherwise permitted by this section, a company organized under this chapter may invest in the following and no other:

a. *United States government obligations.* Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States.

b. *Certain development bank obligations.* Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. A company shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. *State obligations.* Obligations issued or guaranteed by a state of the United States, or a political subdivision of a state, or an instrumentality of a state or political subdivision of a state.

d. *Canadian government obligations.* Obligations issued or guaranteed by the Dominion of Canada, or by an agency or province of Canada, or by a political subdivision of a province, or by an instrumentality of any of those provinces or political subdivisions.

e. *Corporate and business trust obligations.* Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada, provided that a company shall not invest more than five percent of its admitted assets in the

obligations of any one corporation or business trust.

Aggregate investments in below investment grade bonds shall not exceed five percent of assets.

f. *Stocks.* A company may invest in common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada.

(1) Stocks purchased under this section shall not exceed one hundred percent of capital and surplus. With the approval of the commissioner, a company may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) A company shall not invest more than ten percent of its capital and surplus in the stocks of any one corporation.

g. *Real estate mortgages.* Mortgages and other interest-bearing securities that are first liens upon real estate located within this state or any other state of the United States. However, a mortgage or other security does not qualify as an investment under this paragraph if at the date of acquisition the total indebtedness secured by the lien exceeds seventy-five percent of the value of the property that is subject to the lien. Improvements shall not be considered in estimating value unless the owner contracts to keep them insured during the life of the loan in one or more reliable fire insurance companies authorized to transact business in this state and for a sum at least equal to the excess of the loan above seventy-five percent of the value of the ground, exclusive of improvements, and unless this insurance is payable in case of loss to the company investing its funds as its interest may appear at the time of loss. For the purpose of this section, a lien upon real estate shall not be held or construed to be other than a first lien by reason of the fact that drainage or other improvement assessments have been levied against the real estate covered by the lien, whether or not the installment of the assessments have matured, but in determining the value of the real estate for loan purposes the amount of drainage or other assessment tax that is unpaid shall be first deducted.

h. *Real estate.*

(1) Except as provided in subparagraphs (2), (3), and (4) of this paragraph, a company may acquire, hold, and convey real estate only as follows:

(a) Real estate mortgaged to it in good faith as security for loans previously contracted, or for moneys due.

(b) Real estate conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(c) Real estate purchased at sales on judgments, decrees, or mortgages obtained or made for debts previously contracted in the course of its dealings.

(d) Real estate subject to a contract for deed under which the company holds the vendor's interest to secure the payments the vendee is required to make under the contract.

All real estate specified in subdivisions (a), (b), and (c) of this subparagraph shall be sold and disposed of within three years after the company acquires title to it, or within three years after the real estate ceases to be necessary for the accommodation of the company's business, and the company shall not hold any of those properties for a longer period unless the company elects to hold the property under another paragraph of this section, or unless the company procures a certificate from the commissioner of insurance that its interest will suffer materially by the forced sale of those properties and that the time for the sale is extended to the time the commissioner directs in the certificate.

(2) A company may acquire, hold, and convey real estate as required for the convenient accommodation and transaction of its business.

(3) A company may acquire real estate or an interest in real estate as an investment for the production of income, and may hold, improve, or otherwise develop, subdivide, lease, sell, and convey real estate so acquired directly or as a joint venture or through a limited or general partnership in which the company is a partner.

(4) A company may also acquire and hold real estate if the purpose of the acquisition is to enhance the sale value of real estate previously acquired and held by the company under this paragraph, and if the company expects the real estate so acquired to qualify under subparagraph (2) or (3) of this paragraph within three years after acquisition.

(5) A company may, after securing the written approval of the commissioner, acquire and hold real estate for the purpose of providing necessary living quarters for its employees. However, the company shall dispose of the real estate within three years after it has ceased to be necessary for that purpose unless the commissioner agrees to extend the holding period upon application by the company.

(6) A company shall not invest more than twenty-five percent of its total admitted assets in real estate. The cost of a parcel of real estate held for both the accommodation of business and for the production of income shall be allocated between the two uses annually. A company shall not invest more than ten percent of its total admitted assets in real estate held under subparagraph (3) of this paragraph.

(7) A company is not required to divest itself of real estate assets owned or contracted for prior to July 1, 1982, in order to comply with the limitations established under this paragraph.

*i. Foreign investments.* Obligations of and investments in foreign countries, as follows:

(1) A company may acquire and hold other investments in foreign countries that are required to be held as a condition of doing business in those countries, so long as such investments are of substantially the same types as those eligible for investment under this section.

(2) A company shall not invest more than two percent of its admitted assets in the stocks or stock equivalents of foreign corporations or business trusts, other than the stocks or stock equivalents of foreign corporations or business trusts incorporated or formed under the laws of Canada, and then only if the stocks or stock equivalents of such foreign corporations or business trusts are regularly traded on the New York, London, Paris, Zurich, Hong Kong, Toronto, or Tokyo stock exchange, or a similar exchange approved by the commissioner by rule or order.

(3) A company may invest in the obligations of a foreign government other than Canada or of a corporation incorporated under the laws of a foreign government other than Canada. Any such governmental obligation must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Any such corporate obligation must on the date of acquisition have investment qualities and characteristics, and must not have speculative elements which are predominant, as provided by rule. A company shall not invest more than two percent of its admitted assets in the obligations of a foreign government other than Canada. A company shall not invest more than two percent of its admitted assets in the obligations of a corporation incorporated under the laws of a foreign government other than a corporation incorporated under the laws of Canada.

(4) A company shall not invest more than ten percent of its admitted assets in foreign investments pursuant to this paragraph.

*j. Personal property under lease.* Personal property for intended lease or rental by the company in the United States or Canada. A company shall not invest more than five percent of its admitted assets under this paragraph.

*k. Collateral loans.* Obligations secured by the pledge of an investment authorized by paragraphs "a" through "j", subject to the following conditions:

(1) The pledged investment shall be legally assigned or delivered to the company.

(2) The pledged investment shall at the time of purchase have a market value of at least one hundred ten percent of the amount of the unpaid balance of the obligations.

(3) The company shall reserve the right to declare the obligation immediately due and payable if at any time after purchase the security depreciates to the point where the investment would not qualify under subparagraph (2) of this paragraph. However, additional qualifying security may be pledged to allow the investment to remain qualified.

*l. Options transactions.*

(1) A domestic fire and casualty company may only engage in the following transactions in options on an exchange and only when in accordance with the rules of the exchange on which the transactions take place:

(a) The sale of exchange-traded covered options.

(b) The purchase of exchange-traded covered options solely in closing purchase transactions.

(2) The commissioner shall adopt rules pursuant to chapter 17A regulating option sales under this subparagraph.

*m. Venture capital funds.* Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the investments by a company in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. A company shall not invest more than five percent of its capital and surplus under this paragraph. For purposes of this paragraph, “*venture capital fund*” means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. “*Equity interests*” means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

“*Venture capital fund*” includes an equity interest in the Iowa fund of funds as defined in section 15E.62.

*n. Other investments.*

(1) A company organized under this chapter may invest up to five percent of its admitted assets in securities or property of any kind, without restrictions or limitations except those imposed on business corporations in general.

(2) A company organized under this chapter may invest its assets in any additional forms not specifically included in paragraphs “a” through “o” when authorized by rules adopted by the commissioner.

*o. Rules.* The commissioner may adopt rules pursuant to chapter 17A to carry out the purposes

and provisions of this section.

2003 Acts, ch 91, §34

Similar provisions, §511.8

Subsection 4, paragraph m, NEW unnumbered paragraph 2

**515.63 Annual statement.**

The president or the vice president and secretary of each company organized or authorized to do business in the state shall annually on or before the first day of March of each year prepare under oath and file with the commissioner of insurance or a depository designated by the commissioner a full, true, and complete statement of the condition of such company on the last day of the preceding year, which shall exhibit the following items and facts:

1. First — The amount of capital stock of the company.

2. Second — The names of the officers.

3. Third — The name of the company and where located.

4. Fourth — The amount of its capital stock paid up.

5. Fifth — The property or assets held by the company, specifying:

*a.* The value of real estate owned by the company.

*b.* The amount of cash on hand and deposited in banks to the credit of the company, and in what bank deposited.

*c.* The amount of cash in the hands of agents and in the course of transmission.

*d.* The amount of loans secured by first mortgage on real estate, with the rate of interest thereon.

*e.* The amount of all other bonds and loans and how secured, with the rate of interest thereon.

*f.* The amount due the company on which judgment has been obtained.

*g.* The amount of bonds of the state, of the United States, of any county or municipal corporation of the state, and of any other bonds owned by the company, specifying the amount and number thereof, and par and market value of each kind.

*h.* The amount of bonds, stock, and other evidences of indebtedness held by such company as collateral security for loans, with amount loaned on each kind, and its par and market value.

*i.* The amount of assessments on stock and premium notes, paid and unpaid.

*j.* The amount of interest actually due and unpaid.

*k.* All other securities and their value.

*l.* The amount for which premium notes have been given on which policies have been issued.

6. Sixth — Liabilities of such company, specifying:

*a.* Losses adjusted and due.

*b.* Losses adjusted and not due.

*c.* Losses unadjusted.

*d.* Losses in suspense and the cause thereof.

*e.* Losses resisted and in litigation.

f. Dividends in scrip or cash, specifying the amount of each, declared but not due.

g. Dividends declared and due.

h. The amount required to reinsure all outstanding risks on the basis of the unearned premium reserve as required by law.

i. The amount due banks or other creditors.

j. The amount of money borrowed and the security therefor.

k. All other claims against the company.

7. Seventh — The income of the company during the previous year, specifying:

a. The amount received for premiums, exclusive of premium notes.

b. The amount of premium notes received.

c. The amount received for interest.

d. The amount received for assessments or calls on stock notes, or premium notes.

e. The amount received from all other sources.

8. Eighth — The expenditures during the preceding year, specifying:

a. The amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which such losses were estimated in such statement.

b. The amount paid for dividends.

c. The amount paid for commissions, salaries, expenses, and other charges of agents, clerks, and other employees.

d. The amount paid for salaries, fees, and other charges of officers and directors.

e. The amount paid for local, state, national and other taxes and duties.

f. The amount paid for all other expenses, including printing, stationery, rents, furniture, or otherwise.

9. Ninth — The largest amount insured in any one risk.

10. Tenth — The amount of risks written during the year then ending.

11. Eleventh — The amount of risks in force having less than one year to run.

12. Twelfth — The amount of risks in force having more than one and not over three years to run.

13. Thirteenth — The amount of risks having more than three years to run.

14. Fourteenth — The dividends, if any, declared on premiums received for risks not terminated.

15. Fifteenth — All other information as required by the national association of insurance commissioners' annual statement blank. The annual statement blank shall be prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual report shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual

statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

2003 Acts, ch 91, §35  
Unnumbered paragraph 1 amended

#### **515.73 Commissioner as process agent.**

Any company desiring to transact the business of insurance under this chapter shall file with the commissioner of insurance a power of attorney and a signed written instrument authorizing the commissioner to accept service of notice or process on behalf of such company that shall be as valid as if served upon the company according to the laws of this or any other state, and waiving all claim or right of error due to the filing of the power of attorney and the agreement regarding service of notice or process.

2003 Acts, ch 91, §36  
Section amended

**515.78 Agent's certificate of authority.**  
Repealed by 2003 Acts, ch 91, § 51.

#### **515.92 Statement of capital and surplus.**

1. Every advertisement or public announcement, and every sign, circular, or card issued or published by a foreign company transacting the business of casualty insurance in the state, or by an officer, agent, or representative that purports to disclose the company's financial standing shall exhibit the capital actually paid in cash, and the amount of net surplus of assets over all its liabilities actually held and available for the payment of losses by fire and for the protection of holders of fire policies, and shall also exhibit the amount of net surplus of assets over all liabilities in the United States actually available for the payment of losses by fire and held in the United States for the protection of holders of fire policies in the United States, including in such liabilities the fund reserved for reinsurance of outstanding risks. The amounts stated for capital and net surplus shall correspond with the latest verified statement made by the company or association to the commissioner of insurance.

2. The company shall not write, place, or cause to be written or placed, a policy or contract for insurance upon property situated or located in this state except through a licensed producer authorized to do business in this state.

2003 Acts, ch 91, §37  
Section amended

#### **515.129 Expenses of examination.**

The necessary expenses of any examination of any insurance company made or ordered to be made by the commissioner of insurance under this chapter shall be certified to by the commissioner, and paid on the commissioner's requisition by the company so examined; and in case of failure of the company to make such payment, the commission-

er shall suspend such company from doing business in this state until such expenses are paid. If such expenses are not paid by the company, they shall be audited by the director of the department of administrative services and paid out of the state treasury.

2003 Acts, ch 145, §286  
Terminology change applied

#### **515.133 Examination of officers and employees.**

1. The commissioner of insurance is authorized to issue a subpoena for examination under oath, any officer, agent, or employee of any company suspected of violating any of the provisions of section 515.131.

2. Upon the filing of a written, verified complaint with the commissioner by two or more residents of this state alleging that a company has vio-

lated section 515.131, the commissioner shall issue a subpoena for examination under oath to any officer, agent, or employee of the company.

2003 Acts, ch 91, §38  
Section amended

#### **515.134 Revocation of authority.**

If upon examination, and that of any other witness produced and examined, the commissioner determines that a company has violated section 515.131, or if any officer, agent, or employee fails to appear or submit to examination after receiving a subpoena, the commissioner shall promptly issue an order revoking the authority of the company to transact business within this state, and the company shall not be permitted to do the business of insurance in this state for one year.

2003 Acts, ch 91, §39  
Section amended

## CHAPTER 515B

### INSURANCE GUARANTY ASSOCIATION

#### **515B.2 Definitions.**

As used in this chapter unless the context otherwise requires:

1. “*Association*” means the Iowa insurance guaranty association created pursuant to section 515B.3.

2. “*Claimant*” means an insured making a first party claim or any person instituting a liability claim against the insured of an insolvent insurer. “*Claimant*” does not include a person who is an affiliate of an insolvent insurer.

3. “*Commissioner*” means the commissioner of insurance of this state.

4. *a.* “*Covered claim*” means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after July 1, 1970, and one of the following conditions exists:

(1) The claimant or insured is a resident of this state at the time of the insured event. Other than an individual, the residence of the claimant or insured is the state in which its principal place of business is located.

(2) The claim is a first party claim by an insured for damage to property permanently located in this state.

*b.* “*Covered claim*” does not include any amount as follows:

(1) That is due any reinsurer, insurer, insurance pool, underwriting association, or other group assuming insurance risks, as subrogation,

contribution, or indemnity recoveries, or otherwise.

(2) That constitutes the portion of a claim that is within an insured’s deductible or self-insured retention.

(3) That is a claim for unearned premium calculated on a retrospective basis, experience-rated plan, or premium subject to adjustment after termination of the policy.

(4) That is due an attorney, adjuster, or witness as fees for services rendered to the insolvent insurer.

(5) That is a fine, penalty, interest, or punitive or exemplary damages.

(6) That constitutes a claim under a policy issued by an insolvent insurer with a deductible or self-insured retention of two hundred thousand dollars or more. However, such a claim shall be considered a covered claim, if as of the deadline set for the filing of claims against the insolvent insurer of its liquidator, the insured is a debtor under 11 U.S.C. § 701 et seq.

(7) That would otherwise be a covered claim, but is an obligation to or on behalf of a person who has a net worth, on the date of the occurrence giving rise to the claim, greater than that allowed by the guarantee fund law of the state of residence of the claimant, and which state has denied coverage to that claimant on that basis.

(8) That is an obligation owed to or on behalf of an affiliate of, as defined in section 521A.1, an insolvent insurer.

Notwithstanding the subparagraphs of this lettered paragraph, a person is not prevented from

presenting a noncovered claim to the insolvent insurer or its liquidator, but the noncovered claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage of the policy issued by the insolvent insurer.

5. “*Insurer*” means an insurer licensed to transact insurance business in this state under either chapter 515 or chapter 520, either at the time the policy was issued or when the insured event occurred. It does not include county or state mutual insurance associations licensed under chapter 518 or chapter 518A, or fraternal benefit societies, orders, or associations licensed under chapter 512B, or corporations operating nonprofit service plans under chapter 514, or life insurance companies or life, accident, or health associations licensed under chapter 508, or those professions under chapter 519.

6. “*Insolvent insurer*” means an insurer against which a final order of liquidation with a finding of insolvency has been entered on or after July 1, 1980, by a court of competent jurisdiction of this state or of the state of the insurer’s domicile.

7. “*Net direct written premiums*” means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums and dividends paid or credited to policyholders on such direct business. Such term does not include premiums on contracts between insurers or reinsurers.

8. “*Person*” means any individual, corporation, partnership, association, or voluntary organization.

2003 Acts, ch 91, §40  
Subsection 2 amended

#### **515B.8 Effect of paid claims.**

1. Any person recovering under this chapter shall be deemed to have assigned the person’s rights under the policy to the association to the extent of the person’s recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except causes of action the insolvent insurer would have had if the sums had been paid by the insolvent insurer.

2. The association and any similar entity in another state shall be recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered claim obligations as determined under this chapter or under similar law in another state, and shall receive dividends and any other distributions at the priority set forth under the applicable liquidation law. The receiver, liquidator, or statutory successor of an in-

solvent insurer shall be bound by determinations of covered claim eligibility under this chapter and by settlements of covered claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator’s expenses.

3. The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association, which statements shall preserve the rights of the association against the assets of the insolvent insurer.

2003 Acts, ch 91, §41  
Subsection 1 amended

#### **515B.9 Nonduplication of recovery.**

1. Any person having a claim under an insurance policy, and the claim under such other policy alleges the same damages or arises from the same facts, injury, or loss that gives rise to a covered claim against the association, shall be required to first exhaust all coverage provided by that policy, whether such coverage is on a primary, excess, or pro rata basis and any obligation of the association shall not be considered other insurance.

Any amount payable on a covered claim shall be reduced by the full applicable limits of such other insurance policy and the association shall receive full credit for such limits or where there are no applicable limits, the claim shall be reduced by the total recovery.

a. A policy providing liability coverage to a person who may be jointly and severally liable with, or a joint tortfeasor with, the person covered under the policy of the insolvent insurer shall be first exhausted before any claim is made against the association and the association shall receive credit for the same as provided above.

b. For purposes of this section, an insurance policy means a policy issued by an insurance company, whether or not a member insurer, which policy insures any of the types of risks insured by an insurance company authorized to write insurance under chapter 515, 516A, or 520, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.

2. A person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured. However, if the claim is a first party claim for damage to property with a permanent location, recovery shall be first sought from the association of the location of the property. If the claim is a workers’ compensation claim, recovery

shall be first sought from the association of the residence of the claimant. Any sums recovered from any other guaranty association or equivalent organization shall be subtracted from the maximum liability of the association under section 515B.5, subsection 1, paragraph “a”.

2003 Acts, ch 91, §42  
 Subsection 1 stricken and rewritten

**515B.16 Actions against the association.**

Any action against the association shall be brought against the association in the associa-

tion’s own name. The Polk county district court shall have exclusive jurisdiction and venue of such actions. Service of the original notice in actions against the association may be made on any officer of the association or upon the commissioner of insurance on behalf of the association. The commissioner shall promptly transmit any notice so served upon the commissioner to the association. Any action against the association shall be commenced within three years after the date of the order of liquidation.

2003 Acts, ch 91, §43  
 Section amended

**CHAPTER 515D**

**AUTOMOBILE INSURANCE CANCELLATION CONTROL**

**515D.5 Delivery of notice.**

1. Notwithstanding the provisions of sections 515.80 through 515.81A, a notice of cancellation of a policy shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the effective date of cancellation, or, where the cancellation is for nonpayment of premium notwithstanding the provisions of sections 515.80 and 515.81A at least ten days prior to the date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of cancellation, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the date of cancellation, the insurer will state the reason for cancellation, together with notification of the right to a hearing before the commissioner within fifteen days as provided in this chapter.

When the reason does not accompany the notice of cancellation, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for cancellation. A statement of reason shall be mailed or delivered to the named insured within five days after receipt of a request.

2. A notice of exclusion of a person under a policy pursuant to section 515D.4, is not effective unless written notice is mailed or delivered to the named insured at least twenty days prior to the ef-

fective date of the exclusion. The written notice shall state the reason for the exclusion, together with notification of the right to a hearing before the commissioner pursuant to section 515D.10 within fifteen days of receipt or delivery of a statement of reason as provided in this section.

2003 Acts, ch 91, §44  
 Subsection 1, unnumbered paragraph 1 amended

**515D.10 Hearing before commissioner.**

Any named insured who has received a statement of reason for cancellation, or of reason for an insurer’s intent not to renew a policy, may, within fifteen days of the receipt or delivery of a statement of reason, request a hearing before the commissioner of insurance. The purpose of this hearing shall be limited to establishing the existence of the proof or evidence used by the insurer in its reason for cancellation or intent not to renew. The burden of proof of the reason for cancellation or intent not to renew shall be upon the insurer. Other than the sharing of information required by this chapter and the rules adopted pursuant to the provisions of this chapter, the commissioner shall keep confidential the information obtained from the insured or in the hearing process, pursuant to section 505.8, subsection 6. The commissioner of insurance shall adopt rules for carrying out the provisions of this section.

2003 Acts, ch 91, §45  
 Section amended

**CHAPTER 515E**

**RISK RETENTION GROUPS AND PURCHASING GROUPS**

**515E.3 Risk retention groups organized in this state.**

To be organized as a risk retention group in this

state, the group must be organized and licensed as a liability insurance company authorized by the insurance laws of this state. Except as provided

elsewhere in this chapter, a risk retention group organized in this state must comply with all of the laws, rules, and requirements applicable to liability insurers organized in this state. Additionally, a risk retention group organized in this state must comply with section 515E.4. These requirements do not exempt risk retention groups from a duty imposed by any other law or rule of the state. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the commissioner of insurance of this state a plan of operation or a feasibility study, and revisions of the plan or study, within ten days of any change. The name under which a risk retention group may be chartered and licensed shall be a brief description of its membership followed by the phrase “risk retention group” and, unless its membership consists solely of insurers, shall not include the terms “insurance”, “mutual”, “reciprocal”, or any similar term. All risk retention groups chartered in this state shall file with the division and the national association of insurance commissioners an annual statement blank prepared in accordance with instructions prescribed by the commissioner. All fi-

nancial information reflected in the annual statement shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

A risk retention group organized in this state shall file in the office of the commissioner a power of attorney and an agreement in writing that service of process in any action or proceeding against the society may be served on the commissioner and shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of the power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original.

2003 Acts, ch 91, §46  
NEW unnumbered paragraph 2

## CHAPTER 515F

### CASUALTY INSURANCE

#### 515F.3 Scope of chapter.

This chapter applies to all forms of casualty insurance, including fidelity, surety, and guaranty bonds, including but not limited to all forms of fire and inland marine insurance, and to any combination of any of the foregoing, on risks or operations located in this state.

Except as otherwise provided in specific divisions of this chapter, this chapter does not apply to:

1. Reinsurance, other than statutorily authorized joint reinsurance mechanisms to the extent stated in section 515F.13.
2. Accident and health insurance.
3. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, excluding inland marine insurance, as determined by the commissioner.
4. Workers' compensation insurance.
5. Surplus lines insurance.
6. Insurance written by a county or state mutual insurance association as provided in chapter 518 or 518A.

2003 Acts, ch 119, §10, 11  
Unnumbered paragraph 2 amended

**515F.26 through 515F.29** Reserved.

#### DIVISION III

#### FAIR ACCESS TO INSURANCE REQUIREMENTS PLAN

#### 515F.30 Short title.

This division may be cited as the “*Fair Access to Insurance Requirements Plan Act*”, or the “*FAIR Plan Act*”.

2003 Acts, ch 119, §1, 11  
NEW section

#### 515F.31 Purpose.

The purposes of this division include all of the following:

1. To make basic property insurance available to qualified applicants with the least possible administrative detail and expense.
2. To establish a plan, an industry placement facility, and a joint reinsurance association for the equitable distribution and placement of risks among insurers.
3. To utilize fully the voluntary insurance market as a source of essential property insurance.
4. To encourage the delivery of basic property insurance at the most reasonable cost possible, provided that insurance pricing by the FAIR plan is actuarially self-supporting and does not actively compete with insurance pricing in the voluntary

insurance market.

2003 Acts, ch 119, §2, 11  
NEW section

#### 515F.32 Definitions.

1. “*Basic property insurance*” means insurance against direct loss to property as defined in the standard fire policy and extended coverage, vandalism, and malicious mischief endorsements; homeowners insurance; and such other coverage or classes of insurance as may be added to the FAIR plan by the commissioner. “*Basic property insurance*” does not include any of the following:

- a. Automobile insurance.
- b. Inland marine insurance.

2. “*Insurer*” includes all companies or associations licensed to transact insurance business in this state under chapters 515, 518, and 518A, and companies or associations admitted or seeking to be admitted to do business in this state under any of those chapters, notwithstanding any provision of the Code to the contrary.

3. “*Plan*” means the FAIR plan to assure fair access to insurance requirements established pursuant to section 515F.33.

2003 Acts, ch 119, §3, 11  
NEW section

#### 515F.33 FAIR plan established.

The FAIR plan to assure fair access to insurance requirements is established. The plan shall operate subject to the provisions and conditions of this division.

2003 Acts, ch 119, §4, 11  
NEW section

#### 515F.34 Membership.

1. Eligibility for membership in the FAIR plan and its underwriting association requires all of the following:

- a. The insurer must be licensed to write property insurance in this state.
- b. The insurer is engaged in writing property insurance in this state, including the property insurance components of multiperil on a direct basis.

2. Each insurer that meets the eligibility requirements in subsection 1 shall be required to do all of the following:

- a. Automatically subscribe to the articles of agreement for the FAIR plan and the underwriting association as a prerequisite to authority to transact property insurance business in this state.
- b. Become and remain a member both of the FAIR plan and the underwriting association.
- c. Comply with the requirements of the FAIR plan and the underwriting association as a condition of the insurer’s authority to transact property insurance business in this state.

2003 Acts, ch 119, §5, 11  
NEW section

#### 515F.35 Status of plan.

1. The FAIR plan is not and shall not be deemed a department, unit, agency, or instrumentality of the state.

2. All debts, claims, obligations, and liabilities incurred by the FAIR plan shall be the debts, claims, obligations, and liabilities of the FAIR plan only, and are not the debts or pledges of credit of the state, or the state’s agencies, instrumentalities, officers, or employees.

3. The moneys of the FAIR plan are not part of the general fund of the state, and the state shall not budget for or provide general fund appropriations to the plan.

4. The records, reports, and communications of the FAIR plan, the governing committee, the committees of the FAIR plan, and their representatives, producers, and employees are not public records.

2003 Acts, ch 119, §6, 11  
NEW section

#### 515F.36 Administration.

1. A governing committee shall administer the FAIR plan, subject to the supervision of the commissioner, and operated by a manager appointed by the committee.

2. The committee shall consist of seven members, one of whom shall be elected by the committee from each of the following:

- a. American insurance association.
- b. Alliance of American insurers.
- c. National association of independent insurers.

d. Iowa insurance institute.

e. Mutual insurance association of Iowa.

f. Independent insurance agents of Iowa.

g. All other insurers.

3. Not more than one insurer in a group under the same management or ownership shall serve on the committee at the same time.

4. The plan of operation and articles of association shall make provision for an underwriting association having authority on behalf of its members to cause to be issued property insurance policies, to reinsure in whole or in part any such policies, and to cede any such reinsurance. The plan of operation and articles of association shall provide, among other things, for the perils to be covered, limits of coverage, geographical area of coverage, compensation and commissions, assessments of members, the sharing of expenses, income, and losses on an equitable basis, cumulative weighted voting for the governing committee of the association, the administration of the FAIR plan, and any other matter necessary or convenient for the purpose of assuring fair access to insurance requirements.

2003 Acts, ch 119, §7, 11  
NEW section

**515F.37 Rules.**

The commissioner shall adopt rules necessary to administer this division.

2003 Acts, ch 119, §8, 11  
NEW section

**515F.38 Retroactive applicability.**

This division applies retroactively to October 7,

1968, to validate action taken under the Iowa basic property insurance inspection and placement program adopted by the commissioner of insurance.

2003 Acts, ch 119, §9, 11  
NEW section

## CHAPTER 518

### COUNTY MUTUAL INSURANCE ASSOCIATIONS

**518.18 Premium tax.**

After January 1, 1966, every association doing business under this chapter shall be required to pay to the director of the department of revenue, or a depository designated by the director, as taxes an amount equal to the following:

1. The applicable percent of the gross amount of premiums received during the preceding calendar year, after deducting the amount returned upon the canceled policies, certificates, and rejected applications; and after deducting premiums paid for windstorm or hail reinsurance on properties specifically reinsured. However, the reinsurer of such windstorm or hail risks shall pay the applicable percent of the gross amount of reinsurance premiums received upon such risks after deducting the amounts returned upon canceled policies, certificates, and rejected applications. For purposes of this section, “*applicable percent*” means the same as specified in section 432.1, subsection 4.

2. Except as provided in subsection 3, the premium tax shall be paid on or before March 1 of the year following the calendar year for which the tax is due. The commissioner of insurance may suspend the certificate of authority of a county mutual insurance association that fails to pay its premium tax on or before the due date.

3. *a.* Each county mutual insurance association transacting business in this state whose Iowa premium tax liability for the preceding calendar year was one thousand dollars or more shall remit on or before June 1, on a prepayment basis, an amount equal to one-half of the premium tax liability for the preceding calendar year.

*b.* In addition to the prepayment amount in paragraph “*a*”, each association shall remit on or before June 30, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

- (1) For prepayment in the 2003 and 2004 calendar years, eleven percent.
- (2) For prepayment in the 2005 calendar year, twenty-six percent.
- (3) For prepayment in the 2006 and subse-

quent calendar years, fifty percent.

*c.* The sums prepaid by a county mutual insurance association under this subsection shall be allowed as credits against its premium tax liability for the calendar year during which the payments are made. If a prepayment made under this subsection exceeds the annual premium tax liability, the excess shall be allowed as a credit against subsequent prepayment or tax liabilities. The commissioner of insurance may suspend the certificate of authority of an association that fails to make a prepayment on or before the due date.

2003 Acts, ch 145, §286; 2003 Acts, ch 179, §136, 159  
Terminology change applied  
Unnumbered paragraph 2 amended

**518.23 Cancellation or nonrenewal of policies — notice.**

1. *Cancellation by insured.* A policy shall be canceled at any time at the request of the insured upon the return of the policy to the home office of the association, and the payment of all premium charges against such policy.

2. *Cancellation by association.*

*a.* Except as provided in paragraph “*b*”, notice of cancellation is not effective unless mailed or delivered by the association to the named insured at least thirty days before the effective date of cancellation.

*b.* Notice of cancellation resulting from nonpayment of a premium or installment provided for in the policy, or provided for in a note or contract for the payment of such premium or installment, is not effective unless mailed or delivered by the association to the named insured at least ten days prior to the date of cancellation.

*c.* If a notice of cancellation under paragraph “*a*” or “*b*” fails to include the reason for such cancellation, the association, upon receipt of a timely request by the named insured, shall provide in writing the reason for the cancellation.

3. *Nonrenewal by association.* A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. If the reason does not accompany the notice of nonrenewal, the association, upon

receipt of a timely request by the named insured, shall provide the reason for the nonrenewal in writing.

4. *Notice.* Service of notice under subsection 2 or 3 may be delivered in person or mailed to the insured at the insured's post office address as given in or upon the policy, or to such other address as the insured shall have given to the association in writing. A post office department certificate of

mailing shall be deemed proof of receipt of such mailing. If in either case the cash payments exceed the amount properly chargeable, the excess shall be refunded to the insured upon the surrender of the policy to the association at its home office.

2003 Acts, ch 91, §47  
Subsection 2, paragraph a amended

## CHAPTER 518A

### STATE MUTUAL INSURANCE ASSOCIATIONS

#### **518A.29 Cancellation or nonrenewal by association — notice.**

1. *Cancellation by insured.* A policy shall be canceled at any time at the request of the insured upon the return of the policy to the home office of the association and the payment of all premium charges against such policy.

2. *Cancellation by association.*

a. Except as provided in paragraph "b", notice of cancellation is not effective unless mailed or delivered by the association to the named insured at least thirty days before the effective date of cancellation.

b. Notice of cancellation resulting from nonpayment of a premium or installment provided for in the policy, or provided for in a note or contract for the payment of such premium or installment, is not effective unless mailed or delivered by the association to the named insured at least ten days prior to the date of cancellation.

c. If a notice of cancellation under paragraph "a" or "b" fails to include the reason for such cancellation, the association, upon receipt of a timely request by the named insured, shall provide the reason for the cancellation in writing.

3. *Nonrenewal by association.* A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. If the reason does not accompany the notice of nonrenewal, the association, upon receipt of a timely request by the named insured, shall provide in writing the reason for the nonrenewal.

4. *Notice.* Service of notice under subsection 2 or 3 may be delivered in person or mailed to the insured at the insured's post office address as given in or upon the policy, or to such other address as the insured shall have given to the association in writing. A post office department certificate of mailing shall be deemed proof of receipt of such mailing. If in either case the cash payments exceed the amount properly chargeable, the excess shall be refunded upon the surrender of the policy

to the association at its home office.

2003 Acts, ch 91, §48  
Subsection 2, paragraph a amended

#### **518A.35 Annual tax.**

1. A state mutual insurance association doing business under this chapter shall on or before the first day of March, each year, pay to the director of revenue, or a depository designated by the director, a sum equivalent to the applicable percent of the gross receipts from premiums and fees for business done within the state, including all insurance upon property situated in the state without including or deducting any amounts received or paid for reinsurance. However, a company reinsuring windstorm or hail risks written by county mutual insurance associations is required to pay the applicable percent tax on the gross amount of reinsurance premiums received upon such risks, but after deducting the amount returned upon canceled policies and rejected applications covering property situated within the state, and dividends returned to policyholders on property situated within the state. For purposes of this section, "applicable percent" means the same as specified in section 432.1, subsection 4.

2. Except as provided in subsection 3, the premium tax shall be paid on or before March 1 of the year following the calendar year for which the tax is due. The commissioner of insurance may suspend the certificate of authority of a state mutual insurance association that fails to pay its premium tax on or before the due date.

3. a. Each state mutual insurance association transacting business in this state whose Iowa premium tax liability for the preceding calendar year was one thousand dollars or more shall remit on or before June 1, on a prepayment basis, an amount equal to one-half of the premium tax liability for the preceding calendar year.

b. In addition to the prepayment amount in paragraph "a", each association shall remit on or before June 30, on a prepayment basis, an additional amount equal to the following percent of the

premium tax liability for the preceding calendar year as follows:

(1) For prepayment in the 2003 and 2004 calendar years, eleven percent.

(2) For prepayment in the 2005 calendar year, twenty-six percent.

(3) For prepayment in the 2006 and subsequent calendar years, fifty percent.

c. The sums prepaid by a state mutual insurance association under this subsection shall be allowed as credits against its premium tax liability for the calendar year during which the payments

are made. If a prepayment made under this subsection exceeds the annual premium tax liability, the excess shall be allowed as a credit against subsequent prepayment or tax liabilities. The commissioner of insurance may suspend the certificate of authority of an association that fails to make a prepayment on or before the due date.

2003 Acts, ch 145, §286; 2003 Acts, ch 179, §137, 159  
Terminology change applied  
Section amended

**518A.43 Cancellation of license.** Repealed by 2003 Acts, ch 91, § 51.

## CHAPTER 518B

### RIOT REINSURANCE PROGRAM

#### **518B.2 Reimbursement fund created.**

There is hereby created the federal riot reinsurance reimbursement fund in the office of the treasurer of state which shall be operated under the joint control of the director of the department of administrative services and the commissioner. The fund shall consist of all payments made by insurers in accordance with the provisions of this chapter. The director of the department of administrative services shall have the same power to enforce the collection of the assessments provided hereunder as any other obligation due the state.

2003 Acts, ch 145, §286  
Terminology change applied

#### **518B.5 Warrants issued — overage fund.**

The secretary shall be reimbursed up to the amount requested by warrants issued against the fund by the director of the department of administrative services upon vouchers approved by the di-

rector of the department of administrative services and the commissioner. If the assessment produces a fund greater than the amount requested by the secretary, the overage shall be placed in a special fund in the office of the treasurer of state under the control of the commissioner and the director of the department of administrative services and shall be applied to any subsequent requests by the secretary for reimbursement of losses paid on lines of insurance reinsured by the secretary in this state in accordance with the Act.

In the event that the provisions of this chapter and the assessments made thereunder are no longer needed in order to effectuate the program for which they were intended, the amounts remaining in the special fund shall inure to the general fund of the state.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 521C

### REINSURANCE INTERMEDIARIES

#### **521C.3 Licensure.**

1. A person shall not act as a reinsurance intermediary-broker in this state if the person maintains an office in this state or another state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation, unless the person is a licensed producer in this state or another state having a law substantially similar to this law, or the person is licensed in this state as a nonresident reinsurance intermediary.

2. A person shall not act as a reinsurance intermediary-manager in any of the following circumstances:

a. Where the reinsurer is domiciled in this state, unless the person is a licensed producer in

this state.

b. Where the person maintains an office in this state individually or as a member or employee of a firm or association, or as an officer, director, or employee of a corporation in this state, unless the person is a licensed producer in this state.

c. Where the person would be acting in another state for a nondomestic insurer, unless the person is a licensed producer in this state or in another state having a law substantially similar to this law, or is licensed in this state as a nonresident reinsurance intermediary.

3. The commissioner may require a reinsurance intermediary-manager subject to subsection 2 to do one or more of the following:

a. File a bond in an amount determined by the

commissioner from an insurer acceptable to the commissioner for the protection of each reinsurer represented by the reinsurance intermediary-manager.

*b.* Maintain an errors and omissions policy in an amount acceptable to the commissioner.

*4. a.* The commissioner may issue a reinsurance intermediary license to a person who has complied with the requirements of this chapter. Any such license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements to the application. A license issued to a corporation shall authorize all of the officers, and any designated employees and directors of the corporation to act as reinsurance intermediaries on behalf of the corporation, and all such persons shall be named in the application and any supplements to the application.

*b.* A reinsurance intermediary license applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process, and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such non-resident reinsurance intermediary may be served.

The licensee shall promptly notify the commissioner in writing of a change of the designated agent for service of process, and the change becomes effective upon acknowledgment by the commissioner.

*5.* The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment, any of the following conditions are present:

*a.* The applicant, anyone named in the application, or any member, principal, officer, or director of the applicant, is not trustworthy.

*b.* A controlling person of such applicant is not trustworthy to act as a reinsurance intermediary.

*c.* Conditions present in paragraph "a" or "b" have given cause for revocation or suspension of a license, or a person referred to in paragraph "a" or "b" has failed to comply with any prerequisite for the issuance of a license.

Upon written request, the commissioner shall furnish a written summary of the basis for refusal to issue a license, which document is privileged and not subject to disclosure under chapter 22.

*6.* A licensed attorney in this state when acting in a professional capacity as an attorney is exempt from the requirements of this section.

2003 Acts, ch 91, §49  
Subsection 4, paragraph b amended

## CHAPTER 523

### ELECTIONS, PROPORTIONATE REPRESENTATION, AND INSIDER TRADING

#### **523.7 Statement of stock ownership filed with commissioner.**

*1.* Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner of insurance as prescribed by rule a statement, in a form as the commissioner may prescribe, of the amount of all equity securities of the company of which the person is the beneficial owner.

*2.* Within the time frame prescribed by rule, if there has been a change in the ownership during

a time period prescribed by rule, a person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner a statement, in a form as the commissioner may prescribe, indicating the person's ownership at the close of the time period prescribed by rule and any changes in the person's ownership as have occurred during the time period prescribed by rule.

2003 Acts, ch 91, §50  
Section amended

## CHAPTER 523A

### CEMETERY AND FUNERAL MERCHANDISE AND FUNERAL SERVICES

#### **523A.602 Consumer recision, cancellation, and refund rights — purchase agreement compliance with other laws.**

*1.* A seller shall furnish the purchaser with a

completed copy of a purchase agreement pertaining to the sale at the time the purchase agreement is signed. The seller shall comply with the following terms:

a. The same language shall be used in both the oral sales representation and the written purchase agreement.

b. The seller shall give notice in the purchase agreement of the purchaser's right to rescind after signing the purchase agreement. The rescision period must be, but may be greater than, three business days after the date of the purchase agreement. The notice must:

- (1) Be located close to the signature line.
- (2) Be printed in twelve point boldface type.
- (3) State that **"YOU, THE PURCHASER, HAVE THE RIGHT TO RESCIND THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT OF THE (INSERT RELEVANT NUMBER, NOT LESS THAN THREE) BUSINESS DAY AFTER THE DATE OF THIS AGREEMENT."**

c. All moneys shall be refunded without penalty within ten days after rescision.

2. *Cancellation refund.*

a. A purchase agreement must include a statement that the purchaser has the right to cancel the agreement for the purchase of cemetery merchandise, funeral merchandise, and funeral services upon written demand and designate or appoint a trustee to hold, manage, invest, and distribute the trust assets.

b. (1) If a purchase agreement is canceled, a purchaser requests a transfer of the trust assets upon cancellation of a purchase agreement, or another establishment provides merchandise or services designated in a purchase agreement, the seller shall refund or transfer within thirty days of receiving a written demand no less than the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services adjusted for inflation, using the consumer price index amounts announced by the commissioner annually, less any actual expenses incurred by the seller pursuant to the purchase agreement as set forth in the purchase agreement under section 523A.601, subsection 1, paragraph "f". The amount of the actual expenses deducted by the seller shall not exceed ten percent of the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services. The seller may also deduct the value of the cemetery merchandise, funeral merchandise, and funeral ser-

vices already received by, delivered to, or warehoused for the purchaser.

(2) For the purposes of this paragraph "b", "actual expenses" means all reasonable business expenses of an establishment that are associated with the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. "Actual expenses" includes but is not limited to the following:

- (a) Marketing and promotional expenses.
- (b) Investment management fees.
- (c) Annual reporting fees related to accounting and regulatory requirements.
- (d) Licensing fees of the establishment.
- (e) Administration, regulatory reporting, and custody expenses related to purchase agreements.
- (f) Computer and software expenses.
- (g) Expenses related to employees of the establishment such as licensing fees, continuing education, and salaries and commissions.
- (h) Miscellaneous office expenses.

c. A purchase agreement must include a statement that the purchaser is entitled to a refund of the purchase price of the applicable funeral merchandise adjusted for inflation, using the consumer price index amounts announced by the commissioner annually for any item of funeral merchandise that cannot be delivered to the location specified in the purchase agreement within forty-eight hours of notice of the individual's death, unless the delay is caused by weather conditions or a natural disaster. The seller must return such refund to the purchaser within thirty days of receiving the written demand.

3. This section does not prohibit a purchaser who is or may become eligible for benefits under Title XIX of the federal Social Security Act from making a guaranteed price purchase agreement irrevocable to the extent that federal law or regulations require that such an agreement be irrevocable for purposes of a purchaser's eligibility for benefits under Title XIX of the federal Social Security Act, as permitted under federal law. The seller of credit sale agreements shall comply with the requirements of chapter 537, the Iowa consumer credit code, and is subject to the remedies and penalties provided in that chapter for noncompliance.

2003 Acts, ch 58, §1  
Subsection 2, paragraph b amended

## CHAPTER 524

### BANKS

#### **524.207 Expenses of the banking division — fees.**

1. All expenses required in the discharge of the duties and responsibilities imposed upon the banking division of the department of commerce,

the superintendent, and the state banking board by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the general fund of the state. All of these fees are payable to the superin-

tendent. The superintendent shall pay all the fees and other moneys received by the superintendent to the treasurer of state within the time required by section 12.10 and the fees and other moneys shall be deposited into the general fund of the state. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of the division to the extent approved by the state banking board.

2. The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state and each separate duty shall be fiscally self-sustaining.

3. The banking division may expend additional funds, including funds for additional personnel, if those additional expenditures are actual expenses which exceed the funds budgeted for bank examinations and directly result from examinations of banks. The amounts necessary to fund the excess examination expenses shall be collected from banks being regulated, and the collections shall be treated as repayment receipts as defined in section 8.2. The division shall notify in writing the legislative services agency and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed to the general fund, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

4. All fees and moneys collected shall be deposited into the general fund of the state and expenses required to be paid under this section shall be paid from funds appropriated for those purposes. Moneys deposited into the general fund of the state pursuant to this section shall be subject to the requirements of section 8.60.

2003 Acts, ch 35, §45, 49  
Terminology change applied

#### **524.209 Expenses.**

The superintendent, deputy superintendent, assistants, examiners and other employees of the banking division shall be entitled to receive reimbursement for expenses incurred in the performance of their duties. The superintendent, and when specifically authorized by the superinten-

dent, the deputy superintendent, assistants, examiners and other employees of the banking division, shall be entitled to receive reimbursement for expenses incurred while attending conventions, meetings, conferences, schools, or seminars relating to the performance of their duties, and such expenses shall be paid by the treasurer of state on warrants drawn by the director of the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

#### **524.212 Prohibition against disclosure of regulatory information.**

The superintendent, deputy superintendent, assistant to the superintendent, examiner, or other employee of the banking division shall not disclose, in any manner, to any person other than the person examined and those regulatory agencies referred to in section 524.217, subsection 2, any information relating specifically to the supervision and regulation of any state bank, persons subject to the provisions of chapter 533A, 533C, 536, or 536A, any affiliate of any state bank, or an affiliate of a person subject to the provisions of chapter 533A, 533C, 536, or 536A, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in section 524.215, subsections 1, 2, 3, and 5.

2003 Acts, ch 96, §40, 42  
2003 amendments to this section take effect October 1, 2003; 2003 Acts, ch 96, §42  
Section amended

#### **524.541 Lists — filing with superintendent.**

Every state bank shall cause to be kept a full and correct list of the names and addresses of the officers, directors, and shareholders of the state bank, and the number of shares held by each. If an affiliate, as defined in subsection 4 of section 524.1101, is a shareholder in a state bank, such list shall include the names, addresses, and percentage of ownership or interest in the affiliate of the shareholders, members, or other individuals possessing a beneficial interest in said affiliate.

A copy of the list as of the date of the adjournment of each annual meeting of shareholders, in the form of an affidavit signed by the president or cashier of the state bank, shall be transmitted to the superintendent within ten days after such annual meeting.

2003 Acts, ch 4, §1  
Unnumbered paragraph 1 amended

## CHAPTER 533

### CREDIT UNIONS

#### **533.3 Restriction.**

1. A person other than one referred to in sub-

section 2 shall not use a name or title containing the words "credit union" or any derivation thereof,

and shall not represent in advertising or otherwise that the person is conducting business as a credit union.

2. The prohibitions contained in subsection 1 do not apply to a credit union organized under this chapter or under the Federal Credit Union Act, 12 U.S.C. Sec. 1751 et seq., or to the Iowa credit union league, or a chapter, affiliate or subsidiary of the Iowa credit union league, or to a political action committee formed under Public Law 94-283 or chapter 68A by the Iowa credit union league or by credit unions organized under this chapter or federal law.

3. Violation of subsection 1 is a serious misdemeanor, and the violator may be enjoined from the use of words, advertising or other representation prohibited by subsection 1.

Section not amended; internal reference change applied

### 533.24 Taxation.

1. A credit union shall be deemed an institution for savings and is subject to taxation only as to its real estate and moneys and credits. The shares shall not be taxed.

2. The moneys and credits tax on credit unions is imposed at a rate of five mills on each dollar of the legal and special reserves which are required to be maintained by the credit union under section 533.17, and shall be levied by the board of supervisors, and placed upon the tax list and collected by the county treasurer, except that an exemption shall be given to each credit union in the amount of forty thousand dollars. The amount collected in each taxing district within a city shall be apportioned twenty percent to the county, thirty percent to the city general fund, and fifty percent to the general fund of the state, and the amount collected in each taxing district outside of cities shall be apportioned fifty percent to the county and fifty percent to the general fund of the state. The moneys and credits tax shall be collected at the location of the credit union as shown in its articles of incorporation.

3. The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15E.43.

4. The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15E.51.

5. The moneys and credits tax imposed under this section shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

2003 Acts, 1st Ex, ch 2, §88, 89

Subsection 3 takes effect February 28, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1006, §13

Subsection 4 takes effect May 8, 2002, and applies retroactively to tax years beginning on or after January 1, 2002; 2002 Acts, ch 1156, §8

Subsection 5 takes effect June 19, 2003, and applies retroactively to tax years beginning on or after January 1, 2003; 2003 Acts, 1st Ex, ch 2, §89

For future repeal of subsection 5 effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93

Former unnumbered paragraphs 1 – 4 editorially redesignated as subsections 1 – 4

NEW subsection 5

### 533.62 Examination and supervision fees — penalties.

1. Each credit union shall pay to the superintendent an annual fee as established by the superintendent and adopted by the credit union review board. The fee shall be based upon the actual operating costs of the credit union division.

2. Failure of a credit union to pay a fee pursuant to subsection 1 within fifteen days after the fee is due shall result in the fee being considered delinquent and a penalty equal to five percent of the original fee may be assessed for each day or part of a day the payment remains delinquent. The delinquency may be grounds for revocation of the charter of the credit union.

3. All expenses required in the discharge of the duties and responsibilities imposed upon the superintendent and the board by the laws of this state shall be paid from funds appropriated from the general fund of the state. The superintendent shall pay all fees and other money received by the superintendent to the treasurer of state within the same time required by section 12.10. The treasurer of state shall deposit such funds in the general fund of the state. Funds appropriated to the credit union division shall be subject at all times to the warrant of the director of the department of administrative services, drawn upon written requisition of the superintendent or a designated representative, for the payment of all salaries and other expenses necessary to carry out the duties of the credit union division.

4. *a.* A loan of money or property shall not be made directly or indirectly by a state-chartered credit union, or by its officers, directors, or employees, to the superintendent, deputy, or employee of the credit union division. The superintendent, deputy, or employee of the credit union division shall not accept from a state-chartered credit union, or its officers, directors, or employees, a loan of money or property, either directly or indirectly.

*b.* The superintendent, deputy, or employee of the credit union division shall not perform any services for or be an officer, director, or employee of a state-chartered credit union.

*c.* A person who willfully undertakes to establish a business dealing contrary to this section commits a serious misdemeanor, and shall be permanently disqualified from acting as an officer, director, or employee of a state-chartered credit union and permanently disqualified from acting as superintendent, deputy, or employee of the credit union division.

*d.* The superintendent, deputy, or employee of the credit union division who is convicted of theft, burglary, robbery, larceny, or embezzlement as a result of a violation of the laws of any state or of the United States while holding such position shall be immediately disqualified from employment and shall be forever disqualified from holding any posi-

tion in the credit union division.

2003 Acts, ch 145, §286  
Terminology change applied

**533.67 Expenses of the credit union division — fees.**

1. All expenses required in the discharge of the duties and responsibilities imposed upon the credit union division, the superintendent, and the credit union review board by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the general fund of the state. All of these fees are payable to the superintendent. The superintendent shall pay all the fees and other moneys received by the superintendent to the treasurer of state within the time required by section 12.10 and the fees and other moneys shall be deposited into the general fund of the state. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of the division to the extent approved by the credit union review board.

2. The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state and each separate duty shall be fiscally self-sustaining.

3. The credit union division may expend additional funds, including funds for additional personnel, if those additional expenditures are actual expenses which exceed the funds budgeted for credit union examinations and directly result

from examinations of credit unions. The amounts necessary to fund the excess examination expenses shall be collected from credit unions being regulated, and the collections shall be treated as repayment receipts as defined in section 8.2. The division shall notify in writing the legislative services agency and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed to the general fund, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

4. All fees and other moneys collected shall be deposited into the general fund of the state and expenses required to be paid under this section shall be paid from funds appropriated for those purposes. Moneys deposited into the general fund of the state pursuant to this section shall be subject to the requirements of section 8.60.

5. The division may accept reimbursement of expenses related to the examination of a credit union from the national credit union administration or any other share guarantor or insurance plan authorized by this chapter. These reimbursements shall be deposited into the general fund of the state.

2003 Acts, ch 35, §45, 49  
Terminology change applied

**CHAPTER 533B**

**SALE OF CERTAIN INSTRUMENTS FOR PAYMENT OF MONEY**

Repealed effective October 1, 2003;  
2003 Acts, ch 96, §41, 42; see chapter 533C

**CHAPTER 533C**

**UNIFORM MONEY SERVICES ACT**

Chapter effective October 1, 2003;  
2003 Acts, ch 96, §42

**ARTICLE 1**

**GENERAL PROVISIONS**

**533C.101 Short title.**

This chapter may be cited as the "*Uniform Money Services Act*".

2003 Acts, ch 96, §1, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

**533C.102 Definitions.**

In this chapter:

1. "*Applicant*" means a person that files an application for a license under this chapter.

2. "*Authorized delegate*" means a person a licensee designates to provide money services on behalf of the licensee.

3. "*Bank*" means an institution organized under federal or state law which does any of the following:

a. Accepts demand deposits or deposits that the depositor may use for payment to third parties and engages in the business of making commercial loans.

b. Engages in credit card operations and maintains only one office that accepts deposits, does not accept demand deposits or deposits that the depositor may use for payments to third parties, does not accept a savings or time deposit less than one hundred thousand dollars, and does not engage in the business of making commercial loans.

4. “*Compensation*” means any fee, commission, or other benefit.

5. “*Conducting the business*” means engaging in activities of a licensee or money transmitter more than ten times in any calendar year for compensation.

6. “*Control*” means any of the following:

a. Ownership of, or the power to vote, directly or indirectly, at least twenty-five percent of a class of voting securities or voting interests of a licensee or person in control of a licensee.

b. Power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee.

c. The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

7. “*Credit union*” means a cooperative, non-profit association incorporated under chapter 533 or the Federal Credit Union Act, 12 U.S.C. § 1751 et seq., that is insured by the national credit union administration and includes an office of a credit union.

8. “*Currency exchange*” means receipt of compensation from the exchange of money of one government for money of another government.

9. “*Executive officer*” means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

10. “*Licensee*” means a person licensed under this chapter.

11. “*Location*” means a place of business at which activity conducted by a licensee or money transmitter occurs.

12. “*Monetary value*” means a medium of exchange, whether or not redeemable in money.

13. “*Money*” means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

14. “*Money services*” means money transmission or currency exchange.

15. “*Money transmission*” means any of the following:

a. Selling payment instruments to one or more persons or issuing payment instruments which are sold to one or more persons.

b. Conducting the business of receiving money

or monetary value for transmission.

c. Conducting the business of receiving money for obligors for the purpose of paying obligors’ bills, invoices, or accounts.

16. “*Outstanding*”, with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee.

17. “*Payment instrument*” means a check, draft, money order, traveler’s check, stored-value, or other instrument or order for the transmission or payment of money or monetary value, sold to one or more persons, whether or not that instrument or order is negotiable. “*Payment instrument*” does not include an instrument that is redeemable by the issuer or an affiliate in merchandise or service, a credit card voucher, or a letter of credit.

18. “*Person*” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

19. “*Proceeds*” means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind.

20. “*Property*” means anything of value, and includes any interest in property, including any benefit, privilege, claim, or right with respect to anything of value, whether real or personal, tangible or intangible, without reduction for expenses incurred for acquisition, maintenance, production, or any other purpose.

21. “*Record*” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

22. “*Responsible individual*” means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this state.

23. “*State*” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

24. “*Stored-value*” means a monetary value that is evidenced by an electronic record.

25. “*Superintendent*” means the superintendent of banking for the state of Iowa.

26. “*Transaction*” includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer between accounts, exchange of currency, extension of credit, purchase or sale of any monetary instrument or stored-value, use of a safe deposit box, or any other acquisition or disposition of property by whatever means effected.

27. “*Unsafe or unsound practice*” means a practice or conduct by a person licensed to engage

in money transmission or an authorized delegate of such a person which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the interests of its customers.

2003 Acts, ch 96, §2, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

### 533C.103 Exclusions.

This chapter does not apply to:

1. The United States or a department, agency, or instrumentality thereof.

2. A money transmission by the United States postal service or by a contractor on behalf of the United States postal service.

3. A state, county, city, or any other governmental agency or governmental subdivision of a state.

4. A bank, bank holding company, savings and loan association, savings bank, credit union, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the federal Bank Service Company Act, 12 U.S.C. § 1861 – 1867, or corporation organized under the federal Edge Act, 12 U.S.C. § 611 – 633, under the laws of a state or the United States.

5. Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof.

6. A board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. § 1 – 25, or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board.

7. A registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant.

8. A person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider.

9. An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers.

10. A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer.

11. A delayed deposit services business as defined in chapter 533D.

12. A real estate broker or salesperson as defined in chapter 543B.

13. Pari-mutuel wagering, racetracks, and excursion gambling boats as provided in chapters 99D and 99F.

14. A person engaging in the business of debt management that is licensed or exempt from licensing pursuant to section 533A.2.

15. An insurance company organized under chapter 508, 514, 514B, 515, 518, 518A, or 520, or authorized to do the business of insurance in Iowa to the extent of its operation as an insurance company.

16. An insurance producer as defined in section 522B.1 to the extent of its operation as an insurance producer.

2003 Acts, ch 96, §3, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

## ARTICLE 2

### MONEY TRANSMISSION LICENSES

#### 533C.201 License required.

1. A person shall not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person:

a. Is licensed under this article.

b. Is an authorized delegate of a person licensed under this article.

2. A license under this article is not transferable or assignable.

2003 Acts, ch 96, §4, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### 533C.202 Application for license.

1. In this section, “*material litigation*” means litigation that according to generally accepted accounting principles is significant to an applicant’s or a licensee’s financial health and would be required to be disclosed in the applicant’s or licensee’s annual audited financial statements, report to shareholders, or similar records.

2. A person applying for a license under this article shall do so in a form prescribed by the superintendent. The application must state or contain:

a. The legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business.

b. A list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the ten-year period next preceding the submission of the application.

c. A description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this state.

d. A list of the applicant’s proposed authorized delegates and the locations in this state where the applicant and its authorized delegates propose to

engage in money transmission or provide other money services.

*e.* A list of other states in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state.

*f.* Information concerning any bankruptcy or receivership proceedings affecting the licensee.

*g.* A sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument or instrument upon which stored-value is recorded, if applicable.

*h.* The name and address of any bank through which the applicant's payment instruments and stored-value will be paid.

*i.* A description of the source of money and credit to be used by the applicant to provide money services.

*j.* Any other information the superintendent reasonably requires with respect to the applicant.

3. If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide all of the following:

*a.* The date of the applicant's incorporation or formation and state or country of incorporation or formation.

*b.* If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed.

*c.* A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded.

*d.* The legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the ten-year period next preceding the submission of the application of each executive officer, manager, director, or person that has control, of the applicant.

*e.* A list of any criminal convictions and material litigation in which any executive officer, manager, director, or person in control of the applicant has been involved in the ten-year period next preceding the submission of the application.

*f.* A copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application.

*g.* A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application.

*h.* If the applicant is publicly traded, a copy of the most recent report filed with the United States securities and exchange commission under section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m.

*i.* If the applicant is a wholly owned subsidiary of:

(1) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m.

(2) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States.

*j.* If the applicant has a registered agent in this state, the name and address of the applicant's registered agent in this state.

*k.* Any other information the superintendent reasonably requires with respect to the applicant.

4. A nonrefundable application fee of one thousand dollars and a license fee must accompany an application for a license under this article. The license fee must be refunded if the application is denied. The license fee shall be the sum of five hundred dollars plus an additional ten dollars for each location in this state at which business is conducted through authorized delegates or employees of the licensee, but shall not exceed five thousand dollars. Fees for locations added after the initial application shall be submitted with the quarterly reports pursuant to section 533C.503, subsection 2. If the licensee has no locations in this state at which business is conducted through authorized delegates or employees of the licensee, the license fee shall be set by the superintendent, but shall not exceed five thousand dollars. A license under this article expires on the next September 30 after its issuance. The initial license fee is considered an annual fee and the superintendent shall prorate the license fee, refunding any amount due to a partial license year. However, no refund of a license fee shall be made when a license is suspended, revoked, or surrendered.

5. The superintendent may waive one or more requirements of subsections 2 and 3, or permit an applicant to submit other information in lieu of the required information.

2003 Acts, ch 96, §5, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

### **533C.203 Security.**

1. Except as otherwise provided in subsection 2, a surety bond, letter of credit, or other similar security acceptable to the superintendent in the amount of fifty thousand dollars plus ten thousand dollars per location, not exceeding a total addition of three hundred thousand dollars, must accompany an application for a license. If the licensee has no locations in this state, the superintendent shall set the bond amount not to exceed three hundred thousand dollars.

2. Security must be in a form satisfactory to the superintendent and payable to the state for the benefit of any claimant against the licensee to secure the faithful performance of the obligations

of the licensee with respect to money transmission.

3. The aggregate liability on a surety bond shall not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond, or the superintendent may maintain an action on behalf of the claimant.

4. A surety bond must cover claims for so long as the superintendent specifies, but for at least five years after the licensee ceases to provide money services in this state. However, the superintendent may permit the amount of security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or stored-value obligations outstanding in this state is reduced. The superintendent may permit a licensee to substitute another form of security acceptable to the superintendent for the security effective at the time the licensee ceases to provide money services in this state.

5. In lieu of the security prescribed in this section, an applicant for a license or a licensee may provide security in a form prescribed by the superintendent.

6. The superintendent may increase the amount of security required to a maximum of one million dollars if the financial condition of a licensee so requires, as evidenced by reduction of net worth, financial losses, or other relevant criteria.

2003 Acts, ch 96, §6, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.204 Issuance of license.**

1. When an application is filed under this article, the superintendent shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The superintendent may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The superintendent shall issue a license to an applicant under this article if the superintendent finds that all of the following conditions have been fulfilled:

*a.* The applicant has complied with sections 533C.202, 533C.203, and 533C.206.

*b.* The applicant has not been convicted of or pled guilty to a felony or an indictable misdemeanor for financial gain within the past ten years.

*c.* The applicant has paid a fee set by the department of public safety, division of criminal investigation and bureau of identification, to defray the costs associated with the search of criminal history records of the applicant. If the applicant is a corporation, the applicant shall pay the fee associated with a criminal history record check for the directors and officers of the corporation. If the applicant is a partnership, the applicant shall pay the fee associated with a criminal history record check for each of the partners. The superintendent may require the applicant to provide addi-

tional information from the applicant if the department of public safety records indicate that a person with the same name has a criminal history. If the applicant is a publicly traded corporation or a subsidiary or affiliate of a publicly traded corporation, no criminal history record check shall be required.

2. When an application for an original license under this article is complete, the superintendent shall promptly notify the applicant of the date on which the application was determined to be complete and the superintendent shall approve or deny the application within one hundred twenty days after that date.

3. The superintendent may for good cause extend the application period.

4. An applicant whose application is denied by the superintendent under this article may appeal, within thirty days after receipt of the notice of the denial, from the denial and request a hearing. The denial of a license shall not be deemed a contested case.

2003 Acts, ch 96, §7, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.205 Renewal of license.**

1. A licensee under this article shall pay an annual renewal fee as determined below by no later than September 1 of the year of expiration. The renewal fee shall be five hundred dollars plus an additional ten dollars for each location in this state at which business is conducted through authorized delegates or employees of the licensee, but shall not exceed five thousand dollars. Fees for locations added after submission of the renewal application shall be submitted with the quarterly reports pursuant to section 533C.503, subsection 2. If the licensee has no locations in this state at which business is conducted through authorized delegates or employees of the licensee, the license fee shall be set by the superintendent, but shall not exceed five thousand dollars. Licenses issued under chapter 533B, Code 2003, will be initially renewed as provided in section 533C.904.

2. A licensee under this article shall submit a renewal report with the renewal fee, in a form prescribed by the superintendent. The renewal report must state or contain:

*a.* A copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement.

*b.* The number and monetary amount of payment instruments sold by the licensee in this state which have not been included in a renewal report, and the monetary amount of payment instruments and stored-value currently outstanding.

*c.* A description of each material change in in-

formation submitted by the licensee in its original license application which has not been reported to the superintendent on any required report.

*d.* A list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in sections 533C.601 and 533C.602.

*e.* Proof that the licensee continues to maintain adequate security as required by section 533C.203; and

*f.* A list of the locations in this state where the licensee or an authorized delegate of the licensee engages in money transmission or provides other money services.

3. If a licensee does not file a renewal report or pay its renewal fee by September 1, or any extension of time granted by the superintendent, the superintendent may assess a late fee of one hundred dollars per day.

2003 Acts, ch 96, §8, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.206 Net worth.**

A licensee under this article shall maintain a net worth of at least one hundred thousand dollars plus ten thousand dollars per authorized delegate not to exceed five hundred thousand dollars determined in accordance with generally accepted accounting principles. If the licensee has no locations in this state at which business is conducted through authorized delegates or employees of the licensee, the minimum net worth, not to exceed five hundred thousand dollars, shall be set by the superintendent.

2003 Acts, ch 96, §9, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

### ARTICLE 3

#### CURRENCY EXCHANGE LICENSES

#### **533C.301 License required.**

1. A person shall not engage in currency exchange or advertise, solicit, or hold itself out as providing currency exchange for which the person receives revenues equal or greater than five percent of total revenues unless the person:

*a.* Is licensed under this article.

*b.* Is licensed for money transmission under article 2.

*c.* Is an authorized delegate of a person licensed under article 2.

2. A license under this article is not transferable or assignable.

2003 Acts, ch 96, §10, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.302 Application for license.**

1. A person applying for a license under this

article shall do so in a form prescribed by the superintendent. The application must state or contain:

*a.* The legal name and residential and business addresses of the applicant, if the applicant is an individual, or, if the applicant is not an individual, the name of each partner, executive officer, manager, and director.

*b.* The location of the principal office of the applicant.

*c.* The complete addresses of other locations in this state where the applicant proposes to engage in currency exchange, including all limited stations and mobile locations.

*d.* A description of the source of money and credit to be used by the applicant to engage in currency exchange.

*e.* Other information the superintendent reasonably requires with respect to the applicant, but not more than the superintendent may require under article 2.

2. A nonrefundable application fee of one thousand dollars and the license fee must accompany an application for a license under this article. The license fee shall be the sum of five hundred dollars plus an additional one hundred dollars for each location at which business is conducted, but not to exceed two thousand dollars. Fees for locations added after the initial application shall be submitted with the quarterly reports pursuant to section 533C.503, subsection 2. The license fee must be refunded if the application is denied. A license under this article expires on the next September 30 of an odd-ending year after its issuance. The initial license fee is considered a biennial fee and the superintendent shall prorate the license fee, refunding any amount due to a partial license period. However, no refund of a license fee shall be made when a license is suspended, revoked, or surrendered.

2003 Acts, ch 96, §11, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.303 Issuance of license.**

1. Upon the filing of an application under this article, the superintendent shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The superintendent may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The superintendent shall issue a license to an applicant under this article if the superintendent finds that all of the following conditions have been fulfilled:

*a.* The applicant has complied with section 533C.302.

*b.* The applicant has not been convicted of or pled guilty to any felony or an indictable misdemeanor for financial gain within the past ten years.

c. The applicant has paid a fee set by the department of public safety, division of criminal investigation and bureau of identification, to defray the costs associated with the search of criminal history records of the applicant. If the applicant is a corporation, the applicant shall pay the fee associated with a criminal history record check for the directors and officers of the corporation. If the applicant is a partnership, the applicant shall pay the fee associated with a criminal history record check for each of the partners. The superintendent may require the applicant to provide additional information from the applicant if the department of public safety records indicate that a person with the same name has a criminal history. If the applicant is a publicly traded corporation or a subsidiary or affiliate of a publicly traded corporation, no criminal history record check shall be required.

d. The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in currency exchange.

2. When an application for an original license under this article is complete, the superintendent shall promptly notify the applicant of the date on which the application was determined to be complete and the superintendent shall approve or deny the application within one hundred twenty days after that date.

3. The superintendent may for good cause extend the application period.

4. An applicant whose application is denied a license by the superintendent under this article may appeal, within thirty days after receipt of the notice of the denial, from the denial and request a hearing. The denial of a license shall not be deemed a contested case.

2003 Acts, ch 96, §12, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

**533C.304 Renewal of license.**

1. A licensee under this article shall pay a biennial renewal fee no later than September 1 of an odd-ending year. The biennial renewal fee shall be the sum of five hundred dollars plus an additional one hundred dollars for each location at which business is conducted, but shall not exceed two thousand dollars. Fees for locations added after the initial application shall be submitted with the quarterly reports pursuant to section 533C.503, subsection 2.

2. A licensee under this article shall submit a renewal report with the renewal fee, in a form prescribed by the superintendent. The renewal report must state or contain:

a. A description of each material change in information submitted by the licensee in its original license application that has not been reported to the superintendent on any required report.

b. A list of the locations in this state where the licensee or an authorized delegate of the licensee engages in currency exchange.

3. If a licensee does not file a renewal report and pay its renewal fee by September 1 of an odd-ending year, or any extension of time granted by the superintendent, the superintendent may assess a late fee of one hundred dollars per day.

4. The superintendent for good cause may grant an extension of the renewal date.

2003 Acts, ch 96, §13, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

ARTICLE 4

AUTHORIZED DELEGATES

**533C.401 Relationship between licensee and authorized delegate.**

1. In this section, “*remit*” means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

2. A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this chapter. The licensee shall furnish in a record to each authorized delegate policies and procedures for the operation of the money services business.

3. An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

4. If a license is suspended or revoked or a licensee does not renew its license, the superintendent shall notify all authorized delegates of the licensee whose names are in a record filed with the superintendent of the suspension, revocation, or nonrenewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.

5. An authorized delegate shall not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is licensed to engage under article 2 or 3. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.

6. A person operating under a written contract with a licensee as required under subsection 2 shall not be deemed to be conducting unauthorized money services because the licensee has failed to properly designate the person as an au-

thorized delegate under this chapter provided that the person is otherwise operating in full compliance with this chapter.

2003 Acts, ch 96, §14, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.402 Unauthorized activities.**

A person shall not provide money services on behalf of another person not licensed under this chapter. A person who engages in that activity provides money services to the same extent as if the person were a licensee.

2003 Acts, ch 96, §15, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

### ARTICLE 5

#### EXAMINATIONS — REPORTS — RECORDS

#### **533C.501 Authority to conduct examinations.**

1. The superintendent may conduct an annual examination of a licensee upon reasonable notice in a record to the licensee. The superintendent may conduct an annual examination of any authorized delegate of a licensee upon reasonable notice in a record to the authorized delegate and the licensee.

2. The superintendent may examine a licensee or its authorized delegate, at any time, without notice, if the superintendent has reason to believe that the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating this chapter or a rule adopted or an order issued under this chapter.

3. The licensee shall pay the reasonable cost of the examination.

4. Information obtained during an examination under this chapter may be disclosed only as provided in section 533C.507.

2003 Acts, ch 96, §16, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.502 Joint examinations.**

1. The superintendent may conduct an on-site examination of records listed in section 533C.505 in conjunction with representatives of other state agencies or agencies of another state or of the federal government. Instead of an examination, the superintendent may accept the examination report of an agency of this state or of another state or of the federal government or a report prepared by an independent licensed or certified public accountant.

2. A joint examination or an acceptance of an examination report does not preclude the superintendent from conducting an examination as provided by law. A joint report or a report accepted under this section is an official report of the super-

intendent for all purposes.

2003 Acts, ch 96, §17, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.503 Reports.**

1. A licensee shall file with the superintendent within fifteen business days any material changes in information provided in a licensee's application as prescribed by the superintendent.

2. A licensee shall file with the superintendent within forty-five days after the end of each fiscal quarter a current list of all authorized delegates and locations in this state where the licensee or an authorized delegate of the licensee provides money services. The licensee shall state the name and street address of each location and authorized delegate.

3. A licensee shall file a report with the superintendent within one business day after the licensee has reason to know of the occurrence of any of the following events:

*a.* The filing of a petition by or against the licensee under the United States bankruptcy code, 11 U.S.C. § 101 et seq., for bankruptcy or reorganization.

*b.* The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors.

*c.* The commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed.

*d.* The cancellation or other impairment of the licensee's bond or other security.

*e.* A charge or conviction of the licensee or of an executive officer, manager, or director of, or person in control of, the licensee for a felony.

*f.* A charge or conviction of an authorized delegate for a felony.

2003 Acts, ch 96, §18, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.504 Change of control.**

1. A licensee shall:

*a.* Request approval from the superintendent of a proposed change of control.

*b.* Submit a nonrefundable fee of one thousand dollars with the request.

2. After review of a request for approval under subsection 1, the superintendent may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information must be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.

3. The superintendent shall approve a request for change of control under subsection 1 if, after investigation, the superintendent determines that

the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.

4. When an application for a change of control under this article is complete, the superintendent shall notify the licensee in a record of the date on which the request was determined to be complete and shall approve or deny the request within one hundred twenty days after that date.

5. The superintendent, by rule or order, may exempt a person from any of the requirements of subsection 1, paragraph "b", if it is in the public interest to do so.

6. Subsection 1 does not apply to a public offering of securities.

7. Before filing a request for approval to acquire control of a licensee or person in control of a licensee, a person may request in a record a determination from the superintendent as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the superintendent determines that the person would not be a person in control of a licensee, the superintendent shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of subsections 1 through 3.

2003 Acts, ch 96, §19, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.505 Records.**

1. A licensee shall maintain the following records for determining its compliance with this chapter for at least three years:

- a. A record of each payment instrument sold.
- b. A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts.
- c. Bank statements and bank reconciliation records.
- d. Records of outstanding payment instruments and stored-value obligations.
- e. Records of each payment instrument and stored-value obligation paid within the three-year period.
- f. A list of the last known names and addresses of all of the licensee's authorized delegates.
- g. Any other records the superintendent reasonably requires by rule.

2. The items specified in subsection 1 may be maintained in any form of record.

3. Records may be maintained outside this state if they are made accessible to the superintendent on seven business-days' notice that is sent in a record.

4. All records maintained by the licensee as required in subsections 1 through 3 shall be open to inspection by the superintendent pursuant to sec-

tion 533C.501.

5. A licensee, authorized delegate, or any officer, employee, agent, or any public official or governmental employee who keeps or files a record pursuant to this section or who communicates or discloses information or records under this section is not liable to its customer, to a state or local agency, or to any person for any loss or damage caused in whole or in part by the making, filing, or governmental use of the record, or any information contained in that record.

6. The licensee shall keep such records as the superintendent may require in order to determine whether such licensee is complying with the provisions of this chapter and with the rules and orders lawfully made by the superintendent under this chapter.

2003 Acts, ch 96, §20, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.506 Money laundering reports.**

A licensee and an authorized delegate shall file all reports required by federal currency reporting, recordkeeping, and suspicious activity reporting requirements as set forth in 31 U.S.C. § 5311 – 5330, and 31 C.F.R. § 103.11 – 103.170.

2003 Acts, ch 96, §21, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### **533C.507 Disclosure.**

1. Except as otherwise provided by this chapter, the records of the superintendent relating to examinations or supervision and regulation of a person licensed pursuant to this chapter, or authorized delegates of a person licensed pursuant to this chapter, are not public records and are not subject to disclosure under chapter 22. Neither the superintendent nor any member of the superintendent's staff shall disclose any information obtained in the discharge of the superintendent's official duties to any person not connected with the department, except that the superintendent or the superintendent's designee may disclose the information:

a. To representatives of federal agencies insuring accounts in the financial institution.

b. To representatives of state or federal agencies and foreign countries having regulatory or supervisory authority over the activities of the financial institution or similar financial institutions if those representatives are permitted to and do, upon request of the superintendent, disclose similar information respecting those financial institutions under their regulation or supervision or to those representatives who state in writing under oath that they will maintain the confidentiality of that information.

c. To the attorney general of this state.

d. To a federal or state grand jury in response to a lawful subpoena, or pursuant to a county attorney subpoena.

e. To the auditor of this state for the purpose of conducting audits authorized by law.

2. The superintendent may:

a. Disclose the fact of filing of applications with the department pursuant to this chapter, give notice of a hearing, if any, regarding those applications, and announce the superintendent's action thereon.

b. Disclose final decisions in connection with proceedings for the suspension or revocation of licenses or certificates issued pursuant to this chapter.

c. Prepare and circulate reports reflecting the assets and liabilities of licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information.

d. Prepare and circulate reports provided by law.

3. Every official report of the department is prima facie evidence of the facts therein stated in any action or proceeding wherein the superintendent is a party.

4. Nothing in this section shall be construed to prevent the disclosure of information that is:

a. Admissible in evidence in any civil or criminal proceeding brought by or at the request of the superintendent or this state to enforce or prosecute violations of this chapter, chapter 706B, or the rules adopted, or orders issued pursuant to this chapter.

b. Requested by or provided to a federal agency, including but not limited to the department of defense, department of energy, department of homeland security, nuclear regulatory commission, and centers for disease control and prevention, to assist state and local government with domestic preparedness for acts of terrorism.

5. The attorney general or the department of public safety may report any possible violations indicated by analysis of the reports required by this chapter to any appropriate law enforcement or regulatory agency for use in the proper discharge of its official duties. The attorney general or the department of public safety shall provide copies of the reports required by this chapter to any appropriate prosecutorial or law enforcement agency upon being provided with a written request for records relating to a specific individual or entity and stating that the agency has an articulable suspicion that such individual or entity has committed a felony offense or a violation of this chapter to which the reports are relevant. A person who releases information received pursuant to this subsection except in the proper discharge of the person's official duties is guilty of a serious misdemeanor.

6. Any report, record, information, analysis, or request obtained by the attorney general or department of public safety pursuant to this chapter is not a public record as defined in chapter 22 and

is not subject to disclosure.

2003 Acts, ch 96, §22, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

## ARTICLE 6

### PERMISSIBLE INVESTMENTS

#### 533C.601 Maintenance of permissible investments.

1. A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments and stored-value obligations issued or sold and money transmitted by the licensee in the United States.

2. The superintendent, with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investment may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The superintendent by rule may prescribe or by order allow other types of investments that the superintendent determines to have a safety substantially equivalent to other permissible investments.

3. Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored-value obligations in the event of bankruptcy or receivership of the licensee.

2003 Acts, ch 96, §23, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

#### 533C.602 Types of permissible investments.

1. Except to the extent otherwise limited by the superintendent pursuant to section 533C.601, the following investments are permissible under section 533C.601:

a. Cash, a certificate of deposit, or senior debt obligation of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813.

b. Banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank.

c. An investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities.

d. An investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental

subdivision, agency, or instrumentality thereof.

*e.* Receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection if the aggregate amount of receivables under this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not hold at one time receivables under this paragraph in any one person aggregating more than ten percent of the licensee's total permissible investments.

*f.* A share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the federal Investment Companies Act of 1940, 15 U.S.C. § 80a-1 – 80a-64, and whose portfolio is restricted by the management investment company's investment policy to investments specified in paragraphs "a" through "d".

2. The following investments are permissible under section 533C.601, but only to the extent specified:

*a.* An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold investments under this paragraph in any one person aggregating more than ten percent of the licensee's total permissible investments.

*b.* A share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States securities and exchange commission under the federal Investment Companies Act of 1940, 15 U.S.C. § 80a-1 – 80a-64, and whose portfolio is restricted by the management investment company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold investments in any one person aggregating more than ten percent of the licensee's total permissible investments.

*c.* A demand-borrowing agreement made with a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this paragraph does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not

at one time hold principal and interest outstanding under demand-borrowing agreements under this paragraph with any one person aggregating more than ten percent of the licensee's total permissible investments.

*d.* Any other investment the superintendent designates, to the extent specified by the superintendent.

3. The aggregate of investments under subsection 2 may not exceed fifty percent of the total permissible investments of a licensee calculated in accordance with section 533C.601.

2003 Acts, ch 96, §24, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

## ARTICLE 7

### ENFORCEMENT

#### **533C.701 Suspension and revocation — receivership.**

1. The superintendent may suspend or revoke a license, place a licensee in receivership, or order a licensee to revoke the designation of an authorized delegate if:

*a.* The licensee violates this chapter or a rule adopted or an order issued under this chapter.

*b.* The licensee does not cooperate with an examination or investigation by the superintendent.

*c.* The licensee engages in fraud, intentional misrepresentation, or gross negligence.

*d.* An authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued under this chapter, as a result of the licensee's willful misconduct or willful blindness.

*e.* The competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, or responsible individual of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services.

*f.* The licensee engages in an unsafe or unsound practice.

*g.* The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors.

*h.* The licensee does not remove an authorized delegate after the superintendent issues and serves upon the licensee a final order finding that the authorized delegate has violated this chapter.

2. In determining whether a licensee is engaging in an unsafe or unsound practice, the superintendent may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of this chapter, and the previous conduct of the person involved.

2003 Acts, ch 96, §25, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

### **533C.702 Suspension and revocation of authorized delegates.**

1. The superintendent may issue an order suspending or revoking the designation of an authorized delegate if the superintendent finds that:

*a.* The authorized delegate violated this chapter or a rule adopted or an order issued under this chapter.

*b.* The authorized delegate did not cooperate with an examination or investigation by the superintendent.

*c.* The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence.

*d.* The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute.

*e.* The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services.

*f.* The authorized delegate is engaging in an unsafe or unsound practice.

2. In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the superintendent may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this chapter or a rule adopted or order issued under this chapter, and the previous conduct of the authorized delegate.

3. An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the superintendent.

2003 Acts, ch 96, §26, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

### **533C.703 Orders to cease and desist.**

1. If the superintendent determines that a violation of this chapter or of a rule adopted or an order issued under this chapter by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the superintendent may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of it upon the licensee or authorized delegate.

2. The superintendent may issue an order against a licensee to cease and desist from providing money services through an authorized delegate that is the subject of a separate order by the superintendent.

3. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to section 533C.701 or 533C.702.

4. A licensee or an authorized delegate who is served with an order to cease and desist may petition the appropriate court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to section 533C.701 or 533C.702.

5. An order to cease and desist expires unless the superintendent commences an administrative proceeding pursuant to section 533C.701 or 533C.702 within ten days after it is issued.

2003 Acts, ch 96, §27, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

### **533C.704 Consent orders.**

The superintendent may enter into a consent order at any time with a person to resolve a matter arising under this chapter or a rule adopted or order issued under this chapter. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued under this chapter has been violated.

2003 Acts, ch 96, §28, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

### **533C.705 Civil penalties.**

The superintendent may assess a civil penalty against a person who violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed one thousand dollars per day for each day the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney fees.

2003 Acts, ch 96, §29, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

### **533C.706 Criminal penalties.**

1. A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter or who intentionally makes a false entry or omits a material entry in such a record is guilty of a class "D" felony.

2. A person who knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter is guilty of an aggravated misdemeanor.

3. It shall be unlawful for any person to do any of the following:

*a.* With intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, to knowingly furnish or provide

to a licensee, authorized delegate, financial institution, person engaged in a trade or business, or any officer, employee, agent, or authorized delegate of any of them, or to the attorney general or department of public safety, any false, inaccurate, or incomplete information; or to knowingly conceal a material fact in connection with a transaction for which a report is required to be filed pursuant to this chapter.

b. With the intent to disguise the fact that money or a payment instrument is the proceeds of criminal conduct, or with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal conduct, or with intent to evade the making or filing of a report required under this chapter, or with intent to cause the making or filing of a report that contains a material omission or misstatement of fact, to conduct or structure a transaction or series of transactions by or through one or more licensees, authorized delegates, financial institutions, or persons engaged in a trade or business.

4. A person who violates subsection 3 is guilty of a class "C" felony and is also subject to a civil penalty of three times the value of the property involved in the transaction, or, if no transaction is involved, five thousand dollars.

5. Notwithstanding any other provision of law, each violation of this section constitutes a separate, punishable offense.

2003 Acts, ch 96, §30, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

**533C.707 Unlicensed persons.**

1. If the superintendent has reason to believe that a person has violated or is violating section 533C.201, 533C.301, 533C.401, or 533C.402, the superintendent may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of section 533C.201, 533C.301, 533C.401, or 533C.402.

2. In an emergency, the superintendent may petition the district court for the issuance of a temporary restraining order ex parte pursuant to the rules of civil procedure.

3. An order to cease and desist becomes effective upon service of it upon the person.

4. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to sections 533C.701 and 533C.702.

5. A person who is served with an order to cease and desist under this section may petition the district court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to sections 533C.701 and 533C.702.

6. An order to cease and desist expires unless the superintendent commences an administrative proceeding within ten days after it is issued.

2003 Acts, ch 96, §31, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

**533C.708 Investigations.**

1. The attorney general or county attorney may conduct investigations within or outside this state to determine if any licensee, authorized delegate, or person engaged in a trade or business has failed to file a report required by this chapter or has engaged or is engaging in any act, practice, or transaction that constitutes a violation of this chapter.

2. Upon presentation of a subpoena from a prosecuting attorney, all licensees, authorized delegates, and financial institutions shall make their books and records available to the attorney general or county attorney or peace officer during normal business hours for inspection and examination in connection with an investigation pursuant to this section.

2003 Acts, ch 96, §32, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

ARTICLE 8

ADMINISTRATIVE PROCEDURES

**533C.801 Administrative proceedings.**

All administrative proceedings under this chapter must be conducted in accordance with chapter 17A.

2003 Acts, ch 96, §33, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

**533C.802 Hearings.**

Except as otherwise provided in sections 533C.703 and 533C.707, the superintendent shall not suspend or revoke a license, place a licensee in receivership, issue an order to cease and desist, suspend or revoke the designation of an authorized delegate, or assess a civil penalty without notice and an opportunity to be heard. The superintendent shall also hold a hearing when requested to do so by an applicant whose application for a license is denied.

2003 Acts, ch 96, §34, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

**533C.803 Rules.**

The superintendent may adopt pursuant to chapter 17A such reasonable and relevant rules, not inconsistent with this chapter, as may be necessary for the enforcement of the provisions of this chapter.

2003 Acts, ch 96, §35, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

## ARTICLE 9

## MISCELLANEOUS PROVISIONS

**533C.901 Uniformity of application and construction.**

1. The provisions of this chapter shall be liberally construed to effectuate its remedial purposes. Civil remedies under this chapter shall be supplemental and not mutually exclusive. The civil remedies do not preclude and are not precluded by other provisions of law.

2. The provisions of this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting the law and to make the reporting requirements regarding financial transactions under Iowa law uniform with the reporting requirements regarding financial transactions under federal law.

3. The attorney general may enter into reciprocal agreements with the attorney general or chief prosecuting attorney of any state to effectuate the purposes of this chapter.

2003 Acts, ch 96, §36, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

**533C.902 Financial services licensing fund.**

1. A financial services licensing fund is created as a separate fund in the state treasury under the authority of the banking division of the department of commerce. Moneys deposited in the fund shall be used to pay for staffing necessary to perform examinations, audits, and other duties required of the superintendent and the banking division under this chapter.

2. The fund shall receive moneys including, but not limited to, any fees, costs, expenses, or penalties collected pursuant to this chapter.

3. Notwithstanding section 8.33, moneys appropriated to the fund and other moneys credited

to the fund shall not revert at the close of the fiscal year but shall remain in the financial services licensing fund and shall remain available for expenditure for the purposes designated.

2003 Acts, ch 96, §37, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

**533C.903 Severability clause.**

The provisions of this chapter are severable pursuant to section 4.12.

2003 Acts, ch 96, §38, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

**533C.904 Savings and transitional provisions.**

1. A license issued under chapter 533B, Code 2003, that is in effect immediately before October 1, 2003, remains in force as a license under chapter 533B, Code 2003, until the license's expiration date. Thereafter, the licensee is deemed to have applied for and received a license under this chapter and must comply with the renewal requirements set forth in this chapter. Licenses issued under chapter 533B, Code 2003, will be initially renewed for a period to the next September 30 with the license renewal fee prorated based on a two thousand dollar annual fee.

2. This chapter applies to the provision of money services on or after October 1, 2003. This chapter does not apply to money transmission provided by a licensee who was licensed to provide money transmission under chapter 533B, Code 2003, and whose license remains in force under this section.

3. A person is not deemed to be in violation of this chapter for operating without a license if the person files an application within three calendar months after October 1, 2003, until the application is denied.

2003 Acts, ch 96, §39, 42  
Section is effective October 1, 2003; 2003 Acts, ch 96, §42  
NEW section

## CHAPTER 534

## SAVINGS AND LOAN ASSOCIATIONS

**534.403 Examinations.**

1. *Superintendent's authority — examinations.* The superintendent and examiners shall have full access to all books and papers of an association which relate to its business, and to books, records, and papers kept by an officer, director, agent, or employee relating to, or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of an association, or any other person, in relation to its affairs, transactions, and

condition, and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

2. *Expenses, per diem, vacation, and sick leave.* If the examination is made under section 534.401, subsection 3, each examiner shall file with the superintendent an itemized, certified, and sworn voucher of the examiner's expense for the time the examiner is actually engaged in an examination. On the fifteenth and last days of each month each examiner shall file in triplicate with

the superintendent a certified statement of the actual days engaged in examinations. The salaries shall be included in a two-week payroll period. Upon approval of the superintendent, the director of the department of administrative services is authorized to issue warrants for payment of the vouchers and salaries, including a prorated amount for vacation and sick leave. Repayment to the state shall be made as provided by section 534.408, subsection 4. Savings and loan examiners shall be paid salaries at rates commensurate with, and shall be reimbursed for meals and lodging at the same rate and in the same manner as, that which is received by federal examiners operating under the federal home loan bank board.

3. *Record required.* A record of all examinations, reports, and related information shall be kept in the superintendent's office, showing in detail as to each association all matters connected with the conduct of its business, its financial standing, and everything touching its solvency, plan of business, and integrity.

The examinations, reports, and information shall be kept confidential in the office of the super-

intendent, and are not subject to publication or disclosure to others except as provided in this chapter. However, the superintendent may furnish any examination, report, or information to the federal office of thrift supervision, federal deposit insurance corporation, or a successor deposit insurance instrumentality, federal home loan bank board, or financial institution regulatory authorities of any state. Any evidence of felonious acts on the part of the officers, directors, or employees of an association may be referred by the superintendent to proper authorities. Members of associations, other than their officers and directors, are not entitled to inspection of any such records or information, and are not entitled to any information relative to the names of the members of an association, or the amounts invested by them, as disclosed in the superintendent's office, or in the records of an association.

4. *Revocation of authority.* If an association refuses to submit to examination, the superintendent shall revoke its certificate of authority.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 537

### CONSUMER CREDIT CODE

#### 537.1301 General definitions.

As used in this chapter, unless otherwise required by the context:

1. *“Actuarial method”* means the method of allocating payments made on a debt between the amount financed and the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed. The administrator may adopt rules not inconsistent with the Truth in Lending Act further defining the term and prescribing its application.

2. *“Administrator”* means the administrator designated in section 537.6103.

3. *“Agreement”* means the oral or written bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

4. *“Amount financed”* means:

a. In the case of a sale, the cash price of the goods, services, or interest in land, plus the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in, a lien on, or a debt with respect to property traded in, less the amount of any down payment whether made in cash or in property traded in, plus additional charges if permitted under paragraph “c”.

b. In the case of a loan, the net amount paid to, receivable by, or paid or payable for the account of the debtor, plus the amount of any discount excluded from the finance charge under subsection 19, paragraph “b”, subparagraph (3), plus additional charges if permitted under paragraph “c” of this subsection.

c. In the case of a sale or loan, additional charges permitted under section 537.2501, to the extent that payment is deferred, that the charge is not otherwise included, in the amount permitted respectively in paragraph “a” or “b”, and that the charge is authorized by and disclosed to the consumer as required by law.

5. *“Billing cycle”* means the time interval between periodic billing statement dates.

6. *“Card issuer”* means a person who issues a credit card.

7. *“Cardholder”* means a person to whom a credit card is issued or who has agreed with the card issuer to pay obligations arising from the issuance or use of the card to or by another person.

8. *“Cash price”* of goods, services, or an interest in land means, except in the case of a consumer rental purchase agreement, the price at which they are sold by the seller to cash buyers in the ordinary course of business, and may include the cash price of accessories or services related to the sale, such as delivery, installation, alterations, modifications, and improvements, and taxes to the

extent imposed on a cash sale of the goods, services, or interest in land.

9. *Conspicuous.* A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether or not a term or clause is conspicuous is for decision by the court.

10. *“Consumer”* means the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

11. *“Consumer credit transaction”* means a consumer credit sale or consumer loan, or a refinancing or consolidation thereof, or a consumer lease, or a consumer rental purchase agreement.

12. *Consumer credit sale.*

a. Except as provided in paragraph “b”, a consumer credit sale is a sale of goods, services, or an interest in land in which all of the following are applicable:

(1) Credit is granted either pursuant to a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.

(2) The buyer is a person other than an organization.

(3) The goods, services or interest in land are purchased primarily for a personal, family or household purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

b. A *“consumer credit sale”* does not include:

(1) A sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card.

(2) A sale of an interest in land if the finance charge does not exceed twelve percent per year calculated on the actuarial method on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

(3) A consumer rental purchase agreement as defined in section 537.3604.

13. *Consumer lease.*

a. Except as provided in paragraph “b”, a consumer lease is a lease of goods in which all of the following are applicable:

(1) The lessor is regularly engaged in the business of leasing.

(2) The lessee is a person other than an organization.

(3) The lessee takes under the lease primarily for a personal, family, or household purpose.

(4) The amount payable under the lease does not exceed twenty-five thousand dollars.

(5) The lease is for a term exceeding four months.

b. A consumer lease does not include a consumer rental purchase agreement as defined in section 537.3604.

14. *Consumer loan.*

a. Except as provided in paragraph “b”, a *“consumer loan”* is a loan in which all of the following are applicable:

(1) The person is regularly engaged in the business of making loans.

(2) The debtor is a person other than an organization.

(3) The debt is incurred primarily for a personal, family or household purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) The amount financed does not exceed twenty-five thousand dollars.

b. A *“consumer loan”* does not include:

(1) A sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a seller credit card.

(2) A debt which is secured by a first lien on real property and which is incurred primarily for the purpose of acquiring that real property, or refinancing a contract for deed to that real property, or constructing on that real property a building containing one or more dwelling units.

(3) A loan financed by the Iowa finance authority and secured by a lien on land.

(4) A consumer rental purchase agreement as defined in section 537.3604.

c. In determining which loans are consumer loans under this subsection the rules of construction stated in this paragraph shall be applied:

(1) A debt is incurred primarily for the purpose to which a majority of the loan proceeds are applied or are designated by the debtor to be applied.

(2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are incurred for the same purposes and in the same proportion as the principal of the loan refinanced or paid.

(3) Loan proceeds used to pay a prior loan by a different borrower are incurred for the new borrower’s purposes in agreeing to pay the prior loan.

(4) The assumption of a loan by a different borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.

(5) The provisions of this paragraph shall not be construed to modify or limit the provisions of section 535.8, subsection 2, paragraph “c” or “e.”

15. *“Credit”* means the right granted by a person extending credit to a person to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor.

16. *“Credit card”* means a card or device issued under an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing property or purchasing services, obtaining loans, or otherwise obtaining credit from the card issuer or other persons. A transaction is *“pursuant to a credit card”* if credit is obtained according to the terms of the arrangement by transmitting information contained on the card or device orally, in writing, by mechanical or automated

methods, or in any other manner. A transaction is not “pursuant to a credit card” if the card or device is used solely to identify the cardholder and credit is not obtained according to the terms of the arrangement.

17. “*Creditor*” means the person who grants credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor’s right to payment, but use of the term does not in itself impose on an assignee any obligation of the assignee’s assignor. In the case of credit granted pursuant to a credit card, the “creditor” is the card issuer and not another person honoring the credit card.

18. “*Earnings*” means compensation paid or payable to an individual or for the individual’s account for personal services rendered or to be rendered by the individual, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

19. *Finance charge*.

a. Except as otherwise provided in paragraph “b”, “*finance charge*” means the sum of all charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, including any of the following types of charges which are applicable:

(1) Interest or any amount payable under a point, discount or other system of charges, however denominated, except that with respect to a consumer credit sale of goods or services a cash discount of five percent or less of the stated price of goods or services which is offered to the consumer for payment by cash, check or the like either immediately or within a period of time, is not part of the finance charge for the purpose of determining maximum charges pursuant to section 537.2401. A cash discount permitted by this subparagraph is not part of the finance charge for the purpose of determining compliance with section 537.3201 if it is properly disclosed as required by the Truth in Lending Act as amended to and including July 1, 1982 and regulations issued pursuant to that Act prior to July 1, 1982.

(2) Time price differential, credit service, service, carrying or other charge, however denominated.

(3) Premium or other charge for any guarantee or insurance protecting the creditor against the consumer’s default or other credit loss.

(4) Charges incurred for investigating the collateral or credit-worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the creditor had no notice of the charges when the credit was granted.

b. “*Finance charge*” does not include:

(1) Charges as a result of default or delinquency if made for actual unanticipated late payment,

delinquency, default, or other like occurrence unless the parties agree that these charges are finance charges. A charge is not made for actual unanticipated late payment, delinquency, default or other like occurrence if imposed on an account which is or may be debited from time to time for purchases or other debts and, under its terms, payment in full or at a specified amount is required when billed, and in the ordinary course of business the consumer is permitted to continue to have purchases or other debts debited to the account after the imposition of the charge.

(2) Additional charges as defined in section 537.2501, or deferral charges as defined in section 537.2503.

(3) A discount, if a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation.

(4) Lease payments for a consumer rental purchase agreement, or charges specifically authorized by this chapter for consumer rental purchase agreements.

20. “*Gift certificate*” means a merchandise certificate conspicuously designated as a gift certificate, and purchased by a buyer for use by a person other than the buyer.

21. a. “*Goods*” includes, but is not limited to:

(1) “*Goods*” as described in section 554.2105, subsection 1.

(2) Goods not in existence at the time the transaction is entered into.

(3) Things in action.

(4) Investment securities.

(5) Mobile homes regardless of whether they are affixed to the land.

(6) Gift certificates.

b. “*Goods*” excludes money, chattel paper, documents of title, instruments and merchandise certificates other than gift certificates.

22. “*Insurance premium loan*” means a consumer loan that is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer, is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract, and contains an authorization to cancel the policy or contract financed.

23. “*Lender*” means a person who makes a loan or, except as otherwise provided in this Act, a person who takes an assignment of a lender’s right to payment, but use of the term does not in itself impose on an assignee any obligation of the lender.

24. “*Lender credit card*” means a credit card issued by a lender.

25. a. “*Loan*” means any of the following, except as provided in paragraph “b”:

(1) The creation of debt by the lender’s payment of or agreement to pay money to the debtor or to a third person for the account of the debtor.

(2) The creation of debt by a credit to an ac-

count with the lender upon which the debtor is entitled to draw immediately.

(3) The creation of debt pursuant to a lender credit card in any manner, including a cash advance or the card issuer's honoring a draft or similar order for the payment of money drawn or accepted by the debtor, paying or agreeing to pay the debtor's obligation, or purchasing or otherwise acquiring the debtor's obligation from the obligee or the obligee's assignees.

(4) The creation of debt by a cash advance to a debtor pursuant to a seller credit card.

(5) The forbearance of debt arising from a loan.

b. "Loan" does not include:

(1) A card issuer's payment or agreement to pay money to a third person for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of a seller credit card.

(2) The forbearance of debt arising from a sale or lease.

26. "Merchandise certificate" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services. Sale of a merchandise certificate on credit is a credit sale beginning at the time the certificate is redeemed.

27. "Mortgage lender" means a domestic or foreign corporation authorized in this state to make loans secured by mortgages or deeds of trust.

28. "Official fees" means:

a. Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating, or satisfying a security interest related to a consumer credit transaction.

b. Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph "a" which would otherwise be payable.

29. "Open-end credit" means an arrangement, other than a consumer rental purchase agreement, pursuant to which all of the following are applicable:

a. A creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card.

b. The amounts financed and the finance and other appropriate charges are debited to an account.

c. The finance charge, if made, is computed on the account periodically.

d. Either the consumer has the privilege of paying in full or in installments, or the transaction is a consumer credit transaction solely because a delinquency charge or the like is treated as a finance charge pursuant to subsection 19, paragraph "b", subparagraph (1) of this section or the creditor otherwise periodically imposes charges

computed on the account for delaying payment of it and permits the consumer to continue to purchase or lease on credit.

30. "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, co-operative, or association.

31. "Payable in installments" means that payment is required or permitted by agreement to be made in more than four periodic payments, excluding a down payment. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment excluding the down payment, a transaction is "payable in installments".

32. "Person" means:

a. A natural person, partnership, or an individual.

b. An organization.

33. a. "Person related to" with respect to a natural person or an individual means any of the following:

(1) The spouse of the individual.

(2) A brother, brother-in-law, sister, or sister-in-law of the individual.

(3) An ancestor or lineal descendant of the individual or the individual's spouse.

(4) Any other relative, by blood or marriage, of the individual or the individual's spouse, if the relative shares the same home with the individual.

b. "Person related to" with respect to an organization means:

(1) A person directly or indirectly controlling, controlled by or under common control with the organization.

(2) An officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization.

(3) The spouse of a person related to the organization.

(4) A relative by blood or marriage of a person related to the organization who shares the same home with the person.

34. A "precomputed consumer credit transaction" is a consumer credit transaction, other than a consumer lease or a consumer rental purchase agreement, in which the debt is a sum comprising the amount financed and the amount of the finance charge computed in advance. A disclosure required by the Truth in Lending Act does not in itself make a finance charge or transaction precomputed.

35. "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

36. "Sale of goods" includes, but is not limited to, any agreement in the form of a bailment or lease of goods if the bailee or lessee pays or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of

the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with the terms of the agreement. "Sale of goods" does not include a consumer rental purchase agreement.

37. "Sale of an interest in land" includes, but is not limited to, a lease in which the lessee has an option to purchase the interest, by which all or a substantial part of the rental or other payments previously made by the lessee are applied to the purchase price.

38. "Sale of services" means furnishing or agreeing to furnish services for a consideration and includes making arrangements to have services furnished by another.

39. "Seller" means a person who makes a sale or, except as otherwise provided in this chapter, a person who takes an assignment of the seller's right to payment, but use of the term does not in itself impose on an assignee any obligation of the seller.

40. "Seller credit card" means either of the following:

a. A credit card issued primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from the card issuer, persons related to the card issuer, persons licensed or franchised to do business under the card issuer's business or trade name or designation, or from any of these persons and from other persons as well.

b. A credit card issued by a person other than a supervised lender primarily for the purpose of giving the cardholder the privilege of using the credit card to purchase or lease property or services from at least one hundred persons not related to the card issuer.

41. "Services" includes, but is not limited to:

a. Work, labor, and other personal services.

b. Privileges or benefits with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like.

c. Insurance.

42. "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business, which is organized, chartered, or holding an authorization certificate pursuant to chapter 524, 533, or 534, or pursuant to the laws of any other state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and which is subject to supervision by an official or agency of this state, such other state, or of the United States.

43. "Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated

according to the actuarial method, exceeds the rate of finance charge permitted in chapter 535.

With respect to a consumer loan made pursuant to open end credit, the finance charge shall be deemed not to exceed the rate permitted in chapter 535 if the finance charge contracted for and received does not exceed a charge for each monthly billing cycle which is one-twelfth of that rate multiplied by the average daily balance of the open end account in the billing cycle for which the charge is made. The average daily balance of the open end account is the sum of the amount unpaid each day during that cycle divided by the number of days in the cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day. If the billing cycle is not monthly, the finance charge shall be deemed not to exceed that rate per year if the finance charge contracted for and received does not exceed a percentage which bears the same relation to that rate as the number of days in the billing cycle bears to three hundred sixty-five. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

2003 Acts, ch 44, §92

Subsection 4, paragraph b amended

### 537.1303 Other defined terms.

Other defined terms in this chapter and the sections in which they appear are:

1. "Closing costs". Section 537.2501, subsection 1, paragraph "e."

2. "Computational period". Section 537.2510, subsection 4, paragraph "a."

3. "Debt". Section 537.7102, subsection 3.

4. "Debt collection". Section 537.7102, subsection 4.

5. "Debt collector". Section 537.7102, subsection 5.

6. "Disposable earnings". Section 537.5105, subsection 1, paragraph "a."

7. "Garnishment". Section 537.5105, subsection 1, paragraph "b."

8. "Interval". Section 537.2510, subsection 4, paragraph "b."

9. "Location". Section 537.2310, subsection 1.

10. "Pursuant to a credit card". Section 537.1301, subsection 16.

11. "Residence". Section 537.1201, subsection 4.

2003 Acts, ch 108, §99

Subsection 10 amended

### 537.2502 Delinquency charges.

1. With respect to a consumer credit transaction not pursuant to an open-end credit arrangement and other than a consumer lease or consumer rental purchase agreement, the parties may contract for a delinquency charge on any install-

ment not paid in full within ten days after its due date, as originally scheduled or as deferred, in an amount as follows:

*a.* For a precomputed transaction, an amount not exceeding the greater of either of the following:

(1) Five percent of the unpaid amount of the installment, or a maximum of twenty dollars.

(2) The deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

*b.* For an interest-bearing transaction, an amount not exceeding five percent of the unpaid amount of the installment, or a maximum of fifteen dollars.

2. A delinquency charge under subsection 1 may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

3. A delinquency charge shall not be collected under subsection 1, paragraph “*a*”, on an installment that is paid in full within ten days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection, payments associated with a precomputed transaction are applied first to current installments and then to delinquent installments.

4. With respect to open-end credit, the parties may contract for a delinquency charge on any payment not paid in full when due, as originally scheduled or as deferred, in an amount up to fifteen dollars.

5. A delinquency charge under subsection 4 may be collected only once on a payment however long it remains in default. A delinquency charge shall not be collected with respect to a deferred payment unless the payment is not paid in full on or before its deferred due date. A delinquency charge may be collected at the time it accrues or at any time afterward.

6. A delinquency charge shall not be collected under subsection 4 on a payment associated with a precomputed transaction that is paid in full on or before its scheduled or deferred due date even though an earlier maturing payment or a delinquency or deferred charge on an earlier payment has not been paid in full. For purposes of this subsection, payments are applied first to amounts due for the current billing cycle and then to delinquent payments.

2003 Acts, 1st Ex, ch 1, §125, 133  
Subsections 3 and 6 amended

#### **537.2601 Charges for other credit transactions.**

1. With respect to a credit transaction other than a consumer credit transaction, the parties may contract for the payment by the debtor of any finance or other charge as permitted by law.

2. With respect to a credit transaction which would be a consumer credit transaction if a finance charge were made, a charge for delinquency may not exceed amounts allowed for finance charges for consumer credit sales pursuant to open end credit.

2003 Acts, 1st Ex, ch 1, §126, 133  
Subsection 1 amended

#### **537.3311 Discrimination prohibited.**

A creditor shall not refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds due to any of the following:

1. The age, color, creed, national origin, political affiliation, race, religion, sex, marital status, or disability of the consumer.

2. The consumer receives public assistance, social security benefits, pension benefits, or the like.

3. The exercise by the consumer of rights pursuant to this chapter or the federal Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.

2003 Acts, ch 54, §1  
Section amended

## CHAPTER 537A

### CONTRACTS

#### **537A.4 Gaming contracts void — exceptions.**

All promises, agreements, notes, bills, bonds, or other contracts, mortgages or other securities, when the whole or any part of the consideration thereof is for money or other valuable thing won or lost, laid, staked, or bet, at or upon any game of any kind or on any wager, are absolutely void and of no effect.

This section does not apply to a contract for the operation of or for the sale or rental of equipment for games of skill or games of chance, if both the contract and the games are in compliance with chapter 99B. This section does not apply to wagering under the pari-mutuel method of wagering authorized by chapter 99D. This section does not apply to the sale, purchase, or redemption of a ticket or share in the state lottery in compliance with

chapter 99G. This section does not apply to wagering under the excursion boat gambling method of wagering authorized by chapter 99F. This section does not apply to the sale, purchase, or redemption

of any ticket or similar gambling device legally purchased in Indian lands within this state.

2003 Acts, ch 178, §115, 121; 2003 Acts, ch 179, §142  
Unnumbered paragraph 2 amended

## CHAPTER 541A

### INDIVIDUAL DEVELOPMENT ACCOUNTS

#### 541A.3 Individual development accounts — refund and tax provisions.

All of the following state tax provisions shall apply to an individual development account:

1. Payment by the state of a savings refund on amounts of up to two thousand dollars per calendar year that an account holder deposits in the account holder's account. Moneys transferred to an individual development account from another individual development account shall not be considered an account holder deposit for purposes of determining a savings refund. Payment of a savings refund either shall be made directly to the account holder's account or to an operating organization's central reserve account for later distribution to the account holder's account in the most appropriate manner as determined by the administrator. The state savings refund shall be the indicated percentage of the amount deposited:

a. For an account holder with a household income, as defined in section 425.17, subsection 6, which is one hundred fifty percent or less of the federal poverty level, twenty-five percent.

b. For an account holder with a household income which is more than one hundred fifty percent but less than one hundred seventy-five percent of the federal poverty level, twenty percent.

c. For an account holder with a household income which is one hundred seventy-five percent or more but not more than two hundred percent of the federal poverty level, fifteen percent.

d. For an account holder with a household income which is more than two hundred percent of the federal poverty level, zero percent.

2. Income earned by an individual development account is not subject to state tax, in accordance with the provisions of section 422.7, subsection 28.

3. Amounts transferred between individual development accounts are not subject to state tax.

4. The administrator shall work with the United States secretary of the treasury and the state's congressional delegation as necessary to secure an exemption from federal taxation for individual development accounts and the earnings on those accounts. The administrator shall report annually to the governor and the general assembly concerning the status of federal approval.

5. The administrator shall coordinate the filing of claims for savings refunds authorized under subsection 1, between account holders, operating organizations, and the department of administrative services. Claims approved by the administrator may be paid by the department of administrative services to each account, for an aggregate amount for distribution to the accounts in a particular financial institution, or to an operating organization's central reserve account for later distribution to the account holders' accounts depending on the efficiency for issuing the refunds. Claims shall be initially filed with the administrator on or before a date established by the administrator. Claims approved by the administrator shall be paid from the general fund of the state in the manner specified in section 422.74.

2003 Acts, ch 145, §286  
Terminology change applied

#### 541A.5 Rules.

The administrator, in consultation with the department of administrative services, shall adopt administrative rules to administer this chapter. The rules adopted by the administrator shall include but are not limited to provision for transfer of an individual development account to a different financial institution than originally approved by the administrator, if the different financial institution has an agreement with the account's operating organization.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 542

### PUBLIC ACCOUNTANTS

#### 542.7 Firm permits to practice — attest experience and peer review.

1. The board shall issue or renew a permit to

practice to a certified public accounting firm that makes application and demonstrates the qualifications set forth in this section, or to a qualified

certified public accounting firm originally licensed in another state that establishes an office in this state or otherwise provides services for clients in this state on a regular or recurring basis. A certified public accounting firm licensed and located in another state or foreign jurisdiction shall be allowed to audit a business unit located in Iowa without a permit to practice if the Iowa business unit is part of a multistate company whose principal offices are located outside of this state. A person or firm holding a permit to practice issued by this state prior to July 1, 2002, is deemed to have met the requirements of this section. A firm must hold a permit issued under this section in order to provide attest services or to use the title "CPAs" or "CPA firm".

2. A permit shall be initially issued and renewed for a period of not more than three years, but in any event shall expire on a date specified by rule. An application for a permit shall be made in such form, and in the case of an application for renewal, between such dates as the board may by rule specify.

3. *a.* An applicant for initial issuance or renewal of a permit to practice as a firm shall show that notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members, and managers, belongs to holders of a certificate issued by a state, and that such partners, officers, shareholders, members, and managers, who perform professional services in this state or for clients in this state, hold a certificate issued under section 542.6 or 542.19.

*b.* A certified public accounting firm may include a nonlicensee owner, provided all of the following occur:

(1) Such firm designates a licensee who is responsible for the proper registration of the firm, and identifies that individual to the board.

(2) All nonlicensee owners are active participants in the firm or an affiliated entity.

(3) All nonlicensee owners participate in a program of learning designed to maintain professional competency in compliance with rules adopted by the board which shall include requiring compliance with requirements imposed by a regulatory authority charged with regulation of a nonlicensee owner's professional or occupational license which is relevant to the firm's services.

(4) All nonlicensee owners comply with all applicable rules of professional conduct adopted by the board, and their own regulatory authority.

(5) Such firm complies with other requirements as established by the board by rule.

*c.* A licensee who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm shall meet the experience or competency requirements set out in nationally recognized professional stan-

dards for such services.

*d.* A licensee who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm shall meet the experience or competency requirements established in paragraph "c".

4. An applicant for initial issuance or renewal of a permit to practice as a certified public accounting firm is required to register each office of the firm within this state with the board and to show that all attest and compilation services rendered in this state are under the charge of a person holding a valid certificate issued under section 542.6 or 542.19.

5. The board, by rule, shall establish and charge an application fee for each application for initial issuance or renewal of a permit.

6. An applicant for initial issuance or renewal of a permit shall list in the application all states in which the applicant has applied for or holds a permit as a certified public accounting firm and list any past denial, revocation, or suspension of a permit by another state. A holder of or applicant for a permit shall notify the board in writing within thirty days after an occurrence of any of the following:

*a.* A change in the identity of a partner, officer, shareholder, member, or manager who performs professional services in this state or for clients in this state.

*b.* A change in the number or location of offices within this state.

*c.* A change in the identity of a person in charge of such offices.

*d.* The issuance, denial, revocation, or suspension of a permit by another state.

7. A firm, after receiving or renewing a permit which is not in compliance with this section as a result of a change in firm ownership or personnel, shall take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board shall result in the suspension or revocation of the firm's permit.

8. The board, by rule, shall require as a condition of renewal of a permit to practice as a certified public accounting firm, that an applicant undergo, no more frequently than once every three years, a peer review conducted in such manner as the board specifies. The review shall include a verification that any individual in the firm who is responsible for supervising attest and compilation services and who signs or authorizes someone to sign the accountant's report on a financial statement on behalf of the firm meets the competency requirements set forth in the professional standards for such services.

Such rules shall include reasonable provision for compliance by an applicant showing that the

applicant, within the preceding three years, has undergone a peer review that is a satisfactory equivalent to the peer review required under this subsection. An applicant's completion of a peer review program endorsed or supported by the American institute of certified public accountants, or other substantially similar review as determined by the board, satisfies the requirements of this subsection.

9. An applicant for a permit to practice as a certified public accounting firm, at the time of renewal, may request in writing upon forms provided by the board, a waiver from the requirements of subsection 8. The board may grant a waiver upon a showing satisfactory to the board of any of the following:

*a.* The applicant does not engage in, and does not intend to engage in during the following year, financial reporting areas of practice, including but not limited to financial audits, compilations, and reviews. An applicant granted a waiver pursuant to this paragraph shall immediately notify the board if the applicant engages in such practice, and shall be subject to peer review.

*b.* Reasons of health.

*c.* Military service.

*d.* Instances of hardship.

*e.* Other good cause as determined by the board.

10. Peer review records are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion. Peer review records are not admissible in evidence in a judicial, administrative, or arbitration proceeding. Information or documents discoverable from sources other than a peer review team do not become nondiscoverable from such other sources because they are made available to or are in the possession of a peer review team. Information or documents publicly available from the American institute of certified public accountants relating to quality or peer review are not privileged or confidential under this subsection. A person or organization participating in the peer review process shall not testify as to the findings, recommendations, evaluations, or opinions of a peer review team in a judicial, administrative, or arbitration proceeding.

11. A person is not liable as a result of an act, omission, or decision made in connection with the person's service on a peer review team, unless the act, omission, or decision is made with actual malice. A person is not liable as a result of providing information to a peer review team, or for disclosure of privileged matters to a peer review team.

12. The costs of the peer review shall be paid by the applicant.

2003 Acts, ch 108, §100

Subsection 8, unnumbered paragraph 1 amended

#### **542.8 Qualifications for and issuance of a license as a licensed public accountant — renewal of license — firm registration — peer review.**

1. The license of a licensed public accountant shall be granted by the board to any person who meets one of the following requirements:

*a.* The applicant holds a license as an accounting practitioner issued under the laws of this state in full force and effect on July 1, 2002, and has completed additional educational requirements as prescribed by the board.

*b.* The applicant has satisfactorily completed the examination prescribed in subsection 2 after having met one of the following:

(1) The applicant has had two or more years' actual experience in practice as an accountant as an employee of a certified public accountant, an accounting practitioner, or a licensed public accountant.

(2) The applicant submits evidence satisfactory to the board that the applicant is a graduate of a four-year college or university accredited by the north central accreditation association or other regional accreditation association having equivalent standards, with a major in accounting, or that the applicant is a graduate in accountancy from a business or correspondence school accredited by the accrediting commission for business schools or the accrediting commission of the national home study council.

(3) The applicant submits evidence of at least five years of continuous experience engaged in performing any of the services delineated in section 542.3, subsection 11, on a full-time basis.

2. An examination shall be conducted by the board as often as deemed necessary, but not less than two times per year.

3. The examination shall be designed and given in a manner as to fairly test the applicant's knowledge of accounting. The examination shall not include questions relating to the subject of auditing.

4. The board, in its discretion, may use all or any part of a standard or uniform examination and advisory grading service that is provided or furnished by a national accounting organization or society to assist the board in the performance of its duties under this chapter. The identity of the person taking the examination shall be concealed until after the examination papers have been graded.

5. If an applicant has partially passed an examination given in another state determined by the board to be substantially equivalent to the examination required by this state and meets eligibility requirements that the board finds to be substantially equivalent to those prescribed by this state, the results of the other state's examination

shall be accepted as though given in this state.

6. An applicant who successfully passes all subjects in which examined shall be issued a license as a licensed public accountant by the board. The cost of the license shall be based upon the administrative costs of the board and the costs of issuing the license.

7. An applicant who fails the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who passes a portion of the examination shall have the right to be reexamined in the remaining subjects at a future examination, and if the applicant passes the remaining subjects, the applicant shall be considered to have passed the entire examination. An applicant who fails the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which is available to the board.

8. An applicant for initial issuance of a license must have no less than one year of experience. The experience shall include providing any type of service or advice involving the use of accounting, compilation, management advisory, financial advisory, tax, or consulting skills, as verified by a licensee, meeting requirements prescribed by the board by rule. The experience is acceptable if gained through employment in government, industry, academia, or public practice.

9. *a.* The licensed public accountant license shall expire in multiyear intervals as determined by the board. The board shall notify a person licensed under this chapter of the date of expiration of the license and the amount of the fee required for its renewal. The notice shall be mailed at least one month in advance of the expiration date. A person who fails to renew a license as a licensed public accountant by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.

*b.* A licensee, for renewal of a license under this section, shall participate in a program of learning designed to maintain professional competency. Such program of learning must comply with rules adopted by the board. The board, by rule, may grant an exception to this requirement for a licensee who does not perform or offer to perform for the public one or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or the use of one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the

furnishing of advice on tax matters. A licensee entitled to an exception by rule of the board shall place the word "inactive" adjacent to the licensee's licensed public accountant title on any business card, letterhead, or other document or device, with the exception of the licensee's licensed public accountant license, on which the licensee's licensed public accountant title appears.

10. The board, in its discretion, may waive an examination and issue a license as a licensed public accountant to an applicant for one of the following:

*a.* The applicant holds a license as a licensed public accountant, an accounting practitioner, or similar title issued, after examination, by a state which extends by substantial equivalency privileges to a licensed public accountant of this state, and who, at the time of issuance of the registration, possessed the basic qualifications set forth in subsection 1.

*b.* The applicant has passed the examination required under the laws of another state and possesses the basic qualifications set forth in subsection 1 at the time the applicant applied for registration in this state.

11. A person applying for a license as a licensed public accountant shall pay a fee as determined by the board based upon the costs of issuing such licenses.

12. The board shall issue or renew a permit to practice as a licensed public accounting firm to a person that makes application and demonstrates the qualification set forth in this section or to a licensed public accounting firm originally registered in another state that provides evidence that the qualifications met in the other state are substantially equivalent to those required by this section. A firm must hold a permit issued under this section in order to use the title "LPA" or "Licensed Public Accountants" in a firm name.

*a.* An applicant for initial issuance or renewal of a permit to practice as a firm under this section must show that notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members, and managers, belongs to the holders of a certificate or license issued by a state, and that such partners, officers, shareholders, members, and managers who perform professional services in this state or for clients in this state hold a certificate issued under section 542.6 or a license issued under this section.

*b.* A licensed public accounting firm may include a nonlicensee owner, provided all of the following occur:

(1) Such firm designates a licensee who is responsible for the proper registration of the firm, and identifies that individual to the board.

(2) All nonlicensee owners are active participants in the firm or an affiliated entity.

(3) All nonlicensee owners participate in a pro-

gram of learning designed to maintain professional competency in compliance with rules adopted by the board which shall include requiring compliance with requirements imposed by a regulatory authority charged with regulation of a nonlicensee owner's professional or occupational license which is relevant to the firm's services.

(4) All nonlicensee owners comply with all applicable rules of professional conduct adopted by the board, and their own regulatory authority.

(5) Such firm complies with other requirements as established by the board by rule.

c. An individual licensee who is responsible for compilation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm shall meet the competency requirements set out in nationally recognized professional standards for such services.

d. An individual licensee who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm shall meet the competency requirements set out in nationally recognized professional standards for such services.

13. An applicant for initial issuance or renewal of a permit to practice as a licensed public accounting firm is required to register each office of the firm within this state with the board and to show that all compilation services rendered in this state are under the charge of a person holding a valid certificate issued under section 542.6 or 542.19, or a license issued under this section.

14. The board, by rule, shall establish and charge an application fee for each application for initial issuance or renewal of a permit.

15. An applicant for initial issuance or renewal of a permit shall list in the application all states in which the applicant has applied for or holds a permit as a certified public accountant or a licensed public accounting firm and list any past denial, revocation, or suspension of a permit by another state. A holder of or applicant for a permit shall notify the board in writing within thirty days after an occurrence of any of the following:

a. A change in the identity of a partner, officer, shareholder, member, or manager who performs professional services in this state or for clients in this state.

b. A change in the number or location of offices within this state.

c. A change in the identity of a person in charge of such offices.

d. The issuance, denial, revocation, or suspension of a permit by another state.

16. A firm, after receiving or renewing a permit which is not in compliance with this section as a result of a change in firm ownership or personnel, shall take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time for a firm to take

such corrective action. Failure to comply within a reasonable period as deemed by the board shall result in the suspension or revocation of the firm permit.

17. The board, by rule, shall require as a condition of renewal of a permit to practice as a licensed public accounting firm, that an applicant undergo, no more frequently than once every three years, a peer review conducted in such manner as the board specifies. The review shall include verification that any individual in the firm who is responsible for supervising compilation services and who signs or authorizes someone to sign the accountant's report on a financial statement on behalf of the firm meets the competency requirements set forth in the professional standards for such services. Such rules shall include reasonable provision for compliance by an applicant showing that the applicant, within the preceding three years, has undergone a peer review that is a satisfactory equivalent to the peer review required under this subsection. An applicant's completion of a peer review program endorsed or supported by the national society of accountants, or other substantially similar review as determined by the board, satisfies the requirements of this subsection.

18. An applicant for a permit to practice as a licensed public accounting firm, at the time of renewal, may request in writing upon forms provided by the board, a waiver from the requirements of subsection 17. The board may grant a waiver upon a showing satisfactory to the board of any of the following:

a. The applicant does not engage in, and does not intend to engage in during the following year, financial reporting areas of practice, including but not limited to compilations. An applicant granted a waiver pursuant to this paragraph shall immediately notify the board if the applicant engages in such practice, and shall be subject to peer review.

b. Reasons of health.

c. Military service.

d. Instances of hardship.

e. Other good cause as determined by the board.

19. Peer review records are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion. Peer review records are not admissible in evidence in a judicial, administrative, or arbitration proceeding. Information or documents discoverable from sources other than a peer review team do not become nondiscoverable from such other sources because they are made available to or are in the possession of a peer review team. Information or documents publicly available from the national society of accountants relating to quality or peer review are not privileged or confidential under this subsection. A person or organization participating in the peer review process shall not testify as to the findings, recommendations, evaluations, or opinions of a peer review team in a judicial, admin-

istrative, or arbitration proceeding.

20. A person is not liable as a result of an act, omission, or decision made in connection with the person's service in a peer review team, unless the act, omission, or decision is made with actual malice. A person is not liable as a result of providing information to a peer review team, or for disclosure of privileged matters to a peer review team.

21. The costs of the peer review shall be paid by the applicant.

2003 Acts, ch 108, §101  
Subsection 17 amended

#### 542.13 Unlawful acts.

1. Only a certified public accountant may issue a report on financial statements of a person, firm, organization, or governmental unit, or offer to render or render any attest service. Only a certified public accountant or licensed public accountant may render compilation services. This restriction does not prohibit such acts by a public official or public employee in the performance of that person's duties; or prohibit the performance by any nonlicensee of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports on such financial statements. A nonlicensee may prepare financial statements and issue nonattest transmittals or information on such statements or transmittals which do not purport to be in compliance with the statements on standards for accounting and review services.

2. A licensee performing attest or compilation services must provide those services consistent with professional standards.

3. A person not holding a certificate shall not use or assume the title "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

4. A firm shall not provide attest services or assume or use the title "certified public accountants" or the abbreviation "CPAs" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a certified public accounting firm unless the firm holds a permit issued under section 542.7 and ownership of the firm satisfies the requirements of this chapter and rules adopted by the board.

5. A person shall not assume or use the title "licensed public accountant" or the abbreviation "LPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a licensed public accountant unless that person holds a license issued under section 542.8.

6. A firm not holding a permit issued under section 542.8 shall not provide compilation services or assume or use the title "licensed public ac-

countants", the abbreviation "LPAs", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is composed of licensed public accountants.

7. A person or firm not holding a certificate, permit, or license issued under section 542.6, 542.7, 542.8, or 542.19 shall not assume or use the title "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", "accredited accountant", or any other title or designation likely to be confused with the title "certified public accountant" or "licensed public accountant", or use any of the abbreviations "CA", "LA", "RA", "AA", or similar abbreviation likely to be confused with the abbreviation "CPA" or "LPA". The title "enrolled agent" or "EA" may be used by individuals so designated by the internal revenue service. Nothing in this section shall restrict truthful advertising of a bona fide credential or title which in context is not deceptive or misleading to the public.

8. A nonlicensee shall not use language in any statement relating to the financial affairs of a person or entity which is conventionally used by licensees in reports on financial statements. The board shall develop and issue language which nonlicensees may use in connection with such financial information.

9. A person or firm not holding a certificate, permit, or license issued under section 542.6, 542.7, 542.8, or 542.19 shall not assume or use any title or designation that includes the word "accountant", "auditor", or "accounting" in connection with any other language that implies that such person or firm holds such a certificate, permit, or license or has special competence as an accountant or auditor. However, this subsection does not prohibit an officer, partner, member, manager, or employee of a firm or organization from affixing that person's own signature to a statement in reference to the financial affairs of such firm or organization with wording which designates the position, title, or office that the person holds, or prohibit any act of a public official or employee in the performance of such person's duties. This subsection does not otherwise prohibit the use of the title or designation "accountant" by persons other than those holding a certificate or license under this chapter.

10. A person holding a certificate or license or firm holding a permit under this chapter shall not use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers, or shareholders of the firm, or about any other matter. However, the name of one or more former partners, members, managers, or shareholders may be included in the name of a firm or its successor.

11. This section does not apply to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling

the holder to engage in the practice of public accountancy or its equivalent in such country, whose activities in this state are limited to providing professional services to a person or firm who is a resident of, government of, or business entity of the country in which the person holds such entitlement, who does not perform attest or compilation services, and who does not issue reports with respect to the financial statements of any other person, firm, or governmental unit in this state, and who does not use in this state any title or designation other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

12. A holder of a certificate issued under section 542.6 or 542.19 shall not perform attest services in a firm that does not hold a permit issued under section 542.7.

13. An individual licensee shall not issue a report in standard form upon a compilation of financial information through any form of business that does not hold a permit issued under section 542.7 unless the report discloses the name of the business through which the individual is issuing the report and the individual licensee does all of the following:

*a.* Signs the compilation report identifying the individual as a certified public accountant or licensed public accountant.

*b.* Meets competency requirements provided in applicable standards.

*c.* Undergoes, no less frequently than once every three years, a peer review conducted in a manner as specified by the board. The review shall include verification that such individual has met the competency requirements set out in professional standards for such services.

14. This section does not prohibit a practicing attorney from preparing or presenting records or documents customarily prepared by an attorney in connection with the attorney's professional work in the practice of law.

15. *a.* A licensee shall not for a commission recommend or refer a client to any product or service, or for a commission recommend or refer another person to any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client any of the following:

(1) An audit or review of a financial statement.

(2) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence.

(3) An examination of prospective financial information.

The prohibitions under this paragraph "a" apply during the period in which the licensee is engaged to perform any of the services identified in sub-

paragraphs (1) through (3), and the period covered by any historical financial statements involved in such services.

*b.* A licensee who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.

*c.* A licensee who accepts a referral fee for recommending a service of a licensee or referring a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

16. *a.* A licensee shall not do any of the following:

(1) Perform professional services for a contingent fee, or receive such fee from a client for whom the licensee or the licensee's firm performs any of the following:

(*a.*) An audit or review of a financial statement.

(*b.*) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence.

(*c.*) An examination of prospective financial information.

(2) Prepare for a client an original or amended tax return or claim for a tax refund for a contingent fee.

*b.* Paragraph "a" applies during the period in which the licensee is engaged to perform any of the listed services and the period covered by any historical financial statements involved in such listed services.

*c.* For purposes of this subsection, a contingent fee is a fee established for the performance of a service pursuant to an arrangement in which a fee will not be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee shall not be considered as being a contingent fee if fixed by a court or other public authority, or, in a tax matter, if determined based on the results of a judicial proceeding or the findings of a governmental agency. A licensee's fee may vary depending on the complexity of the services rendered.

17. Nothing contained in this chapter shall be construed to authorize any person engaged in the practice as a certified public accountant or licensed public accountant or any member or employee of such firm to engage in the practice of law individually or within entities licensed under this chapter.

2003 Acts, ch 44, §93

Subsection 16, paragraph d redesignated as subsection 17

#### **542.19 Substantial equivalency.**

1. An individual whose principal place of busi-

ness is not in this state shall be granted a certificate to practice as a certified public accountant in this state if the board determines that the individual holds in good standing a valid certificate or license to practice as a certified public accountant in the state in which the individual's principal place of business is located, and that the individual satisfies one of the following conditions:

*a.* The other state's licensing or certification standards are substantially equivalent to those required by this chapter.

*b.* The applicant's individual qualifications are substantially equivalent to those required by section 542.5.

*c.* The applicant satisfies all of the following:

(1) The applicant passed the examination required for issuance of the applicant's certificate or license with grades that would have been passing grades at the time in this state;

(2) The applicant has at least four years of experience within the ten years immediately preceding the application which occurred after passing the examination upon which the applicant's certificate or license was based and which in the board's opinion is substantially equivalent to that required by section 542.5, subsection 12; and,

(3) If the applicant's certificate or license was issued more than four years prior to the filing of the application in this state, the applicant has fulfilled the continuing professional education requirements described in section 542.6, subsection 3.

2. An individual who holds in good standing a valid certificate or license to practice as a certified public accountant in another state and who desires to establish the holder's principal place of business in this state shall request the issuance of a certificate from the board prior to establishing such principal place of business. The board shall issue a certificate to an individual who satisfies one or more of the conditions described in subsection 1.

3. The board shall issue a certificate to a holder of a substantially equivalent foreign designation, upon satisfaction of all of the following:

*a.* The foreign authority which issued the designation allows a person who holds a valid certificate issued by this state to obtain such foreign authority's comparable designation.

*b.* The foreign designation satisfies all of the following:

(1) The designation was issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended.

(2) The designation entitles the holder to issue reports on financial statements.

(3) The designation was issued upon the basis of education, examination, and experience requirements established by the foreign authority or by law.

*c.* The applicant satisfies all of the following:

(1) The designation was issued based on education and examination standards substantially equivalent to those in effect in this state at the time the foreign designation was granted.

(2) The applicant satisfies an experience requirement, substantially equivalent to the requirement set out in section 542.5, subsection 12, in the jurisdiction which issued the foreign designation or has completed four years of professional experience in this state; or meets equivalent requirements prescribed by the board by rule, within the ten years immediately preceding the application.

(3) The applicant has passed qualifying examinations in national standards and the laws, rules, and code of ethical conduct in effect in this state.

(4) The applicant shall list in the application all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy. A holder of a certificate issued under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

4. An applicant under this section shall comply with all applicable provisions of section 542.5, subsections 1 through 6, and section 542.6.

5. The board shall adopt rules to implement this section which will expedite the application process to the extent reasonably possible.

2003 Acts, ch 44, §94  
Subsection 1, paragraph a amended

## CHAPTER 543D

### REAL ESTATE APPRAISALS AND APPRAISERS

#### 543D.7 Certification process.

Applications for original certification, renewal certification, and examinations shall be made in writing to the board on forms approved by the

board.

2003 Acts, ch 43, §1  
Subsection 2 stricken and former subsection 1 redesignated as unnumbered paragraph 1

**543D.19 Retention of records.**

1. A certified real estate appraiser shall retain for five years, originals or true copies of all written contracts engaging the appraiser's services for real estate appraisal work and all reports and supporting data assembled and formulated for use by the appraiser or the associate appraiser in preparing the reports.

2. An appraiser must retain all work files for a period of at least five years after preparation or at least two years after final disposition of any judicial proceeding in which testimony was given,

whichever period expires last, and either maintain custody of the appraiser's work file or make appropriate work file retention, access, and retrieval arrangements with a party having custody of the work file.

3. All records required to be maintained under this chapter shall be made available by a certified real estate appraiser for inspection and copying by the board on reasonable notice to the appraiser.

2003 Acts, ch 43, §2, 3  
Subsection 1 amended  
Subsection 2 stricken and rewritten

**CHAPTER 544B****LANDSCAPE ARCHITECTS****544B.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Board*" means the landscape architectural examining board established pursuant to section 544B.3.

2. "*Practice of landscape architecture*" means the performance of professional services such as consultations, investigations, reconnaissance, research, planning, design, or responsible supervision in connection with projects involving the arranging of land and the elements thereon for public and private use and enjoyment, including the alignment of roadways and the location of buildings, service areas, parking areas, walkways, steps, ramps, pools and other structures, and the grading of the land, surface and subsoil drainage, erosion control, planting, reforestation, and the preservation of the natural landscape and aesthetic values, in accordance with accepted professional standards of public health, welfare, and safety. This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined in this chapter but shall not include the design of structures or facilities with separate and self-contained purposes for habitation or industry, or the design of public streets and highways, utilities, storm and sanitary sewers, and sewage treatment facilities, such as are ordinarily included in the practice of engineering or architecture; and shall not include the making of land surveys or fi-

nal land plats for official approval or recording. Nothing contained in this chapter shall be construed as authorizing a professional landscape architect to engage in the practice of architecture, engineering, or land surveying.

3. "*Professional landscape architect*" means a person who has obtained a license pursuant to section 544B.2, and who engages in the practice of landscape architecture as defined in this section.

2003 Acts, ch 108, §102  
Subsection 2 amended

**544B.12 Seal.**

Every professional landscape architect shall have a seal, approved by the board, which shall contain the name of the landscape architect and the words "Professional Landscape Architect, State of Iowa", and such other words or figures as the board may deem necessary. All landscape architectural plans and specifications, prepared by such professional landscape architect or under the supervision of such professional landscape architect, shall be dated and bear the legible seal of such professional landscape architect. Nothing contained in this section shall be construed to permit the seal of a professional landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed land surveyor whenever the seal of an architect, engineer or land surveyor is required under the laws of this state.

2003 Acts, ch 44, §95  
Section amended

**CHAPTER 546****DEPARTMENT OF COMMERCE****546.10 Professional licensing and regulation division — superintendent of savings and loan associations.**

1. The professional licensing and regulation

division shall administer and coordinate the licensing and regulation of several professions by bringing together the following licensing boards:

a. The engineering and land surveying exam-

ining board created pursuant to chapter 542B.

b. The Iowa accountancy examining board created pursuant to chapter 542.

c. The real estate commission created pursuant to chapter 543B.

d. The architectural examining board created pursuant to chapter 544A.

e. The landscape architectural examining board created pursuant to chapter 544B.

2. The division is headed by the administrator of professional licensing and regulation who shall be appointed by the governor subject to confirmation by the senate and shall serve a four-year term that begins and ends as provided in section 69.19. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. The administrator shall appoint and supervise staff and shall coordinate activities for the licensing boards within the division. The administrator shall act as a staff person to one or more of the licensing boards.

3. The licensing and regulation examining boards included in the division pursuant to subsection 1 retain the powers granted them pursuant to the chapters in which they are created, except for budgetary and personnel matters which shall be handled by the administrator. Each licensing board shall adopt rules pursuant to chapter 17A. Decisions by a licensing board are final agency actions for purposes of chapter 17A.

Notwithstanding subsection 5, eighty-five percent of the funds received annually resulting from an increase in licensing fees implemented on or after April 1, 2002, by a licensing board or commission listed in subsection 1, is appropriated to the professional licensing and regulation division to be allocated to the board or commission for the fiscal year beginning July 1, 2002, and succeeding fiscal years, for purposes related to the duties of the board or commission, including but not limited to additional full-time equivalent positions. The director of the department of administrative services shall draw warrants upon the treasurer of state from the funds appropriated as provided in this section and shall make the funds available to the professional licensing division on a monthly

basis during each fiscal year.

4. The professional licensing and regulation division of the department of commerce may expend additional funds, including funds for additional personnel, if those additional expenditures are directly the cause of actual examination expenses exceeding funds budgeted for examinations. Before the division expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the division and the division does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management, the division may expend and encumber funds for excess examination expenses. The amounts necessary to fund the examination expenses shall be collected as fees from additional examination applicants and shall be treated as repayment receipts as defined in section 8.2, subsection 8.

5. Fees collected under chapters 542, 542B, 543B, 543D, 544A, and 544B shall be paid to the treasurer of state and credited to the general fund of the state. All expenses required in the discharge of the duties and responsibilities imposed upon the professional licensing division of the department of commerce, the administrator, and the licensing boards by the laws of this state shall be paid from moneys appropriated by the general assembly for those purposes. All fees deposited into the general fund of the state, as provided in this subsection, shall be subject to the requirements of section 8.60.

6. The administrator of professional licensing and regulation is the superintendent of savings and loan associations. The administrator may appoint an individual to act as the superintendent who shall serve as the superintendent at the pleasure of the administrator.

2003 Acts, ch 145, §286  
Confirmation, see §2.32  
Terminology change applied

## CHAPTER 554

### UNIFORM COMMERCIAL CODE

#### **554.3512 Holder's recourse for dishonor.**

1. The holder of a dishonored check, draft, or order may assess against the maker of that check, draft, or order a surcharge not to exceed thirty dollars.

2. The surcharge authorized by this section shall not be assessed unless the holder clearly and

conspicuously posts a notice at the usual place of payment, or in the billing statement of the holder, stating that a surcharge will be assessed and the amount of the surcharge. However, the surcharge shall not be assessed against the maker if the reason for the dishonor of the check, draft, or order is that the maker has stopped payment pursuant to

## section 554.4403.

2003 Acts, ch 10, §1

Subsection 1 stricken and rewritten

**554.3513 Civil remedy for dishonor.**

1. In a civil action against a person who makes a check, draft, or order, which has been dishonored for lack of funds or credit, after having been presented twice, or because the maker has no account with the drawee, the plaintiff shall recover from the defendant total damages equaling three times the face value of the dishonored check, draft, or order, which sum shall include the face value of the check, draft, or order. However, total recovery under this section shall not exceed by more than five hundred dollars the amount of the check, draft, or order and may be awarded only if all of the following apply:

*a.* The plaintiff made written demand of the defendant for payment of the amount of the check, draft, or order not less than thirty days before commencing the action.

*b.* The written demand notified the defendant that treble damages would be sought if the face value of the dishonored check was not paid within thirty days of receipt, and was received by the defendant via any of the following methods:

- (1) Personal service.
- (2) Restricted certified mail.
- (3) Regular mail to at least one of the following addresses, supported by an affidavit of service retained by the payee or holder of the dishonored check, which affidavit shall be presumptive evidence of the receipt of the demand by the maker three days from the date of execution of the affidavit:

(a) The address printed or written on the check.

(b) The address given by the drawer at the time of issuance of the check.

(c) The last known address of the drawer.

*c.* The defendant has failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the face value of the dishonored check, draft, or order.

*d.* The plaintiff clearly and conspicuously posted a notice at the usual place of payment, or in a billing statement of the plaintiff, stating that civil damages pursuant to this section would be sought upon dishonorment.

2. In an action for damages pursuant to subsection 1, if the court or jury determines that the failure of the defendant to satisfy the dishonored check, draft, or order is due to economic hardship, the court or jury may waive all or part of the allowable civil damages. However, if the court or jury waives all or part of the civil damages, the court or jury shall render judgment against the defendant in the amount of the dishonored check, draft, or order and the actual costs incurred by the plaintiff in bringing the action.

3. This section does not apply if the reason for the dishonor of the check, draft, or order is that the maker has stopped payment pursuant to section 554.4403 because of a bona fide dispute between the maker and the holder relating to the consideration for which the check, draft, or order was given.

4. In actions brought pursuant to this section, no additional award pursuant to section 554.3512 or 625.22 shall be made.

5. The plaintiff in a civil action to collect a dishonored check, draft, or order brought before the district court sitting in small claims shall not request or recover punitive or exemplary damages, but may seek the civil damages allowed under this section. The plaintiff in a civil action to collect a dishonored check, draft, or order in the district court not sitting in small claims, may seek punitive or exemplary damages if appropriate under chapter 668A, or civil damages allowed under this section, but not both.

6. A violation of this section is an unlawful practice as provided in section 714.16, subsection 2, paragraph "a".

2003 Acts, ch 100, §1

Subsection 1, paragraph b amended

**554.9701 Effective date.**

The amendments to this Article as enacted in 2000 Iowa Acts, chapter 1149, take effect on July 1, 2001, and are applicable on and after that date.

2003 Acts, ch 44, §96, 116

2003 amendments are effective April 21, 2003, and apply retroactively to July 1, 2001; 2003 Acts, ch 44, §116

Section effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

Section amended

**554.9706 When initial financing statement suffices to continue effectiveness of financing statement.**

1. *Initial financing statement in lieu of continuation statement.* The filing of an initial financing statement in the office specified in section 554.9501 continues the effectiveness of a financing statement filed before July 1, 2001, if:

*a.* the filing of an initial financing statement in that office would be effective to perfect a security interest under this Act;\*

*b.* the pre-effective-date financing statement was filed in an office in another state or another office in this state; and

*c.* the initial financing statement satisfies subsection 3.

2. *Period of continued effectiveness.* The filing of an initial financing statement under subsection 1 continues the effectiveness of the pre-effective-date financing statement:

*a.* if the initial financing statement is filed before July 1, 2001, for the period provided in section 554.9403, Code 2001, with respect to a financing statement; and

*b.* if the initial financing statement is filed after July 1, 2001, for the period provided in section

554.9515 with respect to an initial financing statement.

3. *Requirements for initial financing statement under subsection 1.* To be effective for purposes of subsection 1, an initial financing statement must:

a. satisfy the requirements of part 5 for an initial financing statement;

b. identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

c. indicate that the pre-effective-date financing statement remains effective.

2003 Acts, ch 108, §103

\*2000 Acts, ch 1149

Effective July 1, 2001; 2000 Acts, ch 1149, §187; for law prior to July 1, 2001, see Code 2001

Subsection 2, paragraph a amended

### 554.11103 Transition to this chapter as amended — general rule.

Transactions validly entered into after July 4, 1966, and before January 1, 1975, which were subject to the provisions of this chapter prior to amendment and which would be subject to this chapter as amended if they had been entered into on or after January 1, 1975, and the rights, duties and interests flowing from such transactions remain valid after January 1, 1975, and may be terminated, completed, consummated or enforced as required or permitted by this chapter as amended. Security interests arising out of such transactions which are perfected on January 1, 1975, shall remain perfected until they lapse or are terminated as provided in this chapter as amended, and may be continued as permitted by this chapter as amended.

2003 Acts, ch 108, §104

Section amended

## CHAPTER 554D

### UNIFORM ELECTRONIC TRANSACTIONS ACT

#### 554D.104 Scope.

1. Except as provided in subsection 2, this chapter applies to electronic records and electronic signatures relating to a transaction.

2. a. (1) This chapter does not apply to the following:

(a) An application which would involve construction of a rule of law that is clearly inconsistent with the manifest intent of the body imposing the requirement or repugnant to the context of the same rule of law. However, the mere requirement that information be in writing, written, or printed shall not by itself be sufficient to establish an intent which is inconsistent with the requirement of this section.

(b) With respect to a consumer transaction, a record that serves as a unique and transferable physical expression of rights and obligations including, without limitation, negotiable instruments and other instruments of title where possession of the instrument is deemed to confer title.

(c) An electronic transaction initiated at a satellite terminal, as defined in section 527.2, or the processing and routing of transaction data by a central routing unit or a data processing center, each as defined in section 527.2.

(2) Except as provided under paragraph “b”, this chapter does not apply to a transaction to the extent it is governed by any of the following:

(a) A disclosure requirement associated with a consumer transaction, including, but not limited to, such disclosures required under chapter 13C, sections 321.69 and 321.71, chapters 516D, 523A, 523B, 523G, 533D, 537, 537B, 538A, 552, 552A,

555A, 557A, 557B, 558A, 562A, and 562B, section 714.16, and chapters 714B and 714D, or an administrative rule adopted pursuant to such sections or chapters.

(b) A rule of law governing the creation or execution of a will or trust, living will, a general, durable, or healthcare power of attorney, or a voluntary, involuntary, or standby guardianship or conservatorship.

(c) Chapter 554 other than articles 2 and 13 and sections 554.1107 and 554.1206.

b. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under paragraph “a” to the extent it is governed by a law other than those specified in paragraph “a”, subparagraph (2).

3. A transaction subject to this chapter is also subject to other applicable substantive law.

4. A choice of law provision in a computer information agreement which provides that the contract is to be interpreted pursuant to the laws of a state that has enacted the uniform computer information transactions Act, as proposed by the national conference of commissioners on uniform state laws, or any substantially similar law, is voidable and the agreement shall be interpreted pursuant to the laws of this state if the party against whom enforcement of the choice of law provision is sought is a resident of this state or has its principal place of business located in this state. For purposes of this subsection, a “computer information agreement” means an agreement that would be governed by the uniform computer infor-

mation transactions Act or substantially similar law as enacted in the state specified in the choice of laws provision if that state's law were applied to the agreement.

Section not amended; proposed strike of subsection 4 effective July 1, 2003, is repealed effective April 17, 2003; 2003 Acts, ch 39, §1 - 3

#### 554D.118 Transferable records.

1. For purposes of this section, “transferable record” means an electronic record that satisfies both of the following:

*a.* The electronic record would be a note under chapter 554, article 3, or a document under chapter 554, article 7, if the electronic record were in writing.

*b.* The issuer of the electronic record expressly has agreed such electronic record is a transferable record.

2. A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

3. A system satisfies subsection 2, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that satisfies all of the following:

*a.* A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs “*d*”, “*e*”, and “*f*”, unalterable.

*b.* The authoritative copy identifies the person asserting control as one of the following:

(1) The person to which the transferable record was issued.

(2) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred.

*c.* The authoritative copy is communicated to and maintained by the person asserting control or such person's designated custodian.

*d.* Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control.

*e.* Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

*f.* A revision of the authoritative copy is readily identifiable as authorized or unauthorized.

4. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 554.1201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under chapter 554, including, if the applicable statutory requirements under section 554.3302, subsection 1, section 554.7501, or section 554.9330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of

title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

5. Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chapter 554.

6. If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

2003 Acts, ch 44, §97  
Subsection 4 amended

#### 554D.120 Acceptance and distribution of electronic records by governmental agencies.

1. Except as otherwise provided in section 554D.114, subsection 6, a governmental agency of this state other than a state executive branch agency, department, board, commission, authority, or institution, shall determine whether, and the extent to which, the governmental agency will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

2. Except as otherwise provided in section 554D.114, subsection 6, on or before July 1, 2003, a state executive branch agency, department, board, commission, authority, or institution, in consultation and cooperation with the department of administrative services, shall send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and signatures. The department of management, upon the written request of a state executive branch agency, department, board, commission, authority, or institution and for good cause shown, may grant a waiver from the July 1, 2003, deadline established in this section to the state executive branch agency, department, board, commission, authority, or institution.

3. To the extent that a governmental agency of this state uses electronic records and electronic signatures under subsection 1 or 2, the office of the secretary of state and the department of administrative services, jointly, and in consultation with the office of the attorney general, giving due consideration to security, may specify by rule all of the following:

*a.* The manner and format in which the elec-

tronic records must be created, generated, sent, communicated, received, and stored and the information processing systems established for those purposes.

*b.* If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process.

*c.* Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records.

*d.* Any other required attributes for electronic

records which are specified for corresponding non-electronic records or reasonably necessary under the circumstances.

4. Except as otherwise provided in subsection 2 and in section 554D.114, subsection 6, this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

5. Notwithstanding this section, an institution governed under chapter 262 shall conform with national standards with respect to electronic records and electronic signatures, as such standards are developed.

2003 Acts, ch 44, §98; 2003 Acts, ch 145, §286  
Terminology change applied  
Subsection 4 amended

## CHAPTER 556

### DISPOSITION OF UNCLAIMED PROPERTY

#### 556.1 Definitions and use of terms.

As used in this chapter, unless the context otherwise requires:

1. “*Banking organization*” means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

2. “*Business association*” means a corporation, cooperative association, joint stock company, business trust, investment company, partnership, limited liability company, trust company, mutual fund, or other business entity consisting of one or more persons, whether or not for profit.

3. “*Cooperative association*” means an entity which is structured and operated on a cooperative basis, including an association of persons organized under chapter 497, 498, or 499; an entity composed of entities organized under those chapters; a cooperative organized under chapter 501; a cooperative association organized under chapter 490; or any other entity recognized pursuant to 26 U.S.C. § 1381(a) which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.

4. “*Financial organization*” means any savings and loan association, building and loan association, credit union, cooperative bank or investment company, engaged in business in this state.

5. “*Holder*” means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

6. “*Life insurance corporation*” means any association or corporation transacting within this state the business of insurance on the lives of per-

sons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

7. “*Money order*” includes an express money order and a personal money order, on which the remitter is the purchaser. “*Money order*” does not include a bank money order or any other instrument sold by a banking or financial organization if the seller has obtained the name and address of the payee.

8. “*Owner*” means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or that person’s legal representative.

9. “*Person*” means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

10. “*Property*” means a fixed and certain interest in or right in an intangible that is held, issued, or owed in the course of a holder’s business, or by a government or governmental entity, and all income or increment therefrom, including that which is referred to as or evidenced by any of the following:

*a.* Money, check, draft, deposit, interest, dividend, and income.

*b.* Credit balance, customer overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused airline ticket, unused ticket, mineral proceeds, and unidentified remittance and electronic fund transfer.

*c.* Stock or other evidence of ownership inter-

ests in a business association.

*d.* Bond, debenture, note, or other evidence of indebtedness.

*e.* Money deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions.

*f.* An amount due and payable under the terms of an insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability benefits insurance.

*g.* An amount distributable from a trust or custodian fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

*h.* Amounts distributable from a mineral interest in land.

*i.* Any other fixed and certain interest or right in an intangible that is held, issued, or owing in the course of a holder's business, or by a government or governmental entity.

"Property" does not include credits, advance payments, overpayments, refunds, or credit memoranda shown on the books and records of a business association with respect to another business association unless the balance is property described in section 556.2 held by a banking organization or financial organization.

11. "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

2003 Acts, ch 44, §99  
Subsection 3 amended

### **556.3A Unclaimed demutualization proceeds held by insurance companies.**

1. Property distributable in the course of demutualization or related reorganization of an insurance company occurring on or after January 1, 2003, that remains unclaimed is deemed abandoned two years after the earlier of:

*a.* The first date on which the property of an insurance company being demutualized or reorganized was distributable.

*b.* The date of last contact by the insurance company with a policyholder.

2. Property distributable in the course of demutualization or related reorganization of an insurance company occurring before January 1, 2003, that remains unclaimed is deemed abandoned two years after the first date on which the property of an insurance company being demutualized or reorganized was distributable.

2003 Acts, ch 46, §1, 5  
NEW section

### **556.9 Miscellaneous personal property held for another person — wages — gift certificates.**

1. All intangible personal property, not otherwise covered by this chapter, including any income or increment earned on the property and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned. However, unpaid wages, including wages represented by payroll checks or other compensation for personal services owing in the ordinary course of the holder's business that remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned.

2. An issuer of a gift certificate shall not deduct from the face value of the gift certificate any charge imposed due to the failure of the owner of the gift certificate to present the gift certificate in a timely manner, unless a valid and enforceable written contract exists between the issuer and the owner of the gift certificate pursuant to which the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them. For purposes of this subsection, "gift certificate" means a merchandise certificate conspicuously designated as a gift certificate, and generally purchased by a buyer for use by a person other than the buyer.

2003 Acts, ch 46, §2  
Subsection 1 amended

### **556.11 Report of abandoned property.**

1. Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the state treasurer with respect to the property as hereinafter provided.

2. The report shall be verified and shall include:

*a.* Except with respect to traveler's checks, money orders, cashier's checks, official checks, or similar instruments, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of fifty dollars or more presumed abandoned under this chapter.

*b.* In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and the insured's or annuitant's last known address according to the life insurance corporation's records.

*c.* The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under fifty dollars each may be reported in aggregate.

*d.* The date when the property became payable, demandable, or returnable, and the date of

the last transaction with the owner with respect to the property.

e. Other information which the state treasurer prescribes by rule as necessary for the administration of this chapter.

3. If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed names while holding the property, the holder shall file with the holder's report all prior known names and addresses of each holder of the property.

4. The report shall be filed annually before November 1 for the fiscal year ending on the preceding June 30. However, the report of unclaimed demutualization proceeds as provided in section 556.3A shall be made before May 1 for the preceding calendar year. The treasurer of state may postpone the reporting date upon written request by any person required to file a report.

5. If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner. A holder is not required to make a due diligence mailing to owners whose property has an aggregate value of less than fifty dollars. The treasurer of state may charge a holder that fails to timely exercise due diligence, as required in this subsection, five dollars for each name and address account reported if thirty-five percent or more of the accounts are claimed within the twenty-four months immediately following the filing of the holder report.

6. Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

7. The initial report filed under this chapter shall include all items of property that would have been presumed abandoned if this chapter had been in effect during the ten-year period preceding its effective date.

8. a. A holder required to file a report under this section shall maintain its records containing the information required to be included in the report until the holder files the report and for four years after the date of filing, unless a shorter time is provided in paragraph "b" or by rule of the treasurer of state.

b. A business association that sells, issues, or provides to others for sale or issue in this state, traveler's checks, money orders, or similar written instruments other than third-party bank checks, on which the business association is directly li-

able, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for four years after the date of filing.

9. Other than the notice to owners required by subsection 5, published notice required by section 556.12, subsection 1, and other discretionary means employed by the treasurer of state for notifying owners of the existence of abandoned property, all information provided in reports shall be confidential, unless written consent from the person entitled to the property is obtained by the treasurer of state, and may be disclosed only to governmental agencies for the purposes of returning abandoned property to its owners or to those individuals who appear to be the owner of the property or otherwise have a valid claim to the property.

10. All agreements to pay compensation to recover or assist in the recovery of property reported under this section, made within twenty-four months after the date payment or delivery is made under section 556.13, are unenforceable. However, such agreements made after twenty-four months from the date of payment or delivery are valid if the fee or compensation agreed upon is not more than fifteen percent of the recoverable property, the agreement is in writing and signed by the owner, and the writing discloses the nature and value of the property and the name and address of the person in possession. A person shall not attempt to collect or collect a fee or compensation for discovering property presumed abandoned under this chapter unless the person is licensed as a private investigation business pursuant to chapter 80A. This section does not prevent an owner from asserting, at any time, that an agreement to locate property is based upon excessive or unjust consideration. This section does not apply to an owner who has a bona fide fee contract with a practicing attorney and counselor as described in chapter 602, article 10.

2003 Acts, ch 46, §3, 5; 2003 Acts, ch 64, §1 - 4; 2003 Acts, 1st Ex, ch 2, §40, 209

Subsection 2, paragraphs a and c amended

Subsection 4 amended

Subsection 5 amended

NEW subsection 9

Unnumbered paragraph 1 amended and redesignated as subsection 10

### **556.12 Notice and publication of lists of abandoned property.**

1. If a report has been filed with the treasurer of state, or property has been paid or delivered to the treasurer of state, for the fiscal year ending on June 30 or, in the case of unclaimed demutualization proceeds, for the preceding calendar year as required by section 556.11, the treasurer of state shall provide for the publication annually of at least one notice not later than the following November 30. Each notice shall be published at least once each week for two successive weeks in an English language newspaper of general circulation in

the county in this state in which is located the last known address of any person to be named in the notice. If an address is not listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has its principal place of business within this state.

2. The published notice shall contain:

a. The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

b. A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

3. The treasurer of state is not required to publish in such notice any item of less than fifty dollars unless the treasurer deems the publication to be in the public interest.

4. Within one hundred twenty days from the receipt of the report required by section 556.11, the treasurer of state shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of fifty dollars or more presumed abandoned under this chapter.

5. The mailed notice shall contain a statement that, according to a report filed with the treasurer of state, property is being held to which the addressee appears entitled.

6. This section is not applicable to sums payable on traveler's checks, money orders, cashier's checks, official checks, or similar instruments presumed abandoned under section 556.2.

2003 Acts, ch 46, §4, 5; 2003 Acts, ch 64, §5, 6  
 Subsection 1 amended  
 Subsection 2, paragraph c stricken  
 Subsections 3 – 6 amended

### **556.17 Sale of abandoned property.**

1. All abandoned property other than money delivered to the treasurer of state under this chapter which remains unclaimed one year after the delivery to the treasurer may be sold to the highest bidder at public sale in any city in the state that affords in the treasurer's judgment the most favorable market for the property involved. The treasurer of state may decline the highest bid and reoffer the property for sale if the treasurer considers the price bid insufficient. The treasurer need not offer any property for sale if, in the treasurer's opinion, the probable cost of sale exceeds the value of the property. The treasurer may order destruction of the property when the treasurer has determined that the probable cost of offering the property for sale exceeds the value of the property. If

the treasurer determines that the property delivered does not have any substantial commercial value, the treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the treasurer or any officer or against the holder for or on account of an act the treasurer made under this section, except for intentional misconduct or malfeasance.

2. Any sale held or destruction ordered under this section shall be preceded by a single publication of notice of the sale or destruction order at least three weeks in advance of sale or destruction in an English language newspaper of general circulation in the county where the property is to be sold or, for the destruction, in the county from which the property was received.

3. The purchaser at any sale conducted by the state treasurer pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state treasurer shall execute all documents necessary to complete the transfer of title.

4. Unless the treasurer of state considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under section 556.5, delivered to the treasurer of state must be held for at least one year before the treasurer of state may sell them.

5. Unless the treasurer of state considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under section 556.5 and delivered to the treasurer of state must be held for at least one year before the treasurer of state may sell them. If the treasurer of state sells any securities delivered pursuant to section 556.5 before the expiration of the one-year period, any person making a claim pursuant to this chapter before the end of the one-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to section 556.18, subsection 2. A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the treasurer of state by the holder, if they still remain in the hands of the treasurer of state, or the proceeds received from the sale, less any amounts deducted pursuant to section 556.18, subsection 2, but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the treasurer of state.

2003 Acts, ch 64, §7  
 Subsections 1 and 5 amended

## CHAPTER 556H

### UNCLAIMED DEER VENISON

#### **556H.1 Unclaimed deer venison held by a licensed processing establishment.**

All deer venison deposited with an establishment licensed pursuant to chapter 189A, which remains unclaimed for a period of two months after the establishment has attempted to contact the deer venison owner at least once by ordinary mail at the owner's last known mailing address, shall be presumed to be abandoned. The establishment may dispose of the abandoned deer venison by do-

nating the deer venison to a local nonprofit, charitable organization. For purposes of this section, the term "deer" means the Cervidae or game deer excluding any farm deer as defined in section 481A.1, subsection 21, paragraph "h", and all donated deer venison shall include game deer venison only and shall not be processed as a multispecies meat food product pursuant to chapter 189A.

Section not amended; internal reference change applied

## CHAPTER 557

### REAL PROPERTY IN GENERAL

#### RECORDING OF FARM NAMES

#### **557.22 Authorization.**

Any owner of a farm in the state may have the name of that farm, together with a description of

the owner's lands to which the name applies, recorded in the office of the county recorder of the county in which the farm is located.

2003 Acts, ch 5, §3  
Section amended

## CHAPTER 558

### CONVEYANCES

**558.1A Definition.** Repealed by 2003 Acts, ch 44, § 113.

## CHAPTER 562A

### UNIFORM RESIDENTIAL LANDLORD AND TENANT LAW

#### **562A.27 Noncompliance with rental agreement — failure to pay rent — violation of federal regulation.**

1. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with section 562A.17 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days, and the rental agreement shall terminate as provided in the notice subject to the provisions of this section. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate. If substan-

tially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least seven days' written notice specifying the breach and the date of termination of the rental agreement.

2. If rent is unpaid when due and the tenant fails to pay rent within three days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

3. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for noncompliance by the tenant with the rental agreement or section 562A.17 unless the tenant demonstrates affirmatively that the tenant has exercised due diligence and effort to remedy any noncompliance, and that the tenant's fail-

ure to remedy any noncompliance was due to circumstances beyond the tenant's control. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

4. In any action by a landlord for possession based upon nonpayment of rent, proof by the tenant of the following shall be a defense to any action or claim for possession by the landlord, and the amounts expended by the claimant in correcting the deficiencies shall be deducted from the amount claimed by the landlord as unpaid rent:

*a.* That the landlord failed to comply either with the rental agreement or with section 562A.15; and

*b.* That the tenant notified the landlord at least seven days prior to the due date of the tenant's rent payment of the tenant's intention to correct the condition constituting the breach referred to in paragraph "a" at the landlord's expense; and

*c.* That the reasonable cost of correcting the condition constituting the breach is equal to or less

than one month's periodic rent; and

*d.* That the tenant in good faith caused the condition constituting the breach to be corrected prior to receipt of written notice of the landlord's intention to terminate the rental agreement for nonpayment of rent.

5. Notwithstanding any other provisions of this chapter, a municipal housing agency established pursuant to chapter 403A may issue a thirty-day notice of lease termination for a violation of a rental agreement by the tenant when the violation is a violation of a federal regulation governing the tenant's eligibility for or continued participation in a public housing program. The municipal housing agency shall not be required to provide the tenant with a right or opportunity to remedy the violation or to give any notice that the tenant has such a right or opportunity when the notice cites the federal regulation as authority.

2003 Acts, ch 154, §2  
NEW subsection 5

## CHAPTER 568

### ISLANDS AND ABANDONED RIVER CHANNELS

#### **568.16 Purchase money refunded.**

If the grantee of the state, or the grantee's successors, administrators, or assigns, shall be deprived of the land conveyed by the state under this chapter by the final decree of a court of record for the reason that the conveyance by the state passed no title whatever to the land therein described, because title thereto had previously for any reason been vested in others, then the money so paid the state for the said land shall be refunded by the state to the person or persons entitled thereto, provided the said grantee, or the grantee's successors, administrators, or assigns, shall file a certified copy of the transcript of the said final decree with the executive council within one year from the date of the issuance of such decree, and shall also file satisfactory proof with the executive council that the action over the title to the land was commenced within ten years from the date of the issuance of patent or deed by the state. The amount of money to be refunded under the provisions of this section shall be certified by the executive council to the director of the department of administrative services, who shall draw a warrant therefor, and the same shall be paid out of the general fund.

2003 Acts, ch 145, §286  
Terminology change applied

#### **568.20 Withholding patent — deposit money refunded.**

If the land described in any application is covered by the provisions of sections 568.18 and 568.19, and notice thereof is given to the secretary

of state as provided in section 568.19, no deed or patent of such land, or any part thereof, shall be executed or issued until the title thereto shall have been established by the court as herein provided. If the party making such application, or the party's assignee, does not desire to prosecute the application, or if the party or assignee does not purchase the land under this chapter, then all of the money deposited by the party or assignee with the secretary of state under the provisions of this chapter shall be repaid to said applicant by the secretary of state; and if any part of the money so deposited has been expended by the secretary of state, then the amount so expended shall be certified by the secretary of state to the director of the department of administrative services, who shall draw a warrant upon the general fund in favor of the person entitled thereto.

2003 Acts, ch 145, §286  
Terminology change applied

#### **568.24 Sales and leases for cash — expenses.**

All sales and leases must be for cash, and the money received therefor shall be paid into the state treasury. All expenses incurred in making the survey, plat, appraisement, sale, or lease of any such island shall be certified by the executive council to the director of the department of administrative services, who shall draw a warrant upon the state treasury for the amount, and the same shall be paid from the general fund.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 569

### ACQUISITION OF TITLE BY STATE OR MUNICIPAL CORPORATIONS

#### 569.4 Costs and expenses.

In all cases in which the state becomes the purchaser of real estate under the provisions of this chapter, the costs and expenses attending such purchases shall be audited and allowed by the director of the department of administrative services, and paid out of any money in the state treasury not otherwise appropriated, upon the director's warrant, and charged to the fund to which the indebtedness belonged upon which such real estate was taken.

If the real estate is purchased by a county, the

costs and expenses shall be audited by the board of supervisors and paid out of the county treasury, upon a warrant drawn by the auditor on the treasurer, from the fund to which the debt belonged upon which said real estate was purchased.

If the real estate is purchased by any other municipal corporation, then the costs shall be audited and paid by it in the same manner as other claims against it are audited and paid.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 570A

### AGRICULTURAL SUPPLY DEALER LIEN

#### 570A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Agricultural chemical*" means a fertilizer or agricultural chemical which is applied to crops or land which is used for the raising of crops, including but not limited to fertilizer as defined in section 200.3, and pesticide as defined in section 206.2.

2. "*Agricultural purpose*" means a purpose related to the production, harvest, marketing, or transportation of agricultural products by a person who cultivates, plants, propagates or nurtures the agricultural products including agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any other products raised or produced on farms.

3. "*Agricultural supply*" means an agricultural chemical, seed, feed, or a petroleum product that is used for an agricultural purpose.

4. "*Agricultural supply dealer*" or "*dealer*" means a person engaged in the retail sale of agricultural chemicals, seed, feed, or petroleum products used for an agricultural purpose.

5. "*Agricultural supply dealer lien*" or "*lien*" means the agricultural supply dealer lien created in section 570A.3.

6. "*Certified request*" means a request delivered by certified mail or registered certified mail, in person if in writing and signed and dated by the respective parties, or in the manner provided by the Iowa rules of civil procedure for the personal purchase of original notice.

7. "*Farmer*" means a person engaged in a business which has an agricultural purpose.

8. "*Feed*" means a commercial feed, feed ingredient, mineral feed, drug, animal health product, or customer-formula feed which is used for the feeding of livestock, including but not limited to feed as defined in section 198.3.

9. "*Financial history*" means the record of a person's current loans, the date of a person's loans, the amount of the loans, the person's payment record on the loans, current liens against the person's property, and the person's most recent financial statement.

10. "*Financial institution*" means a bank, credit union, insurance company, mortgage banking company or savings and loan association, industrial loan company, production credit association, farmer's home administration, or like institution which operates or has a place of business in this state.

11. "*Labor*" means labor performed in the application, delivery, or preparation of a product defined in subsections 1, 8, 14, and 16.

12. "*Letter of credit*" means an engagement by a financial institution to honor drafts or other demands for payment.

13. "*Livestock*" means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus, poultry, or fish or shellfish.

14. "*Petroleum product*" means a motor fuel or special fuel which is used in the production of crops or livestock, including but not limited to motor fuel as defined in section 452A.2.

15. "*Sale on a credit basis*" means a transaction in which the purchase price is due on a date after the date of the sale.

16. "*Seed*" means agricultural seeds which are

used in the production of crops, including but not limited to agricultural seed as defined in section 199.1.

2003 Acts, ch 82, §1, 2  
NEW subsection 3 and former subsection 3 amended and renumbered as 4  
NEW subsection 5  
Former subsection 4 amended and renumbered as 6  
Former subsections 5 – 10 renumbered as 7 – 12  
Former subsections 11 and 12 amended and renumbered as 13 and 14  
Former subsections 13 and 14 renumbered as 15 and 16

### **570A.2 Financial institution memorandum to agricultural supply dealers.**

1. Upon the receipt of a certified request of an agricultural supply dealer, prior to or upon a sale on a credit basis of an agricultural supply to a farmer, a financial institution which has either a security interest in collateral owned by the farmer or an outstanding loan to the farmer for an agricultural purpose shall issue within four business days a memorandum which states whether or not the farmer has a sufficient net worth or line of credit to assure payment of the purchase price on the terms of the sale. The certified request submitted by the agricultural supply dealer shall state the amount of the purchase and the terms of sale and shall be accompanied by a waiver of confidentiality signed by the farmer, and a fifteen dollar fee. The waiver of confidentiality and the certified request may be combined and submitted as one document. If the financial institution states in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the memorandum is an irrevocable and unconditional letter of credit to the benefit of the agricultural supply dealer for a period of thirty days following the date on which the final payment is due for the amount of the purchase price which remains unpaid. If the financial institution does not state in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the financial institution shall transmit the relevant financial history which it holds on the person. This financial history shall remain confidential between the financial institution, the agricultural supply dealer, and the farmer.

2. If within four business days of receipt of a certified request a financial institution fails to issue a memorandum upon the request of an agricultural supply dealer and the request from the agricultural supply dealer was proper under subsection 1, or if the memorandum from the financial institution is incomplete, or if the memorandum from the financial institution states that the farmer does not have a sufficient net worth or line of credit to assure payment of the purchase price, the agricultural supply dealer may decide to make the sale and secure the lien provided in section 570A.3.

3. Upon an action to enforce a lien secured under section 570A.3 against the interest of a finan-

cial institution secured to the same collateral as that of the lien, it shall be an affirmative defense to a financial institution and complete proof of the superior priority of the financial institution's lien that the financial institution either did not receive a certified request and a waiver signed by the farmer, or received the request and a waiver signed by the farmer and provided the full and complete relevant financial history which it held on the farmer making the purchase from the agricultural supply dealer on which the lien is based and that financial history reasonably indicated that the farmer did not have a sufficient net worth or line of credit to assure payment of the purchase price.

2003 Acts, ch 82, §3  
Subsection 1 amended

### **570A.3 Lien created.**

An agricultural supply dealer who provides an agricultural supply to a farmer shall have an agricultural lien as provided in section 554.9102. The agricultural supply dealer is a secured party and the farmer is a debtor for purposes of chapter 554, article 9. The amount of the lien shall be the amount owed to the agricultural supply dealer for the retail cost of the agricultural supply, including labor provided. The lien applies to all of the following:

1. Crops which are produced upon the land to which the agricultural chemical was applied, produced from the seed provided, or produced using the petroleum product provided. The lien shall not apply to any crops so produced upon the land after four hundred ninety days from the date that the farmer purchased the agricultural supply.

2. Livestock consuming the feed. However, the lien does not apply to that portion of the livestock of a farmer who has paid all amounts due from the farmer for the retail cost, including labor, of the feed.

2003 Acts, ch 82, §4  
Section amended

### **570A.4 Perfecting the lien — filing requirements.**

Except as provided in this section, a financing statement filed to perfect an agricultural supply dealer lien shall be governed by chapter 554, article 9, part 5, in the same manner as any other financing statement.

1. The lien becomes effective at the time that the farmer purchases the agricultural supply.

2. In order to perfect the lien, the agricultural supply dealer must file a financing statement in the office of the secretary of state as provided in section 554.9308 within thirty-one days after the date that the farmer purchases the agricultural supply. The financing statement shall meet the requirements of section 554.9502, subsection 1, and include all applicable information described in section 554.9516. Filing a financing statement as provided in this subsection satisfies all require-

ments for perfection of an agricultural lien as provided in chapter 554, article 9.

2003 Acts, ch 82, §5  
Section stricken and rewritten

#### **570A.5 Priority of lien.**

Except as provided in this section, an agricultural supply dealer's lien that is effective or perfected as provided in section 570A.4 shall be subject to the rules of priority as provided in section 554.9322. For an agricultural supply dealer's lien that is perfected under section 570A.4, all of the following shall apply:

1. The lien shall have priority over a lien or security interest that applies subsequent to the time that the agricultural supply dealer's lien is perfected.

2. Except as provided in section 570A.2, subsection 3, the lien shall have equal priority to a lien or security interest which is perfected prior to the time that the agricultural supply dealer's lien is perfected. However, a landlord's lien that is perfected pursuant to section 570.1 shall have priority over a conflicting agricultural supply dealer's lien as provided in section 570.1, and a harvester's lien that is perfected pursuant to section 571.3 shall have priority over a conflicting agricultural supply dealer's lien as provided in section 571.3A.

3. A lien in livestock feed shall have priority over an earlier perfected lien or security interest

to the extent of the difference between the acquisition price of the livestock and the fair market value of the livestock at the time the lien attaches or the sale price of the livestock, whichever is greater.

2003 Acts, ch 82, §6  
Section amended

#### **570A.6 Enforcement of lien.**

An agricultural supply dealer may enforce an agricultural supply dealer's lien in the manner provided for agricultural liens pursuant to chapter 554, article 9, part 6.

2003 Acts, ch 82, §7  
Section stricken and rewritten

**570A.7 Enforcement actions.** Repealed by 2003 Acts, ch 82, § 8.

**570A.8 Demand for bringing suit.** Repealed by 2003 Acts, ch 82, § 8.

**570A.9 Assignment of lien.** Repealed by 2003 Acts, ch 82, § 8.

**570A.10 Acknowledgment of satisfaction.** Repealed by 2003 Acts, ch 82, § 8.

**570A.11 Rights and remedies.** Repealed by 2003 Acts, ch 82, § 8.

## CHAPTER 571

### HARVESTER'S LIEN

**571.1 Nature of lien.** Repealed by 2003 Acts, ch 82, § 14.

#### **571.1A Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Crop*" includes but is not limited to corn, soybeans, hay, straw, and crops produced on trees, vines, or bushes.

2. "*Harvester*" means a person who performs harvesting services.

3. "*Harvesting services*" means baling, chopping, combining, cutting, husking, picking, shelling, stacking, threshing, or winnowing a crop, regardless of the means or method employed.

4. "*Harvester's lien*" or "*lien*" means the harvester's lien created in section 571.1B.

2003 Acts, ch 82, §9  
NEW section

#### **571.1B Lien created.**

A harvester shall have an agricultural lien as provided in section 554.9102 for the reasonable value of harvesting services. The harvester is a se-

cured party and the person for whom the harvester renders such harvesting services is a debtor for purposes of chapter 554, article 9. The lien applies to crops harvested by the harvester.

2003 Acts, ch 82, §10  
NEW section

**571.2 Priority of lien.** Repealed by 2003 Acts, ch 82, § 14.

#### **571.3 Perfecting the lien — filing requirements.**

Except as provided in this section, a financing statement filed to perfect a harvester's lien shall be governed by chapter 554, article 9, part 5, in the same manner as any other financing statement.

1. The lien becomes effective at the time that the harvesting services provided under section 571.1B are rendered.

2. In order to perfect the lien, the harvester must file a financing statement in the office of the secretary of state as provided in section 554.9308 within ten days after the last date that the harvesting services were rendered. The financing statement shall meet the requirements of section

554.9502, subsection 1, and include all applicable information described in section 554.9516. Filing a financing statement as provided in this subsection satisfies all requirements for perfection of an agricultural lien as provided in chapter 554, article 9.

2003 Acts, ch 82, §11  
Section stricken and rewritten

#### **571.3A Priority of lien.**

Except as provided in this section, section 554.9322 shall govern the priority of a harvester's lien that is effective or perfected as provided in section 571.3.

1. A harvester's lien that is effective but not perfected under section 571.3 shall have priority as provided in section 554.9322.

2. A harvester's lien that is perfected under section 571.3 shall have priority over a conflicting security interest in harvested crops regardless of when such security interest is perfected. A per-

fectured harvester's lien shall have priority over a conflicting landlord's lien as provided in chapter 570, regardless of when such landlord's lien is perfected.

2003 Acts, ch 82, §12  
NEW section

**571.4 Enforcement — time limit.** Repealed by 2003 Acts, ch 82, § 14.

#### **571.5 Enforcement of lien.**

A harvester may enforce a harvester's lien in the manner provided for agricultural liens pursuant to the uniform commercial code, chapter 554, article 9, part 6.

2003 Acts, ch 82, §13  
Section amended

**571.6 Acknowledgment of satisfaction.** Repealed by 2003 Acts, ch 82, § 14.

## CHAPTER 579A

### CUSTOM CATTLE FEEDLOT LIEN

#### **579A.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Cattle*" means an animal classified as bovine, regardless of the age or sex of the animal.

2. "*Custom cattle feedlot*" means a feedlot where cattle owned by a person are provided feed and care by another person.

3. "*Custom cattle feedlot operator*" means the owner of a custom cattle feedlot or the owner's personal representative.

4. "*Feedlot*" means a lot, yard, corral, building, or other area in which cattle are confined and fed

and maintained for forty-five days or more in any twelve-month period.

5. "*Lien*" means a custom cattle feedlot lien created in section 579A.2.

6. "*Personal representative*" means a person who is authorized by the owner of a custom cattle feedlot to act on behalf of the owner, including by executing an agreement, managing a custom cattle feedlot, filing a financing statement to perfect a lien, and enforcing a lien under this chapter.

7. "*Processor*" means the same as defined in section 202B.102.

Section not amended; internal reference change applied

## CHAPTER 579B

### COMMODITY PRODUCTION CONTRACT LIEN

#### **579B.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Commodity*" means livestock, raw milk, or a crop.

2. "*Continuous arrival*" means the arrival of livestock at a contract livestock facility on a monthly basis or more frequently as provided in a production contract.

3. "*Contract crop field*" means farmland where a crop is produced according to a production contract executed pursuant to section 579B.2 by a contract producer who owns or leases the

farmland.

4. "*Contract livestock facility*" means an animal feeding operation as defined in section 459.102, in which livestock or raw milk is produced according to a production contract executed pursuant to section 579B.2 by a contract producer who owns or leases the animal feeding operation. "*Contract livestock facility*" includes a confinement feeding operation as defined in section 459.102, an open feedlot, or an area which is used for the raising of crops or other vegetation and upon which livestock is fed for slaughter or is allowed to graze or feed.

5. “*Contract operation*” means a contract livestock facility or contract crop field.

6. “*Contract producer*” means a person who owns or leases a contract operation and who produces a commodity under a production contract executed pursuant to section 579B.2.

7. “*Contractor*” means a person who owns a commodity at the time that the commodity is under the authority of the contract producer as provided in section 579B.3 pursuant to a production contract executed pursuant to section 579B.2.

8. *a.* “*Crop*” means a plant used for food, animal feed, fiber, or oil, if the plant is classified as a forage or cereal plant, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses used for forage or silage.

*b.* A “*crop*” does not include trees or nuts or fruit grown on trees; sod; shrubs; greenhouse plants; or plants or plant parts produced for pre-commercial, experimental, or research purposes.

9. “*Farmland*” means agricultural land suitable for use in farming as defined in section 9H.1.

10. “*Lien*” means a commodity production contract lien created in section 579B.3.

11. “*Livestock*” means beef cattle, dairy cattle, sheep, or swine.

12. “*Open feedlot*” means the same as defined

in section 202.1.

13. “*Personal representative*” means a person who is authorized by a contract producer to act on behalf of the contract producer, including by executing an agreement, managing a contract operation, filing a financing statement perfecting a lien, and enforcing a lien as provided in this chapter.

14. “*Processor*” means a person engaged in the business of manufacturing goods from commodities, including by slaughtering or processing livestock, processing raw milk, or processing crops.

15. “*Produce*” means to do any of the following:

*a.* Provide feed or services relating to the care and feeding of livestock. If the livestock is dairy cattle, “*produce*” includes milking the dairy cattle and storing raw milk at the contract producer’s contract livestock facility.

*b.* Provide for planting, raising, harvesting, and storing a crop. “*Produce*” includes preparing the soil for planting and nurturing the crop by the application of fertilizers or soil conditioners as defined in section 200.3 or pesticides as defined in section 206.2.

16. “*Production contract*” means an oral or written agreement executed pursuant to section 579B.2 that provides for the production of a commodity by a contract producer.

2002 Acts, ch 1119, §94

Section not amended; history revised

## CHAPTER 581

### VETERINARIAN’S LIEN

**581.1 Nature of lien.** Repealed by 2003 Acts, ch 82, § 21.

#### 581.1A Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Livestock*” means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus, poultry, or fish or shellfish.

2. “*Veterinarian*” means a person who practices veterinary medicine under a valid license or temporary permit as provided in chapter 169.

3. “*Veterinarian’s lien*” or “*lien*” means a veterinarian’s lien created under section 581.2A.

2003 Acts, ch 82, §15

NEW section

#### 581.2 Priority.

Except as provided in this section, section 554.9322 shall govern the priority of a veterinarian’s lien that is effective or perfected as provided in section 581.3.

1. A veterinarian’s lien that is effective but not perfected under section 581.3 shall have priority

as provided in section 554.9322.

2. A veterinarian’s lien that is perfected under section 581.3 shall have priority over any conflicting security interest or lien in livestock treated by a veterinarian, regardless of when such security interest or lien is perfected.

2003 Acts, ch 82, §16

Section stricken and rewritten

#### 581.2A Lien created.

A veterinarian shall have an agricultural lien as provided in section 554.9102 for the actual and reasonable value of treating livestock, including the cost of any product used and the actual and reasonable value of any professional service rendered by the veterinarian. The veterinarian is a secured party and the owner of the livestock is a debtor for purposes of chapter 554, article 9. The lien applies to the livestock treated by the veterinarian.

2003 Acts, ch 82, §17

NEW section

#### 581.3 Perfecting the lien — filing requirements.

Except as provided in this section, a financing statement filed to perfect a veterinarian’s lien

shall be governed by chapter 554, article 9, part 5, in the same manner as any other financing statement.

1. The lien becomes effective at the time that the veterinarian treats the livestock.

2. In order to perfect the lien, the veterinarian must file a financing statement in the office of the secretary of state as provided in section 554.9308 within sixty days after the day that the veterinarian treats the livestock. The financing statement shall meet the requirements of section 554.9502, subsection 1, and include all applicable information described in section 554.9516. Filing a financ-

ing statement as provided in this subsection satisfies all requirements for perfection of an agricultural lien as provided in chapter 554, article 9.

2003 Acts, ch 82, §18  
Section stricken and rewritten

**581.4 Enforcement.**

A veterinarian may enforce a veterinarian’s lien in the manner provided for agricultural liens pursuant to the uniform commercial code, chapter 554, article 9, part 6.

2003 Acts, ch 82, §19  
Section amended

**CHAPTER 585**

**PUBLICATION OF PROPOSED LEGALIZING ACTS**

**585.1 Publication prior to passage.**

No bill which seeks to legalize the official proceedings of any board of supervisors, board of school directors, or city council, or which seeks to legalize any warrant or bond issued by any of said official bodies, shall be placed on passage in either house or senate until such bill as introduced shall have been published in full in some newspaper published within the territorial limits of the public corporation whose proceedings, warrants, or bonds are proposed to be legalized, nor until proof of such publication shall have been filed with the chief clerk of the house, and with the secretary of

the senate, and a brief minute of such filing entered on the respective journals.

Additional requirements, §2.9  
Section not amended; footnote revised

**585.4 Cost of publication.**

If the bill be introduced at the instance of the public body whose proceedings, bonds, or warrants are sought to be legalized, the cost of the aforesaid publication may be paid from the general fund of the public corporation.

Cost of printing, §2.9  
Section not amended; footnote revised

**CHAPTER 598**

**DISSOLUTION OF MARRIAGE AND DOMESTIC RELATIONS**

**598.7A Mediation.**

1. The district court may, on its own motion or on the motion of any party, order the parties to participate in mediation in any dissolution of marriage action or other domestic relations action. Mediation performed under this section shall comply with the provisions of chapter 679C. The provisions of this section shall not apply if the action involves a child support or medical support obligation enforced by the child support recovery unit. The provisions of this section shall not apply to actions which involve domestic abuse pursuant to chapter 236. The provisions of this section shall not affect a judicial district’s or court’s authority to order settlement conferences pursuant to rules of civil procedure. The court shall, on application of a party, grant a waiver from any court-ordered mediation under this section if the party demonstrates that a history of domestic abuse exists as specified in section 598.41, subsection 3, paragraph “j”.

2. The supreme court shall establish a dispute resolution program in family law cases that includes the opportunities for mediation and settlement conferences. Any judicial district may implement such a dispute resolution program, subject to the rules prescribed by the supreme court.

3. The supreme court shall prescribe rules for the mediation program, including the circumstances under which the district court may order participation in mediation.

4. Any dispute resolution program shall comply with all of the following standards:

a. Participation in mediation shall include attendance at a mediation session with the mediator and the parties to the action, listening to the mediator’s explanation of the mediation process, presentation of one party’s view of the case, and listening to the response of the other party. Participation in mediation does not require that the parties reach an agreement.

b. The parties may choose the mediator, or the

court shall appoint a mediator. A court-appointed mediator shall meet the qualifications established by the supreme court.

c. Parties to the mediation have the right to advice and presence of counsel at all times.

d. The parties to the mediation shall present any agreement reached through the mediation to their attorneys, if any. A mediation agreement reached by the parties shall not be enforceable until approved by the court.

e. The costs of mediation shall be borne by the parties, as agreed to by the parties, or as ordered by the court, and may be taxed as court costs. Mediation shall be provided on a sliding fee scale for parties who are determined to be indigent pursuant to section 815.9.

5. The supreme court shall prescribe qualifications for mediators under this section. The qualifications shall include but are not limited to the ethical standards to be observed by mediators. The qualifications shall not include a requirement that the mediator be licensed to practice any particular profession.

2003 Acts, ch 44, §100  
Legislative intent; 2000 Acts, ch 1159, §1  
Subsection 5 amended

#### **598.21 Orders for disposition and support.**

1. Upon every judgment of annulment, dissolution, or separate maintenance the court shall divide the property of the parties and transfer the title of the property accordingly, including ordering the parties to execute a quitclaim deed or ordering a change of title for tax purposes and delivery of the deed or change of title to the county recorder of the county in which each parcel of real estate is located. The county recorder shall record each quitclaim deed or change of title and shall collect the fee specified in section 331.507, subsection 2, paragraph "a", and the fee specified in section 331.604, subsection 1. The court may protect and promote the best interests of children of the parties by setting aside a portion of the property of the parties in a separate fund or conservatorship for the support, maintenance, education and general welfare of the minor children. The court shall divide all property, except inherited property or gifts received by one party, equitably between the parties after considering all of the following:

- a. The length of the marriage.
- b. The property brought to the marriage by each party.
- c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.
- d. The age and physical and emotional health of the parties.
- e. The contribution by one party to the education, training or increased earning power of the other.

f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.

h. The amount and duration of an order granting support payments to either party pursuant to subsection 3 and whether the property division should be in lieu of such payments.

i. Other economic circumstances of each party, including pension benefits, vested or unvested, and future interests.

j. The tax consequences to each party.

k. Any written agreement made by the parties concerning property distribution.

l. The provisions of an antenuptial agreement.

m. Other factors the court may determine to be relevant in an individual case.

2. Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

3. Upon every judgment of annulment, dissolution or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:

- a. The length of the marriage.
- b. The age and physical and emotional health of the parties.
- c. The distribution of property made pursuant to subsection 1.
- d. The educational level of each party at the time of marriage and at the time the action is commenced.

e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.

*g.* The tax consequences to each party.

*h.* Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocity or compensation by the other party.

*i.* The provisions of an antenuptial agreement.

*j.* Other factors the court may determine to be relevant in an individual case.

4. The supreme court shall maintain uniform child support guidelines and criteria and review the guidelines and criteria at least once every four years, pursuant to the federal Family Support Act of 1988, Pub. L. No. 100-485. The initial review shall be performed within four years of October 12, 1989, and subsequently within the four-year period of the most recent review. It is the intent of the general assembly that, to the extent possible within the requirements of federal law, the court and the child support recovery unit consider the individual facts of each judgment or case in the application of the guidelines and determine the support obligation, accordingly. It is also the intent of the general assembly that in the supreme court's review of the guidelines, the supreme court shall do both of the following: emphasize the ability of a court to apply the guidelines in a just and appropriate manner based upon the individual facts of a judgment or case; and in determining monthly child support payments, consider other children for whom either parent is legally responsible for support and other child support obligations actually paid by either party pursuant to a court or administrative order.

*a.* Unless prohibited pursuant to 28 U.S.C. § 1738B, upon every judgment of annulment, dissolution, or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for supporting a child. In establishing the amount of support, consideration shall be given to the responsibility of both parents to support and provide for the welfare of the minor child and of a child's need, whenever practicable, for a close relationship with both parents. There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded. A variation from the guidelines shall not be considered by a court without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under the criteria prescribed by the supreme court.

The court shall order as child medical support a health benefit plan as defined in chapter 252E if available to either parent at a reasonable cost. A health benefit plan is considered reasonable in cost if it is employment-related or other group health insurance, regardless of the service delivery mechanism. The premium cost of the health benefit plan may be considered by the court as a reason for varying from the child support guide-

lines. If a health benefit plan is not available at a reasonable cost, the court may order any other provisions for medical support as defined in chapter 252E.

*b.* The guidelines prescribed by the supreme court shall be used by the department of human services in determining child support payments under sections 252C.2 and 252C.4. A variation from the guidelines shall not be considered by the department without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under criteria prescribed by the supreme court.

*c.* The guidelines prescribed by the supreme court shall incorporate provisions for medical support as defined in chapter 252E to be effective on or before January 1, 1991.

*d.* For purposes of calculating a support obligation under this section, the income of the parent from whom support is sought shall be used as the noncustodial parent income for purposes of application of the guidelines, regardless of the legal custody of the child.

*e.* Unless the special circumstances of the case justify a deviation, the court or the child support recovery unit shall establish a monthly child support payment of twenty-five dollars for a parent who is nineteen years of age or younger, who has not received a high school or high school equivalency diploma, and to whom each of the following apply:

(1) The parent is attending a school or program described as follows or has been identified as one of the following:

(a) The parent is in full-time attendance at an accredited school and is pursuing a course of study leading to a high school diploma.

(b) The parent is attending an instructional program leading to a high school equivalency diploma.

(c) The parent is attending a vocational education program approved pursuant to chapter 258.

(d) The parent has been identified by the director of special education of the area education agency as a child requiring special education as defined in section 256B.2.

(2) The parent provides proof of compliance with the requirements of subparagraph (1) to the child support recovery unit, if the unit is providing services under chapter 252B, or if the unit is not providing services pursuant to chapter 252B, to the court as the court may direct.

Failure to provide proof of compliance under this subparagraph or proof of compliance under section 598.21A is grounds for modification of the support order using the uniform child support guidelines and imputing an income to the parent equal to a forty-hour work week at the state minimum wage, unless the parent's education, experience, or actual earnings justify a higher income.

*f.* For the purposes of including a child's dependent benefit in calculating a support obligation

under this section for a child whose parent has been awarded disability benefits under the federal Social Security Act, the provisions of section 598.22C shall apply.

4A. If, during an action initiated under this chapter or any other chapter in which a child or medical support obligation may be established based upon a prior determination of paternity, a party wishes to contest the paternity of the child or children involved, all of the following apply:

a. (1) If the prior determination of paternity is based on an affidavit of paternity filed pursuant to section 252A.3A, or a court or administrative order entered in this state, or by operation of law when the mother and established father are or were married to each other, the provisions of section 600B.41A apply.

(2) If following the proceedings under section 600B.41A the court determines that the prior determination of paternity should not be overcome, and that the established father has a duty to provide support, the court shall enter an order establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to subsection 4, or the medical support obligation pursuant to chapter 252E, or both.

b. If a determination of paternity is based on an administrative or court order or other means pursuant to the laws of a foreign jurisdiction, any action to overcome the prior determination of paternity shall be filed in that jurisdiction. Unless a stay of the action initiated in this state to establish child or medical support is requested and granted by the court, pending a resolution of the contested paternity issue by the foreign jurisdiction, the action shall proceed.

c. Notwithstanding paragraph "a", in a pending dissolution action under this chapter, a prior determination of paternity by operation of law through the marriage of the established father and mother of the child may be overcome under this chapter if the established father and mother of the child file a written statement with the court that both parties agree that the established father is not the biological father of the child.

If the court overcomes a prior determination of paternity, the previously established father shall be relieved of support obligations as specified in section 600B.41A, subsection 4. In any action to overcome paternity other than through a pending dissolution action, the provisions of section 600B.41A apply. Overcoming paternity under this paragraph does not bar subsequent actions to establish paternity. A subsequent action to establish paternity against the previously established father is not barred if it is subsequently determined that the written statement attesting that the established father is not the biological father of the child may have been submitted erroneously, and that the person previously determined not to be the child's father during the dissolution action may actually be the child's biological father.

4B. If an action to overcome paternity is brought pursuant to subsection 4A, paragraph "c", the court shall appoint a guardian ad litem for the child for the pendency of the proceedings.

5. The court may protect and promote the best interests of a minor child by setting aside a portion of the child support which either party is ordered to pay in a separate fund or conservatorship for the support, education and welfare of the child.

5A. The court may order a postsecondary education subsidy if good cause is shown.

a. In determining whether good cause exists for ordering a postsecondary education subsidy, the court shall consider the age of the child, the ability of the child relative to postsecondary education, the child's financial resources, whether the child is self-sustaining, and the financial condition of each parent. If the court determines that good cause is shown for ordering a postsecondary education subsidy, the court shall determine the amount of subsidy as follows:

(1) The court shall determine the cost of postsecondary education based upon the cost of attending an in-state public institution for a course of instruction leading to an undergraduate degree and shall include the reasonable costs for only necessary postsecondary education expenses.

(2) The court shall then determine the amount, if any, which the child may reasonably be expected to contribute, considering the child's financial resources, including but not limited to the availability of financial aid whether in the form of scholarships, grants, or student loans, and the ability of the child to earn income while attending school.

(3) The child's expected contribution shall be deducted from the cost of postsecondary education and the court shall apportion responsibility for the remaining cost of postsecondary education to each parent. The amount paid by each parent shall not exceed thirty-three and one-third percent of the total cost of postsecondary education.

b. A postsecondary education subsidy shall be payable to the child, to the educational institution, or to both, but shall not be payable to the custodial parent.

c. A postsecondary education subsidy shall not be awarded if the child has repudiated the parent by publicly disowning the parent, refusing to acknowledge the parent, or by acting in a similar manner.

d. The child shall forward, to each parent, reports of grades awarded at the completion of each academic session, within ten days of receipt of the reports. Unless otherwise specified by the parties, a postsecondary education subsidy awarded by the court shall be terminated upon the child's completion of the first calendar year of course instruction if the child fails to maintain a cumulative grade point average in the median range or above during that first calendar year.

e. A support order, decree, or judgment en-

tered or pending before July 1, 1997, that provides for support of a child for college, university, or community college expenses may be modified in accordance with this subsection.

6. The court may provide for joint custody of the children by the parties pursuant to section 598.41. All orders relating to custody of a child are subject to chapter 598B.

7. Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

8. Subject to 28 U.S.C. § 1738B, the court may subsequently modify orders made under this section when there is a substantial change in circumstances. In determining whether there is a substantial change in circumstances, the court shall consider the following:

- a. Changes in the employment, earning capacity, income or resources of a party.
- b. Receipt by a party of an inheritance, pension or other gift.
- c. Changes in the medical expenses of a party.
- d. Changes in the number or needs of dependents of a party.
- e. Changes in the physical, mental, or emotional health of a party.
- f. Changes in the residence of a party.
- g. Remarriage of a party.
- h. Possible support of a party by another person.
- i. Changes in the physical, emotional or educational needs of a child whose support is governed by the order.
- j. Contempt by a party of existing orders of court.
- k. Other factors the court determines to be relevant in an individual case.

Unless otherwise provided pursuant to 28 U.S.C. § 1738B, a modification of a support order entered under chapter 234, 252A, 252C, 600B, this chapter, or any other support chapter or proceeding between parties to the order is void unless the modification is approved by the court, after proper notice and opportunity to be heard is given to all parties to the order, and entered as an order of the court. If support payments have been assigned to the department of human services pursuant to section 234.39, 239B.6, or 252E.11, or if services are being provided pursuant to chapter 252B, the department is a party to the support order. Modifications of orders pertaining to child custody shall be made pursuant to chapter 598B. If the petition for a modification of an order pertaining to child custody asks either for joint custody or that joint custody be modified to an award of sole custody, the modification, if any, shall be made pursuant to section 598.41.

Judgments for child support or child support

awards entered pursuant to this chapter, chapter 234, 252A, 252C, 252F, 600B, or any other chapter of the Code which are subject to a modification proceeding may be retroactively modified only from three months after the date the notice of the pending petition for modification is served on the opposing party. The three-month limitation applies to a modification action pending on or after July 1, 1997. The prohibition of retroactive modification does not bar the child support recovery unit from obtaining orders for accrued support for previous time periods. Any retroactive modification which increases the amount of child support or any order for accrued support under this paragraph shall include a periodic payment plan. A retroactive modification shall not be regarded as a delinquency unless there are subsequent failures to make payments in accordance with the periodic payment plan.

The periodic due date established under a prior order for payment of child support shall not be changed in any modified order under this section, unless the court determines that good cause exists to change the periodic due date. If the court determines that good cause exists, the court shall include the rationale for the change in the modified order and shall address the issue of reconciliation of any payments due or made under a prior order which would result in payment of the child support obligation under both the prior and the modified orders.

8A. If a parent awarded joint legal custody and physical care or sole legal custody is relocating the residence of the minor child to a location which is one hundred fifty miles or more from the residence of the minor child at the time that custody was awarded, the court may consider the relocation a substantial change in circumstances. If the court determines that the relocation is a substantial change in circumstances, the court shall modify the custody order to, at a minimum, preserve, as nearly as possible, the existing relationship between the minor child and the nonrelocating parent. If modified, the order may include a provision for extended visitation during summer vacations and school breaks and scheduled telephone contact between the nonrelocating parent and the minor child. The modification may include a provision assigning the responsibility for transportation of the minor child for visitation purposes to either or both parents. If the court makes a finding of past interference by the parent awarded joint legal custody and physical care or sole legal custody with the minor child's access to the other parent, the court may order the posting of a cash bond to assure future compliance with the visitation provisions of the decree. The supreme court shall prescribe guidelines for the forfeiting of the bond and restoration of the bond following forfeiting of the bond.

9. Subject to 28 U.S.C. § 1738B, but notwith-

standing subsection 8, a substantial change of circumstances exists when the court order for child support varies by ten percent or more from the amount which would be due pursuant to the most current child support guidelines established pursuant to subsection 4 or the obligor has access to a health benefit plan, the current order for support does not contain provisions for medical support, and the dependents are not covered by a health benefit plan provided by the obligee, excluding coverage pursuant to chapter 249A or a comparable statute of a foreign jurisdiction.

This basis for modification is applicable to petitions filed on or after July 1, 1992, notwithstanding whether the guidelines prescribed by subsection 4 were used in establishing the current amount of support. Upon application for a modification of an order for child support for which services are being received pursuant to chapter 252B, the court shall set the amount of child support based upon the most current child support guidelines established pursuant to subsection 4, including provisions for medical support pursuant to chapter 252E. The child support recovery unit shall, in submitting an application for modification, adjustment, or alteration of an order for support, employ additional criteria and procedures as provided in chapter 252H and as established by rule.

10. Notwithstanding any other provision of law to the contrary, when an application for modification or adjustment of support is submitted by the child support recovery unit, the sole issues which may be considered by the court in that action are the application of the guidelines in estab-

lishing the amount of support pursuant to subsection 4, and provision for medical support under chapter 252E. When an application for a cost-of-living alteration of support is submitted by the child support recovery unit pursuant to section 252H.24, the sole issue which may be considered by the court in the action is the application of the cost-of-living alteration in establishing the amount of child support. Issues related to custody, visitation, or other provisions unrelated to support shall be considered only under a separate application for modification.

10A. If the court modifies an order, and the original decree was entered in another county in Iowa, the clerk of court shall send a copy of the modification by regular mail, electronic transmission, or facsimile to the clerk of court for the county where the original decree was entered.

11. If the court orders a transfer of title to real property, the clerk of court shall issue a certificate under chapter 558 relative to each parcel of real estate affected by the order and immediately deliver the certificate for recording to the county recorder of the county in which the real estate is located. Any fees assessed shall be included as part of the court costs. The county recorder shall deliver the certificates to the county auditor as provided in section 558.58, subsection 1.

Property divisions made under this chapter are not subject to modification.

2003 Acts, ch 151, §28

Child support recovery unit, initiation of proceedings to modify child support award; §252B.5(7)

Subsection 5A, paragraph e, takes effect March 15, 2002, and applies retroactively to support orders, decrees, or judgments entered or pending before July 1, 1997; 2002 Acts, ch 1018, §21

NEW subsection 10A

## CHAPTER 600

### ADOPTION

#### 600.1 Construction.

This chapter\* shall be construed liberally. The best interest of the person to be adopted shall be the paramount consideration in interpreting this chapter. However, the interests of the adopting parents shall be given due consideration in this interpretation. However, in determining the best interest of the person to be adopted and the interests of the adopting parents, any evidence of interests relating to a period of time during which the person to be adopted is placed with prospective adoptive parents and during which the placement is not in compliance with the law, adoption procedures, or any action by the juvenile court or court, shall not be considered in the determination.

If a proceeding held under this chapter involves an Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa Indian child

welfare Act under chapter 232B, the proceeding and other actions taken in connection with the proceeding or this chapter shall comply with chapter 232B. In any proceeding held or action taken under this chapter involving an Indian child, the applicable requirements of the federal Adoption and Safe Families Act of 1999, Pub. L. No. 105-89, shall be applied to the proceeding or action in a manner that complies with chapter 232B and the federal Indian Child Welfare Act, Pub. L. No. 95-608.

2003 Acts, ch 153, §16

\*Enacted as sections 600.1 to 600.16, Code 1977

NEW unnumbered paragraph 2

#### 600.13 Adoption decrees.

1. At the conclusion of the adoption hearing, the juvenile court or court shall do one of the following:

- a. Issue a final adoption decree.
- b. Issue an interlocutory adoption decree.
- c. Issue a standby adoption decree pursuant to section 600.14A.
- d. Dismiss the adoption petition if the requirements of this chapter have not been met or if dismissal of the adoption petition is in the best interest of the person whose adoption has been petitioned. Upon dismissal, the juvenile court or court shall determine who is to be guardian or custodian of a minor child, including the adoption petitioner if it is in the best interest of the minor person whose adoption has been petitioned.

2. An interlocutory adoption decree automatically becomes a final adoption decree at a date specified by the juvenile court or court in the interlocutory adoption decree, which date shall not be less than one hundred eighty days nor more than three hundred sixty days from the date the interlocutory decree is issued. However, an interlocutory adoption decree may be vacated prior to the date specified for it to become final. Also, the juvenile court or court may provide in the interlocutory adoption decree for further observation, investigation, and report of the conditions of and the relationships between the adoption petitioner and the person petitioned to be adopted.

3. If an interlocutory adoption decree is vacated under subsection 2, it shall be void from the date of issuance and the rights, duties, and liabilities of all persons affected by it shall, unless they have become vested, be governed accordingly. Upon vacation of an interlocutory adoption decree, the juvenile court or court shall proceed under the provisions of subsection 1, paragraph “d”.

4. A final adoption decree terminates any parental rights, except those of a spouse of the adoption petitioner, existing at the time of its issuance and establishes the parent-child relationship be-

tween the adoption petitioner and the person petitioned to be adopted. Unless otherwise specified by law, such parent-child relationship shall be deemed to have been created at the birth of the child.

5. An interlocutory or a final adoption decree shall be entered with the clerk of court. Such decree shall set forth any facts of the adoption petition which have been proven to the satisfaction of the juvenile court or court and any other facts considered to be relevant by the juvenile court or court and shall grant the adoption petition. If so designated in the adoption decree, the name of the adopted person shall be changed by issuance of that decree. The clerk of the court shall, within thirty days of issuance, deliver one certified copy of any adoption decree to the petitioner, one copy of any adoption decree to the department and any agency or person making an independent placement who placed a minor person for adoption, and one certification of adoption as prescribed in section 144.19 to the state registrar of vital statistics. Upon receipt of the certification, the state registrar shall prepare a new birth certificate pursuant to section 144.23 and deliver to the parents named in the decree and any adult person adopted by the decree a copy of the new birth certificate. The parents shall pay the fee prescribed in section 144.46. If the person adopted was born outside this state but in the United States, the state registrar shall forward the certification of adoption to the appropriate agency in the state of birth. A copy of any interlocutory adoption decree vacation shall be delivered and another birth certificate shall be prepared in the same manner as a certification of adoption is delivered and the birth certificate was originally prepared.

2003 Acts, ch 44, §101  
Subsection 1 amended

## CHAPTER 600A

### TERMINATION OF PARENTAL RIGHTS

#### **600A.3 Exclusivity.**

Termination of parental rights shall be accomplished only according to the provisions of this chapter. However, termination of parental rights between an adult child and the child’s parents may be accomplished by a decree of adoption establishing a new parent-child relationship.

If a proceeding held under this chapter involves an Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa Indian child welfare Act under chapter 232B, the proceeding and other actions taken in connection with the

proceeding or this chapter shall comply with chapter 232B. In any proceeding held or action taken under this chapter involving an Indian child, the applicable requirements of the federal Adoption and Safe Families Act of 1999, Pub. L. No. 105-89, shall be applied to the proceeding or action in a manner that complies with chapter 232B and the federal Indian Child Welfare Act, Pub. L. No. 95-608.

2003 Acts, ch 153, §17  
NEW unnumbered paragraph 2

## CHAPTER 602

### JUDICIAL BRANCH

#### 602.1204 Procedures for judicial branch.

1. The supreme court shall prescribe procedures for the orderly and efficient supervision and administration of the judicial branch. These procedures shall be executed by the chief justice.

2. The state court administrator may issue directives relating to the management of the judicial branch. The subject matters of these directives shall include, but need not be limited to, fiscal procedures, the judicial retirement system, and the collection and reporting of statistical and other data. The directives shall provide for an affirmative action plan which shall be based upon guidelines provided by the Iowa state civil rights commission. In addition, when establishing salaries and benefits the state court administrator shall not discriminate in the employment or pay between employees on the basis of gender by paying wages to employees at a rate less than the rate at which wages are paid to employees of the opposite gender for work of comparable worth. As used in this section “*comparable worth*” means the value of work as measured by the composite of the skill, effort, responsibility, and working conditions normally required in the performance of work.

3. The supreme court shall compile and publish all procedures and directives relating to the supervision and administration of the internal affairs of the judicial branch, and shall distribute a copy of the compilation and all amendments to each operating component of the judicial branch.

4. The supreme court shall accept bids for the printing of court forms from both public and private enterprises and shall attempt to contract with both public and private enterprises for a reasonable portion of the court forms.

2003 Acts, ch 35, §43, 49; 2003 Acts, ch 145, §271  
See Code editor's note to §2.9  
Subsection 3 amended

#### 602.1215 Clerk of the district court.

1. Subject to the provisions of section 602.1209, subsection 3, the district judges of each judicial election district shall by majority vote appoint persons to serve as clerks of the district court within the judicial election district. The district judges of a judicial election district may appoint a person to serve as clerk of the district court for more than one but not more than four contiguous counties in the same judicial district. A person does not qualify for appointment to the office of clerk of the district court unless the person is at the time of application a resident of the state. A clerk of the district court may be removed from office for cause by a majority vote of the district judges of the judicial election district. Before removal, the clerk of the district court shall be noti-

fied of the cause for removal.

2. The clerk of the district court has the duties specified in article 8, and other duties as prescribed by law or by the supreme court.

3. The clerk of the district court shall assist the state court administrator and the district court administrator in carrying out the rules, directives, and procedures of the judicial branch and the judicial district.

4. The clerk of the district court shall comply with rules, directives, and procedures of the judicial branch and the judicial district.

2003 Acts, ch 151, §29  
Appointment of clerk subject to approval of state court administrator;  
2003 Acts, ch 173, §3  
Subsection 1 amended

#### 602.1301 Budget and fiscal procedures.

1. The supreme court shall prepare an annual operating budget for the judicial branch, and shall submit a budget request to the general assembly for the fiscal period for which the general assembly is appropriating funds.

2. *a.* As early as possible, but not later than December 1, the supreme court shall submit to the legislative services agency the annual budget request and detailed supporting information for the judicial branch. The submission shall be designed to assist the legislative services agency in its preparation for legislative consideration of the budget request. The information submitted shall contain and be arranged in a format substantially similar to the format specified by the director of management and used by all departments and establishments in transmitting to the director estimates of their expenditure requirements pursuant to section 8.23, except the estimates of expenditure requirements shall be based upon one hundred percent of funding for the current fiscal year accounted for by program, and using the same line item definitions of expenditures as used for the current fiscal year's budget request, and the remainder of the estimate of expenditure requirements prioritized by program. The supreme court shall also make use of the department of management's automated budget system when submitting information to the director of management to assist the director in the transmittal of information as required under section 8.35A. The supreme court shall budget and track expenditures by the following separate organization codes:

- (1) Iowa court information system.
- (2) Appellate courts.
- (3) Central administration.
- (4) District court administration.
- (5) Judges and magistrates.
- (6) Court reporters.
- (7) Juvenile court officers.

- (8) District court clerks.
- (9) Jury and witness fees.

b. Before December 1, the supreme court shall submit to the director of management an estimate of the total expenditure requirements of the judicial branch. The director of management shall submit this estimate received from the supreme court to the governor for inclusion without change in the governor's proposed budget for the succeeding fiscal year. The estimate shall also be submitted to the chairpersons of the committees on appropriations.

3. The state court administrator shall prescribe the procedures to be used by the operating components of the judicial branch with respect to the following:

- a. The preparation, submission, review, and revision of budget requests.
- b. The allocation and disbursement of funds appropriated to the judicial branch.
- c. The purchase of forms, supplies, equipment, and other property.
- d. Other matters relating to fiscal administration.

4. The state court administrator shall prescribe practices and procedures for the accounting and internal auditing of funds of the judicial branch, including uniform practices and procedures to be used by judicial officers and court employees with respect to all funds, regardless of source.

2003 Acts, ch 35, §45, 49  
Terminology changes applied

#### **602.1302 State funding.**

1. Except as otherwise provided by sections 602.1303 and 602.1304 or other applicable law, the expenses of operating and maintaining the judicial branch shall be paid out of the general fund of the state from funds appropriated by the general assembly for the judicial branch. State funding shall be phased in as provided in section 602.11101.

2. The supreme court may accept federal funds to be used in the operation of the judicial branch, but shall not expend any of these funds except pursuant to appropriation of the funds by the general assembly.

3. A revolving fund is created in the state treasury for the payment of jury and witness fees, mileage, and costs related to summoning jurors by the judicial branch. The judicial branch shall deposit any reimbursements to the state for the payment of jury and witness fees and mileage in the revolving fund. Notwithstanding section 8.33, unencumbered and unobligated receipts in the revolving fund at the end of a fiscal year do not revert to the general fund of the state. The judicial branch shall on or before February 1 file a financial accounting of the moneys in the revolving fund with the legislative services agency. The accounting shall include an estimate of disbursements

from the revolving fund for the remainder of the fiscal year and for the next fiscal year.

4. The judicial branch shall reimburse counties for the costs of witness and mileage fees and for attorney fees paid pursuant to section 232.141, subsection 1.

2003 Acts, ch 35, §45, 49  
Local court property devoted for use of judicial branch; §602.11107  
Use of revolving fund moneys for interpreter fees; see §622A.4  
Terminology change applied

#### **602.1304 Revenues — enhanced court collections fund.**

1. Except as provided in article 8 and subsection 2 of this section, all fees and other revenues collected by judicial officers and court employees shall be paid into the general fund of the state.

2. a. The enhanced court collections fund is created in the state treasury under the authority of the supreme court. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund, unless and to the extent the total amount of moneys deposited into the fund in a fiscal year would exceed the maximum annual deposit amount established for the collections fund by the general assembly. The initial maximum annual deposit amount for a fiscal year is four million dollars. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the collections fund shall remain in the collections fund and any interest and earnings shall be in addition to the maximum annual deposit amount.

b. For each fiscal year, a judicial collection estimate for that fiscal year shall be equally and proportionally divided into a quarterly amount. The judicial collection estimate shall be calculated by using the state revenue estimating conference estimate made by December 15 pursuant to section 8.22A, subsection 3, of the total amount of fines, fees, civil penalties, costs, surcharges, and other revenues collected by judicial officers and court employees for deposit into the general fund of the state. The revenue estimating conference estimate shall be reduced by the maximum amounts allocated to the Iowa prison infrastructure fund pursuant to section 602.8108A, the court technology and modernization fund pursuant to section 602.8108, and the road use tax fund pursuant to section 602.8108, subsection 6, and the remainder shall be the judicial collection estimate. In each quarter of a fiscal year, after revenues collected by judicial officers and court employees equal to that quarterly amount are deposited into the general fund of the state and after the required amount is deposited during the quarter into the Iowa prison infrastructure fund pursuant to section 602.8108A and into the court technology and modernization fund pursuant to section 602.8108, the director of the department of administrative ser-

vices shall deposit the remaining revenues for that quarter into the enhanced court collections fund in lieu of the general fund. However, after total deposits into the collections fund for the fiscal year are equal to the maximum deposit amount established for the collections fund, remaining revenues for that fiscal year shall be deposited into the general fund. If the revenue estimating conference agrees to a different estimate at a later meeting which projects a lesser amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of the department of administrative services shall recalculate the judicial collection estimate accordingly. If the revenue estimating conference agrees to a different estimate at a later meeting which projects a greater amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of the department of administrative services shall recalculate the judicial collection estimate accordingly but only to the extent that the greater amount is due to an increase in the fines, fees, civil penalties, costs, surcharges, or other revenues allowed by law to be collected by judicial officers and court employees.

c. Moneys in the collections fund shall be used by the judicial branch for the Iowa court information system; records management equipment, services, and projects; other technological improvements; electronic legal research equipment, systems, and projects; and the study, development, and implementation of other innovations and projects that would improve the administration of justice. The moneys in the collection fund may also be used for capital improvements necessitated by the installation of or connection with the Iowa court information system, the Iowa communications network, and other technological improvements approved by the judicial branch.

2003 Acts, ch 145, §286

For provisions concerning the deposit of certain delinquent amounts collected in criminal proceedings in the revolving fund established under §602.1302, see §909.10

Use of enhanced court collections funds; 2002 Acts, ch 1166, §21; 2002 Acts, 2nd Ex, ch 1003, §173; 2003 Acts, ch 173, §1

Terminology change applied

#### **602.1501 Judicial salaries.**

1. The chief justice and each justice of the supreme court shall receive the salary set by the general assembly.

2. The chief judge and each judge of the court of appeals shall receive the salary set by the general assembly.

3. The chief judge of each judicial district and each district judge shall receive the salary set by the general assembly.

4. District associate judges shall receive the salary set by the general assembly.

5. Full-time associate juvenile judges and full-time associate probate judges shall receive the salary set by the general assembly.

6. Magistrates shall receive the salary set by

the general assembly, subject to section 602.6402.

2003 Acts, ch 151, §30  
Subsection 4 amended

#### **602.1604 Judges shall not practice law.**

While holding office, a supreme court justice, court of appeals judge, district judge, or district associate judge shall not practice as an attorney or counselor or give advice in relation to any action pending or about to be brought in any of the courts of the state.

2003 Acts, ch 151, §31  
Section amended

#### **602.1611 Judicial retirement programs.**

1. Judges of the supreme court and court of appeals, district judges, and district associate judges are members of the judicial retirement system established in article 9, part 1, and are not members of the public employees' retirement system established in chapter 97B, except as provided in paragraphs "a" and "b".

a. District associate judges who exercised the election under section 602.11115, subsection 1, are members of the public employees' retirement system and are not members of the judicial retirement system. District associate judges who exercised the election under section 602.11115, subsection 2, are members of the judicial retirement system and are inactive members of the public employees' retirement system.

b. District associate judges appointed after June 30, 1984, judges of the supreme court and court of appeals, and district judges, who were vested members of the public employees' retirement system at the time they became members of the judicial retirement system, and whose contributions in the public employees' retirement system were not refunded to them prior to the repeal of section 97B.69, are members of the judicial retirement system and are inactive vested members of the public employees' retirement system until they become qualified to receive retirement benefits from the judicial retirement system and become retired members of the public employees' retirement system or voluntarily withdraw their contributions from the public employees' retirement system.

2. Magistrates shall be members of the Iowa public employees' retirement system unless the magistrate elects out of coverage under the Iowa public employees' retirement system as provided in section 97B.42A.

3. Commencing July 1, 1998, associate juvenile judges and associate probate judges, who are appointed on a full-time basis, are members of the judicial retirement system established in article 9, part 1, and are not members of the public employees' retirement system established in chapter 97B, except as provided in section 602.11116.

2003 Acts, ch 151, §32  
Subsection 2 stricken and former subsections 3 and 4 renumbered as 2 and 3

**602.4102 Jurisdiction.**

1. The supreme court has appellate jurisdiction only in cases in chancery, and constitutes a court for the correction of errors at law. The jurisdiction of the supreme court is coextensive with the state.

2. A civil or criminal action or special proceeding filed with the supreme court for appeal or review, may be transferred by the supreme court to the court of appeals by issuing an order of transfer. The jurisdiction of the supreme court in the matter ceases upon the filing of that order by the clerk of the supreme court. A matter which has been transferred to the court of appeals pursuant to order of the supreme court is not thereafter subject to the jurisdiction of the supreme court, except as provided in subsection 4.

3. The supreme court shall prescribe rules for the transfer of matters to the court of appeals. These rules may provide for the selective transfer of individual cases and may provide for the transfer of cases according to subject matter or other general criteria. A rule shall not provide for the transfer of a matter other than by an order of transfer under subsection 2.

4. A party to an appeal decided by the court of appeals may, as a matter of right, file an application with the supreme court for further review.

*a.* An application for further review in an appeal from a child in need of assistance or termination of parental rights proceeding shall not be granted by the supreme court unless filed within ten days following the filing of the decision of the court of appeals.

*b.* In all other cases, an application for further review shall not be granted by the supreme court unless the application was filed within twenty days following the filing of the decision of the court of appeals.

5. The court of appeals shall extend the time for filing of an application if the court of appeals determines that a failure to timely file an application was due to the failure of the clerk of the court of appeals to notify the prospective applicant of the filing of the decision. If an application for further review is not acted upon by the supreme court within thirty days after the application was filed, the application is deemed denied, the supreme court loses jurisdiction, and the decision of the court of appeals is conclusive.

6. The supreme court shall prescribe rules of appellate procedure which shall govern further review by the supreme court of decisions of the court of appeals. These rules shall contain, but need not be limited to, a specification of the grounds upon which further review may, in the discretion of the supreme court, be granted.

2003 Acts, ch 25, §2

Subsection 4 amended, divided, and redesignated as subsections 4 and

5

Former subsection 5 renumbered as 6

**602.4202 Rulemaking procedure.**

1. The supreme court shall submit a rule or form prescribed by the supreme court under section 602.4201, subsection 3, or pursuant to any other rulemaking authority specifically made subject to this section to the legislative council and shall at the same time report the rule or form to the chairpersons and ranking members of the senate and house committees on judiciary. The legislative services agency shall make recommendations to the supreme court on the proper style and format of rules and forms required to be submitted to the legislative council under this subsection.

2. A rule or form submitted as required under subsection 1 takes effect sixty days after submission to the legislative council, or at a later date specified by the supreme court, unless the legislative council, within sixty days after submission and by a majority vote of its members, delays the effective date of the rule or form to a date as provided in subsection 3.

3. The effective date of a rule or form submitted during the period of time beginning February 15 and ending February 14 of the next calendar year may be delayed by the legislative council until May 1 of that next calendar year.

4. If the general assembly enacts a bill changing a rule or form, the general assembly's enactment supersedes a conflicting provision in the rule or form as submitted by the supreme court.

2003 Acts, ch 35, §44, 49

Terminology change applied

**602.5106 Decisions of the court — finality.**

1. The court of appeals may affirm, modify, vacate, set aside, or reverse any judgment, order, or decree of the district court or other tribunal which is under the jurisdiction of the court, and may remand the cause and direct the entry of an appropriate judgment, order, or decree, or require further proceedings to be had as is just. If the judges are equally divided on the ultimate decision, the judgment, order, or decree shall be affirmed.

2. A decision of the court of appeals is final and shall not be reviewed by any other court except upon the granting by the supreme court of an application for further review as provided in section 602.4102. Upon the filing of the application, the judgment and mandate of the court of appeals is stayed pending action of the supreme court or until the expiration of the time specified in section 602.4102, subsections 4 and 5.

Section not amended; internal reference change applied

**602.6105 Places of holding court — magistrate schedules.**

1. Courts shall be held at the places in each county maintaining space for the district court as designated by the chief judge of the judicial dis-

tract, except that the determination of actions, special proceedings, and other matters not requiring a jury may be done at some other place in the district with the consent of the parties. For the purposes of this subsection, contiguous counties which have entered into an agreement to share costs pursuant to section 331.381, subsection 17, paragraph "b", shall be considered as one unit for the purpose of conducting all matters except as otherwise provided in this subsection.

2. In any county having two county seats, court shall be held at each, and, in the county of Pottawattamie, court shall be held at Avoca, as well as at the county seat.

3. *a.* The chief judge of a judicial district shall designate times and places for magistrates to hold court to ensure accessibility of magistrates at all times throughout the district. The schedule of times and places of availability of magistrates and any schedule changes shall be disseminated by the chief judge to the peace officers within the district.

*b.* The chief judge of a judicial district shall schedule a magistrate to hold court in a city other than the county seat if all of the following apply:

(1) Magistrate court was regularly scheduled in the city on or after July 1, 2001.

(2) The population of the city is at least two times greater than the population of the county seat or the population of the city is at least thirty thousand.

(3) The city requests the chief judge to schedule magistrate court.

In addition to paying the costs in section 602.1303, subsection 1, the city requesting the magistrate court shall pay any other costs for holding magistrate court in the city which would not otherwise have been incurred by the judicial branch.

2003 Acts, ch 151, §33  
Subsection 3 amended

#### **602.6107 Reorganization of judicial districts and judicial election districts.**

1. The supreme court shall, beginning January 1, 2012, and at least every ten years thereafter, review the division of the state into judicial districts and judicial election districts in order to determine whether the composition or the total number of the judicial districts and judicial election districts is the most efficient and effective administration of the district court and the judicial branch.

2. If the supreme court determines that the administration of the district court and the judicial branch would be made more efficient and effective by reorganizing the judicial districts and judicial election districts, which may include expanding or contracting the total number of judicial districts and judicial election districts, the supreme court shall develop and submit to the general assembly by November 15 a plan that reorganizes the judicial districts and judicial election dis-

tricts. The legislative services agency shall draft a bill embodying the plan for submission by the supreme court to the general assembly. The general assembly shall bring the bill to a vote in either the senate or the house of representatives within thirty days of the bill's submission by the supreme court to the general assembly, under a procedure or rule permitting no amendments by either house except those of a purely corrective nature. If both houses pass the bill, the bill shall be presented as any other bill to the governor for approval. The bill shall take effect upon the general assembly passing legislation, which is approved by the governor including an effective date for the reorganization of the judicial districts and judicial election districts.

3. The composition of the judicial districts in section 602.6107, Code 2003, and judicial election districts in section 602.6109, Code 2003, shall remain in effect until a new division of the state into judicial districts and judicial election districts is enacted.

4. It is the intent of the general assembly that the supreme court prior to developing a plan pursuant to this section consult with and receive input from members of the general public, court employees, judges, members of the general assembly, the judicial departments of correctional services, county officers, officials from other interested political subdivisions, and attorneys. In submitting a plan pursuant to this section, the supreme court shall also submit to the general assembly a report stating the reasons for developing the plan and describing in detail the process used in developing the plan.

5. Nothing in this section or other provision of the Code shall be construed to preclude the general assembly or the judicial branch from proposing or considering a plan reorganizing the judicial districts and judicial election districts at any time.

2003 Acts, ch 35, §46, 49; 2003 Acts, ch 151, §34  
Terminology change applied  
Section stricken and rewritten

#### **602.6109 Judicial election districts and judgeships.**

1. The reorganized judicial election districts established pursuant to section 602.6107 shall be used solely for purposes of nomination, appointment, and retention of judges of the district court.

2. If the judicial election districts are reorganized under section 602.6107, the state court administrator shall reapportion the number of judgeships to which each judicial election district is entitled. The reapportionment shall be determined according to section 602.6201, subsection 3.

2003 Acts, ch 151, §35  
Section stricken and rewritten

#### **602.6111 Identification information filed with the clerk.**

1. Any party, other than the state or a political subdivision of the state, filing a petition or com-

plaint, answer, appearance, first motion, or any document filed with the clerk of the district court which brings a new party into a proceeding shall provide the clerk of the district court with the following information when applicable:

*a.* An employer identification number if a number has been assigned.

*b.* The birth date of the party.

*c.* The social security number of the party.

2. Any party, except the child support recovery unit, filing a petition, complaint, answer, appearance, first motion, or any document with the clerk of the district court to establish or modify an order for child support under chapter 236, 252A, 252K, 598, or 600B shall provide the clerk of the district court with the date of birth and social security number of the child.

3. A party shall provide the information pursuant to this section in the manner required by rules or directives prescribed by the supreme court. The clerk of the district court shall keep a social security number provided pursuant to this section confidential in accordance with the rules and directives prescribed by the supreme court.

2003 Acts, ch 151, §36

Section stricken and rewritten

#### **602.6112 Regional litigation centers — prohibition.**

The judicial branch shall not establish regional litigation centers.

2003 Acts, ch 151, §37

NEW section

#### **602.6201 Office of district judge — apportionment.**

1. District judges shall be nominated and appointed and shall stand for retention in office as provided in chapter 46. District judges shall qualify for office as provided in chapter 63.

2. A district judge must be a resident of the judicial election district in which appointed and retained. Subject to the provision for reassignment of judges under section 602.6108, a district judge shall serve in the district of the judge's residence while in office, regardless of the number of judgeships to which the district is entitled under subsection 3.

3. *a.* A judicial election district containing a city of fifty thousand or more population is entitled to the number of judgeships equal to the average, rounded to the nearest whole number, of the following two quotients, each rounded to the nearest hundredth:

(1) The combined civil and criminal filings in the election district divided by five hundred fifty.

(2) The election district's population divided by forty thousand.

However, the seat of government is entitled to one additional judgeship.

*b.* All other judicial election districts are en-

titled to the number of judgeships equal to the average, rounded to the nearest whole number, of the following two quotients, each rounded to the nearest hundredth:

(1) The combined civil and criminal filings in the election district divided by four hundred fifty.

(2) The election district's population divided by forty thousand.

However, the judicial election district in which the Iowa state penitentiary at Fort Madison is located is entitled to one additional judgeship.

*c.* The filings included in the determinations to be made under this subsection shall not include small claims or nonindictable misdemeanors, and shall not include either civil actions for money judgment where the amount in controversy does not exceed five thousand dollars or indictable misdemeanors or felony violations of section 321J.2, which were assigned to district associate judges and magistrates as shown on their administrative reports, but shall include appeals from decisions of magistrates, district associate judges, and district judges sitting as magistrates. The figures on filings shall be the average for the latest available previous three-year period and when current census figures on population are not available, figures shall be taken from the Iowa department of public health computations.

4. For purposes of this section, a vacancy means the death, resignation, retirement, or removal of a district judge, or the failure of a district judge to be retained in office at the judicial election, or an increase in judgeships under this section.

5. In those judicial election districts having more district judges than the number of judgeships specified by the formula in subsection 3, vacancies shall not be filled.

6. In those judicial election districts having fewer or the same number of district judges as the number of judgeships specified by the formula in subsection 3, vacancies in the number of district judges shall be filled as they occur.

7. In those judicial districts that contain more than one judicial election district, a vacancy in a judicial election district shall not be filled if the total number of district judges in all judicial election districts within the judicial district equals or exceeds the aggregate number of judgeships to which all of the judicial election districts of the judicial district are authorized.

8. An incumbent district judge shall not be removed from office because of a reduction in the number of authorized judgeships.

9. During February of each year, and at other times as appropriate, the state court administrator shall make the determinations required under this section, and shall notify the appropriate nominating commissions and the governor of appointments that are required.

10. Notwithstanding the formula for determining the number of judgeships in this section, the number of district judges shall not exceed one hundred sixteen during the period commencing July 1, 1999.

11. Notwithstanding any other provision of the Code to the contrary, if a vacancy in a judgeship occurs, and the chief justice of the supreme court makes a finding that a substantial disparity exists in the allocation of judgeships and judicial workload between judicial election districts, the chief justice may apportion the judgeship from the judicial election district where the vacancy occurs to another judicial election district based upon the substantial disparity finding. However, a judgeship shall not be apportioned pursuant to this section unless a majority of the judicial council approves the apportionment.

12. Notwithstanding any other provision of the Code to the contrary, if the chief justice of the supreme court determines a substantial disparity exists in the allocation of judgeships and judicial workload between judicial election districts, the chief justice may authorize a voluntary permanent transfer of a district judge from one judicial election district to another upon approval by a majority of the judicial council. After approval by the judicial council, the chief justice shall notify all eligible district judges of the intent to seek applicants for a voluntary permanent transfer and the terms of such a transfer. A district judge is not eligible for a voluntary transfer unless the judge has served a regular term of office as specified in section 46.16. Upon approval of the judge's application, the chief justice may transfer a district judge who consents to the transfer within six months of the notification. The transfer of a district judge shall take effect within sixty days of the official announcement of the transfer by the chief justice. A district judge transferred pursuant to this subsection shall have six months from the date of the announcement of the transfer to establish residency in the judicial election district where the district judge is transferred. A district judge who has been transferred shall stand for retention in the judicial election district to which the district judge has been transferred as provided in chapter 46. For purposes of subsection 3, the judgeship shall be apportioned to the judicial election district where the judge is transferred. A voluntary transfer pursuant to this subsection shall not cause a vacancy of a judgeship in the judicial election district from which the district judge was transferred.

2003 Acts, ch 151, §38, 39  
For future repeal of subsection 12 effective July 1, 2008, see 2003 Acts, ch 151, §63  
Subsection 8 amended  
NEW subsections 11 and 12

**602.6301 Number and apportionment of district associate judges.**

There shall be one district associate judge in counties having a population of more than thirty-

five thousand and less than eighty thousand; two in counties having a population of eighty thousand or more and less than one hundred twenty-five thousand; three in counties having a population of one hundred twenty-five thousand or more and less than two hundred thousand; four in counties having a population of two hundred thousand or more and less than two hundred thirty-five thousand; five in counties having a population of two hundred thirty-five thousand or more and less than two hundred seventy thousand; six in counties having a population of two hundred seventy thousand or more and less than three hundred five thousand; and seven in counties having a population of three hundred five thousand or more. However, a county shall not lose a district associate judgeship solely because of a reduction in the county's population. If the formula provided in this section results in the allocation of an additional district associate judgeship to a county, implementation of the allocation shall be subject to prior approval of the supreme court and availability of funds to the judicial branch. A district associate judge appointed pursuant to section 602.6302 shall not be counted for purposes of this section.

2003 Acts, ch 151, §40  
Section amended

**602.6303 Alternate district associate judge.** Repealed by 2003 Acts, ch 151, § 62.

**602.6304 Appointment and resignation of district associate judges.**

1. The district associate judges authorized by sections 602.6301 and 602.6302 shall be appointed by the district judges of the judicial election district from persons nominated by the county magistrate appointing commission. In the case of a district associate judge to be appointed to more than one county, the appointment shall be from persons nominated by the county magistrate appointing commissions acting jointly and in the case of a district associate judge to be appointed to more than one judicial election district of the same judicial district, the appointment shall be by a majority of the district judges in each judicial election district.

2. In November of any year in which an impending vacancy is created because a district associate judge is not retained in office pursuant to a judicial election, the county magistrate appointing commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as district associate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district not later than December 15 of that year the names of three applicants who are nominated by the commission for the vacancy, unless the chief justice has ordered the commission to delay the

certification of the nominees to the chief judge. The chief justice may order the delay of the certification for up to one hundred eighty days for budgetary reasons. If there are three or fewer applicants the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered.

3. Within thirty days after a county magistrate appointing commission receives notification of an actual or impending vacancy in the office of district associate judge, other than a vacancy referred to in subsection 2, the commission shall certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy, unless the chief justice has ordered the commission to delay the certification of the nominees to the chief judge. The chief justice may order the delay of the certification for up to one hundred eighty days for budgetary reasons. The commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as district associate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered. As used in this subsection, a vacancy is created by the death, retirement, resignation, or removal of a district associate judge, or by an increase in the number of positions authorized.

4. Within fifteen days after the chief judge of a judicial district has received the list of nominees to fill a vacancy in the office of district associate judge, the district judges in the judicial election district shall, by majority vote, appoint one of those nominees to fill the vacancy.

5. A district associate judge who seeks to resign from the office of district associate judge shall notify in writing the chief judge of the judicial district as to the district associate judge's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the actual or impending vacancy in the office of district associate judge due to resignation.

6. The supreme court may prescribe rules of procedure to be used by county magistrate ap-

pointing commissions when exercising the duties specified in this section.

2003 Acts, ch 151, §41  
For future repeal of 2003 amendments to subsections 2 and 3 effective July 1, 2006, see 2003 Acts, ch 151, §64  
Subsections 1 – 3 amended

#### **602.6305 Term, retention, qualifications.**

1. District associate judges shall serve initial terms and shall stand for retention in office within the judicial election districts of their residences at the judicial election in 1982 and every six years thereafter, under sections 46.17 to 46.24.

2. A person does not qualify for appointment to the office of district associate judge unless the person is at the time of appointment a resident of the county in which the vacancy exists, licensed to practice law in Iowa, and will be able, measured by the person's age at the time of appointment, to complete the initial term of office prior to reaching age seventy-two. An applicant for district associate judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission.

3. A district associate judge must be a resident of a county in which the office is held during the entire term of office. A district associate judge shall serve within the judicial district in which appointed, as directed by the chief judge, and is subject to reassignment under section 602.6108.

4. District associate judges shall qualify for office as provided in chapter 63 for district judges.

2003 Acts, ch 151, §42  
Subsection 1 amended

#### **602.6403 Appointment, qualification, and resignation of magistrates.**

1. By June 1 of each year in which magistrates' terms expire, the county magistrate appointing commission shall appoint, except as otherwise provided in section 602.6302, the number of magistrates apportioned to the county by the state court administrator under section 602.6401, and may appoint an additional magistrate when allowed by section 602.6402. The commission shall not appoint more magistrates than are authorized for the county by this article.

2. The magistrate appointing commission for each county shall prescribe the contents of an application, in addition to any application form provided by the supreme court, for an appointment pursuant to this section. The commission shall publicize notice of any vacancy to be filled in at least two publications in all official county newspapers in the county. The commission shall accept applications for a minimum of fifteen days prior to making an appointment, and shall make available during that period of time any printed application forms the commission prescribes.

3. Within thirty days following receipt of notification of a vacancy in the office of magistrate, the commission shall appoint a person to the office to serve the remainder of the unexpired term, unless the chief justice has ordered the commission to delay the appointment for up to one hundred eighty days for budgetary reasons. For purposes of this section, vacancy means a death, resignation, retirement, or removal of a magistrate, or an increase in the number of positions authorized.

4. The term of office of a magistrate is four years, commencing August 1, 1989. However, the terms of all magistrates in a county are deemed to expire if a substitution under section 602.6302 or the allocation under section 602.6401 results in a reduction in the number of magistrates in a county where the magistrates hold office.

5. The commission shall promptly certify the names and addresses of appointees to the clerk of the district court and to the chief judge of the judicial district. The clerk of the district court shall certify to the state court administrator the names and addresses of these appointees.

6. Before assuming office, a magistrate shall subscribe and file in the office of the state court administrator the oath of office specified in section 63.6.

7. Before the commencement of the term of a magistrate, the members of the magistrate appointing commission may reconsider the appointment. Written notification of the reasons for reconsideration and time and place for the meeting must be sent to the magistrate appointee and the clerk of the district court. The commission may reconvene and decertify the magistrate appointee for good cause. Notice of the decertification and a statement of the reasons justifying the decertification shall be promptly sent to the clerk of the district court, the chief judge of the judicial district, and the state court administrator.

8. Annually, the state court administrator shall cause a school of instruction to be conducted for magistrates, and each magistrate shall attend prior to the time of taking office unless excused by the chief justice for good cause. A magistrate appointed to fill a vacancy shall attend the first school of instruction that is held following the appointment, unless excused by the chief justice for good cause.

9. A magistrate who seeks to resign from the office of magistrate shall notify in writing the chief judge of the judicial district as to the magistrate's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the vacancy in the office of magistrate due to resignation.

2003 Acts, ch 151, §43

For future repeal of 2003 amendments to subsection 3 effective July 1,

2006, see 2003 Acts, ch 151, §64  
Subsection 3 amended

### **602.7103B Appointment and resignation of full-time associate juvenile judges.**

1. Full-time associate juvenile judges shall be appointed by the district judges of the judicial election district from persons nominated by the county magistrate appointing commission. In the case of a full-time associate juvenile judge to be appointed to more than one county, the appointment shall be from persons nominated by the county magistrate appointing commissions acting jointly and in the case of a full-time associate juvenile judge to be appointed to more than one judicial election district of the same judicial district, the appointment shall be by a majority of the district judges in each judicial election district.

2. In November of any year in which an impending vacancy is created because a full-time associate juvenile judge is not retained in office pursuant to a judicial election, the county magistrate appointing commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate juvenile judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district not later than December 15 of that year the names of three applicants who are nominated by the commission for the vacancy, unless the chief justice has ordered the commission to delay the certification of the nominees to the chief judge. The chief justice may order the delay of the certification for up to one hundred eighty days for budgetary reasons. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered.

3. Within thirty days after a county magistrate appointing commission receives notification of an actual or impending vacancy in the office of full-time associate juvenile judge, other than a vacancy referred to in subsection 2, the commission shall certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy, unless the chief justice has ordered the commission to delay the certification of the nominees to the chief judge. The chief justice may order the delay of the certification for up to one hundred eighty days for budgetary reasons. The commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration

for nomination as full-time associate juvenile judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered. As used in this subsection, a vacancy is created by the death, retirement, resignation, or removal of a full-time associate juvenile judge, or by an increase in the number of positions authorized.

4. Within fifteen days after the chief judge of a judicial district has received the list of nominees to fill a vacancy in the office of full-time associate juvenile judge, the district judges in the judicial election district shall, by majority vote, appoint one of those nominees to fill the vacancy.

5. A full-time associate juvenile judge who seeks to resign from the office of full-time associate juvenile judge shall notify in writing the chief judge of the judicial district as to the full-time associate juvenile judge's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the actual or impending vacancy in the office of full-time associate juvenile judge due to resignation.

6. The supreme court may prescribe rules of procedure to be used by county magistrate appointing commissions when exercising the duties specified in this section.

2003 Acts, ch 151, §44  
For future repeal of 2003 amendments to subsections 2 and 3 effective July 1, 2006, see 2003 Acts, ch 151, §64  
Subsections 2 and 3 amended

### **602.8102 General duties.**

The clerk shall:

1. Keep the office of the clerk at the county seat.

2. Attend sessions of the district court.

3. Keep the records, papers, and seal, and record the proceedings of the district court as provided by law under the direction of the chief judge of the judicial district.

4. Upon the death of a judge or magistrate of the district court, give written notice to the department of management and the department of administrative services of the date of death. The clerk shall also give written notice of the death of a justice of the supreme court, a judge of the court of appeals, or a judge or magistrate of the district court who resides in the clerk's county to the state commissioner of elections, as provided in section 46.12.

5. When money in the amount of five hundred dollars or more is paid to the clerk to be paid to another person and the money is not disbursed within thirty days, notify the person who is entitled to the money or for whose account the money is paid or the attorney of record of the person. The notice shall be given by certified mail within forty days of the receipt of the money to the last known address of the person or the person's attorney and a memorandum of the notice shall be made in the proper record. If the notice is not given, the clerk and the clerk's sureties are liable for interest at the rate specified in section 535.2, subsection 1, on the money from the date of receipt to the date that the money is paid to the person entitled to it or the person's attorney.

6. On each process issued, indicate the date that it is issued, the clerk's name who issued it, and the seal of the court.

7. Upon return of an original notice to the clerk's office, enter in the appearance or combination docket information to show which parties have been served the notice and the manner and time of service.

8. When entering a lien or indexing an action affecting real estate in the clerk's office, enter the year, month, day, hour, and minute when the entry is made. The clerk shall mail a copy of a mechanic's lien to the owner of the building, land, or improvement which is charged with the lien as provided in section 572.8.

9. Enter in the appearance docket a memorandum of the date of filing of all petitions, demurrers, answers, motions, or papers of any other description in the cause. A pleading of any description is considered filed when the clerk entered the date the pleading was received on the pleading and the pleading shall not be taken from the clerk's office until the memorandum is made. The memorandum shall be made within two business days of a new petition or order being filed, and as soon as practicable for all other pleadings. Thereafter, when a demurrer or motion is sustained or overruled, a pleading is made or amended, or the trial of the cause, rendition of the verdict, entry of judgment, issuance of execution, or any other act is done in the progress of the cause, a similar memorandum shall be made of the action, including the date of action and the number of the book and page of the record where the entry is made. The appearance docket is an index of each suit from its commencement to its conclusion.

10. When title to real estate is finally established in a person by a judgment or decree of the district court or by decision of an appellate court or when the title to real estate is changed by judgment, decree, will, proceeding, or order in probate, certify the final decree, judgment, or decision under seal of the court to the auditor of the county in which the real estate is located.

11. Refund amounts less than three dollars

only upon written application.

12. At the order of a justice of the supreme court, docket without fee any civil or criminal case transferred from a military district under martial law as provided in section 29A.45.

13. Carry out duties as a member of a nominations appeal commission as provided in section 44.7.

14. Maintain a bar admission list as provided in section 46.8.

15. Monthly, notify the county commissioner of registration and the state registrar of voters of persons seventeen and one-half years of age and older who have been convicted of a felony during the preceding calendar month or persons who at any time during the preceding calendar month have been legally declared to be a person who is incompetent to vote as that term is defined in section 48A.2.

16. Reserved.

17. Reserved.

18. Reserved.

19. Keep a book of the record of official bonds and record the official bonds of magistrates as provided in section 64.24.

20. Carry out duties relating to proceedings for the removal of a public officer as provided in sections 66.4 and 66.17.

21. Reserved.

22. Reserved.

23. Carry out duties relating to enforcing orders of the employment appeal board as provided in section 88.9, subsection 2.

24. Certify the imposition of a mulct tax against property creating a public nuisance to the auditor as provided in section 99.28.

25. Carry out duties relating to the judicial review of orders of the employment appeal board as provided in section 89A.10, subsection 2.

26. With sufficient surety, approve an appeal bond for judicial review of an order or action of the department of natural resources relating to dams and spillways as provided in section 464A.8.

27. Docket an appeal from the fence viewer's decision or order as provided in section 359A.23.

28. Certify to the recorder the fact that a judgment has been rendered upon an appeal of a fence viewer's order as provided in section 359A.24.

29. Reserved.

30. Approve bond sureties and enter in the lien index the undertakings of bonds for abatement relating to the illegal manufacture, sale, or consumption of alcoholic liquors as provided in sections 123.76, 123.79, and 123.80.

31. Destroy all records and files of a court proceeding maintained under section 135L.3 in accordance with section 135L.3, subsection 3, paragraph "o".

32. Reserved.

33. Furnish to the Iowa department of public health a certified copy of a judgment suspending or revoking a professional license as provided in

section 147.66.

34. Reserved.

35. Send notice of the conviction, judgment, and sentence of a person violating the uniform controlled substances laws to the state board or officer who issued a license or registered the person to practice a profession or to conduct business as provided in section 124.412.

36. Carry out duties relating to the commitment of a person with mental retardation as provided in sections 222.37 through 222.40.

37. Keep a separate docket of proceedings of cases relating to persons with mental retardation as provided in section 222.57.

38. Order the commitment of a voluntary public patient to the state psychiatric hospital under the circumstances provided in section 225.16.

39. Refer persons applying for voluntary admission to a community mental health center for a preliminary diagnostic evaluation as provided in section 225C.16, subsection 2.

40. Reserved.

41. Carry out duties relating to the involuntary commitment of persons with mental impairments as provided in chapter 229.

42. Serve as clerk of the juvenile court and carry out duties as provided in chapter 232 and article 7 of this chapter.

43. Submit to the director of the division of child and family services of the department of human services a duplicate of the findings of the court related to adoptions as provided in section 235.3, subsection 7.

44. Forward to the superintendent of each correctional institution a copy of the sheriff's certification concerning the number of days that have been credited toward completion of an inmate's sentence as provided in section 903A.5.

45. Reserved.

46. Carry out duties relating to reprieves, pardons, commutations, remission of fines and forfeitures, and restoration of citizenship as provided in sections 914.5 and 914.6.

47. Record support payments made pursuant to an order entered under chapter 252A, 252F, 598, or 600B, or under a comparable statute of a foreign jurisdiction and through setoff of a state or federal income tax refund or rebate, as if the payments were received and disbursed by the clerk; forward support payments received under section 252A.6 to the department of human services and furnish copies of orders and decrees awarding support to parties receiving welfare assistance as provided in section 252A.13.

47A. Accept a check, share draft, draft, or written order on a bank, savings and loan association, credit union, corporation, or person as payment of a support obligation which is payable to the clerk, in accordance with procedures established by the clerk to assure that such negotiable instruments will not be dishonored. The friend of court may perform the clerk's responsibilities un-

der this subsection.

47B. Perform the duties relating to establishment and operation of a state case registry pursuant to section 252B.24.

47C. Perform duties relating to implementation and operation of requirements for the collection services center pursuant to section 252B.13A, subsection 2.

48. Carry out duties relating to the provision of medical care and treatment for indigent persons as provided in chapter 255.

49. Enter a judgment based on the transcript of an appeal to the state board of education against the party liable for payment of costs as provided in section 290.4.

50. Certify the final order of the district court upon appeal of an assessment within a secondary road assessment district to the auditor as provided in section 311.24.

50A. Assist the state department of transportation in suspending, pursuant to section 321.210A, the driver's licenses of persons who fail to timely pay criminal fines or penalties, surcharges, or court costs related to the violation of a law regulating the operation of a motor vehicle.

51. Forward to the state department of transportation a copy of the record of each conviction or forfeiture of bail of a person charged with the violation of the laws regulating the operation of vehicles on public roads as provided in sections 321J.2 and 321.491.

52. Reserved.

53. If a person fails to satisfy a judgment relating to motor vehicle financial responsibility within sixty days, forward to the director of the state department of transportation a certified copy of the judgment as provided in section 321A.12.

54. Approve a bond of a surety company or a bond with at least two individual sureties owning real estate in this state as proof of financial responsibility as provided in section 321A.24.

55. Carry out duties under the Iowa motor vehicle dealers licensing Act as provided in sections 322.10 and 322.24.

56. Carry out duties relating to the enforcement of motor fuel tax laws as provided in sections 452A.66 and 452A.67.

57. Carry out duties relating to the platting of land as provided in chapter 354.

58. Upon order of the director of revenue, issue a commission for the taking of depositions as provided in section 421.17, subsection 8.

58A. Assist the department of administrative services in setting off against debtors' income tax refunds or rebates under section 8A.504, debts which are due, owing, and payable to the clerk of the district court as criminal fines, civil penalties, surcharges, or court costs.

59. Reserved.

60. With acceptable sureties, approve the bond of a petitioner for a tax appeal as provided in section 422.29, subsection 2.

61. Certify the final decision of the district court in an appeal of the tax assessments as provided in section 441.39. Costs of the appeal to be assessed against the board of review or a taxing body shall be certified to the treasurer as provided in section 441.40.

62. Certify a final order of the district court relating to the apportionment of tax receipts to the auditor as provided in section 449.7.

63. Carry out duties relating to the inheritance tax as provided in chapter 450.

64. Deposit funds held by the clerk in an approved depository as provided in section 12C.1.

65. Carry out duties relating to appeals and certification of costs relating to levee and drainage districts as provided in sections 468.86 through 468.95.

66. Carry out duties relating to the condemnation of land as provided in chapter 6B.

67. Forward civil penalties collected for violations relating to the siting of electric power generators to the treasurer of state as provided in section 476A.14, subsection 1.

68. Certify a copy of a decree of dissolution of a business corporation to the secretary of state as provided in section 490.1433.

69. With acceptable sureties, approve the bond of a petitioner filing an appeal for review of an order of the commissioner of insurance as provided in section 502.606 or 507A.7.

70. Certify a copy of a decree of dissolution of a nonprofit corporation to the secretary of state and the recorder in the county in which the corporation is located as provided in section 504A.62.

71. Carry out duties relating to the enforcement of decrees and orders of reciprocal states under the Iowa unauthorized insurers Act as provided in section 507A.11.

72. Certify copies of a decree of involuntary dissolution of a state bank to the secretary of state and the recorder of the county in which the bank is located as provided in section 524.1311, subsection 4.

73. Certify copies of a decree dissolving a credit union as provided in section 533.21, subsection 4.

74. Refuse to accept the filing of papers to institute legal action under the Iowa consumer credit code, chapter 537, if proper venue is not adhered to as provided in section 537.5113.

75. Receive payment of money due to a person who is absent from the state if the address or location of the person is unknown as provided in section 538.5.

76. Carry out duties relating to the appointment of the department of agriculture and land stewardship as receiver for agricultural commodities on behalf of a warehouse operator whose license is suspended or revoked as provided in section 203C.3.

77. Reserved.

78. Certify an acknowledgment of a written in-

strument relating to real estate as provided in section 558.20.

79. Collect on behalf of, and pay to, the treasurer the fee for the transfer of real estate as provided in section 558.66.

80. With acceptable sureties, endorse a bond sufficient to settle a dispute between adjoining owners of a common wall as provided in section 563.11.

81. Carry out duties relating to cemeteries as provided in sections 566.4, 566.7, and 566.8.

82. Carry out duties relating to liens as provided in chapters 249A, 572, 574, 580, 582, and 584.

83. Reserved.

84. Carry out duties relating to the dissolution of a marriage as provided in chapter 598.

85. Carry out duties relating to the custody of children as provided in chapter 598B.

86. Carry out duties relating to adoptions as provided in chapter 600.

87. Enter upon the clerk's records actions taken by the court at a location which is not the county seat as provided in section 602.6106.

88. Maintain a record of the name, address, and term of office of each member of the county magistrate appointing commission as provided in section 602.6501.

89. Certify to the state court administrator the names and addresses of the magistrates appointed by the county magistrate appointing commission as provided in section 602.6403.

90. Furnish an individual or centralized docket for the magistrates of the county as provided in section 602.6604.

91. Serve as an ex officio jury commissioner and notify appointive commissioners of their appointment as provided in sections 607A.9 and 607A.13.

92. Carry out duties relating to the selection of jurors as provided in chapter 607A.

93. Carry out duties relating to the revocation or suspension of an attorney's authority to practice law as provided in article 10 of this chapter.

94. File and index petitions affecting real estate as provided in sections 617.10 through 617.15.

95. Designate the newspapers in which the notices pertaining to the clerk's office shall be published as provided in section 618.7.

96. With acceptable surety, approve a bond of the plaintiff in an action for the payment of costs which may be adjudged against the plaintiff as provided in section 621.1.

97. Issue subpoenas for witnesses as provided in section 622.63.

98. Carry out duties relating to trials and judgments as provided in sections 624.8 through 624.20 and 624.37.

99. Collect jury fees and court reporter fees as required by chapter 625.

100. Reserved.

101. Carry out duties relating to executions as provided in chapter 626.

102. Carry out duties relating to the redemption of property as provided in sections 628.13, 628.18, and 628.20.

103. Record statements of expenditures made by the holder of a sheriff's sale certificate in the encumbrance book and lien index as provided in section 629.3.

104. Carry out duties relating to small claim actions as provided in chapter 631.

105. Carry out duties of the clerk of the probate court as provided in chapter 633.

105A. Provide written notice to all duly appointed guardians and conservators of their liability as provided in sections 633.633A and 633.633B.

106. Carry out duties relating to the administration of small estates as provided in sections 635.1, 635.7, 635.9, and 635.11.

107. Carry out duties relating to the attachment of property as provided in chapter 639.

108. Carry out duties relating to garnishment as provided in chapter 642.

109. With acceptable surety, approve bonds of the plaintiff desiring immediate delivery of the property in an action of replevin as provided in sections 643.7 and 643.12.

110. Carry out duties relating to the disposition of lost property as provided in chapter 556F.

111. Carry out duties relating to the recovery of real property as provided in section 646.23.

112. Endorse the court's approval of a restored record as provided in section 647.3.

113. When a judgment of foreclosure is entered, file with the recorder an instrument acknowledging the foreclosure and the date of decree and upon payment of the judgment, file an instrument with the recorder acknowledging the satisfaction as provided in sections 655.4 and 655.5.

114. Carry out duties relating to the issuance of a writ of habeas corpus as provided in sections 663.9, 663.43, and 663.44.

115. Accept and docket an application for post-conviction review of a conviction as provided in section 822.3.

116. Report all fines, forfeited recognizances, penalties, and forfeitures as provided in section 602.8106, subsection 4, and section 666.6.

117. Issue a warrant for the seizure of a boat or raft as provided in section 667.2.

118. Carry out duties relating to the changing of a person's name as provided in chapter 674.

119. Notify the state registrar of vital statistics of a judgment determining the paternity of a child as provided in section 600B.36.

120. Enter a judgment made by confession and issue an execution of the judgment as provided in section 676.4.

121. With acceptable surety, approve the bond of a receiver as provided in section 680.3.

122. Carry out duties relating to the assign-

ment of property for the benefit of creditors as provided in chapter 681.

123. Carry out duties relating to the certification of surety companies and the investment of trust funds as provided in chapter 636.

124. Maintain a separate docket for petitions requesting that the record and evidence in a judicial review proceeding be closed as provided in section 692.5.

125. Furnish a disposition of each criminal complaint or information or juvenile delinquency petition, alleging a delinquent act which would be a serious or aggravated misdemeanor or felony if committed by an adult, filed in the district or juvenile court to the department of public safety as provided in section 692.15.

126. Carry out duties relating to the issuance of warrants to persons who fail to appear to answer citations as provided in section 805.5.

126A. Upon the failure of a person charged to appear in person or by counsel to defend against the offense charged pursuant to a uniform citation and complaint as provided in section 805.6, enter a conviction and render a judgment in the amount of the appearance bond in satisfaction of the penalty plus court costs.

127. Provide for a traffic and scheduled violations office for the district court and service the locked collection boxes at weigh stations as provided in section 805.7.

128. Issue a summons to corporations to answer an indictment as provided in section 807.5.

129. Carry out duties relating to the disposition of seized property as provided in chapter 809.

130. Docket undertakings of bail as liens on real estate and enter them upon the lien index as provided in section 811.4.

131. Hold the amount of forfeiture and judgment of bail in the clerk's office for sixty days as provided in section 811.6.

132. Carry out duties relating to appeals from the district court as provided in chapter 814.

133. Certify costs and fees payable by the state as provided in section 815.1.

134. Notify the director of the Iowa department of corrections of the commitment of a convicted person as provided in section 901.7.

135. Carry out duties relating to deferred judgments, probations, and restitution as provided in sections 907.4 and 907.8, and chapter 910.

135A. Assess the drug abuse resistance education surcharge as provided by section 911.2.

135B. Assess the law enforcement initiative surcharge as provided by section 911.3.

136. Carry out duties relating to the impaneling and proceedings of the grand jury as provided in rule of criminal procedure 2.3, Iowa court rules.

137. Issue subpoenas upon application of the prosecuting attorney and approval of the court as provided in rule of criminal procedure 2.5, Iowa court rules.

138. Issue summons or warrants to defen-

dants as provided in rule of criminal procedure 2.7, Iowa court rules.

139. Carry out duties relating to the change of venue as provided in rule of criminal procedure 2.11, Iowa court rules.

140. Issue blank subpoenas for witnesses at the request of the defendant as provided in rule of criminal procedure 2.15, Iowa court rules.

141. Carry out duties relating to the entry of judgment as provided in rule of criminal procedure 2.23, Iowa court rules.

142. Carry out duties relating to the execution of a judgment as provided in rule of criminal procedure 2.26, Iowa court rules.

143. Carry out duties relating to the trial of simple misdemeanors as provided in rules of criminal procedure 2.51 through 2.75, Iowa court rules.

144. Serve notice of an order of judgment entered as provided in rule of civil procedure 1.442, Iowa court rules.

145. If a party is ordered or permitted to plead further by the court, serve notice to attorneys of record as provided in rule of civil procedure 1.444, Iowa court rules.

146. Maintain a motion calendar as provided in rule of civil procedure 1.431, Iowa court rules.

147. Provide notice of a judgment, order, or decree as provided in rule of civil procedure 1.453, Iowa court rules.

148. Issue subpoenas as provided in rules of civil procedure 1.715 and 1.1701, Iowa court rules.

149. Tax the costs of taking a deposition as provided in rule of civil procedure 1.716, Iowa court rules.

150. With acceptable sureties, approve a bond filed for change of venue under rule of civil procedure 1.801, Iowa court rules.

151. Transfer the papers relating to a case transferred to another court as provided in rule of civil procedure 1.807, Iowa court rules.

152. Reserved.

153. Reserved.

154. Carry out duties relating to the impaneling of jurors as provided in rules of civil procedure 1.915 through 1.918, Iowa court rules.

155. Furnish a referee, auditor, or examiner with a copy of the order of appointment as provided in rule of civil procedure 1.935, Iowa court rules.

156. Mail notice of the filing of the referee's, auditor's, or examiner's report to the attorneys of record as provided in rule of civil procedure 1.942, Iowa court rules.

157. Carry out duties relating to the entry of judgments as provided in rules of civil procedure 1.955, 1.958, 1.960, 1.961, and 1.962, Iowa court rules.

158. Carry out duties relating to defaults and judgments on defaults as provided in rules of civil procedure 1.972, 1.973, and 1.974, Iowa court rules.

159. Notify the attorney of record if exhibits

used in a case are to be destroyed as provided in rule of civil procedure 1.1014, Iowa court rules.

160. Docket the request for a hearing on a sale of property as provided in rule of civil procedure 1.221, Iowa court rules.

161. With acceptable surety, approve the bond of a citizen commencing an action of quo warranto as provided in rule of civil procedure 1.1302, Iowa court rules.

162. Carry out duties relating to the issuance of a writ of certiorari as provided in rules of civil procedure 1.401 through 1.412, Iowa court rules.

163. Carry out duties relating to the issuance of an injunction as provided in rules of civil procedure 1.1501 through 1.1511, Iowa court rules.

164. Carry out other duties as provided by law.

2003 Acts, ch 44, §114; 2003 Acts, ch 82, §20; 2003 Acts, ch 145, §272, 286;  
2003 Acts, ch 151, §45, 46  
Terminology changes applied  
Code chapter reference added  
Subsections 9, 11, 58A, and 82 amended

#### **602.8105 Fees for civil cases and other services — collection and disposition.**

1. The clerk of the district court shall collect the following fees:

*a.* For filing and docketing a petition, other than a modification of a dissolution decree to which a written stipulation is attached at the time of filing containing the agreement of the parties to the terms of modification, one hundred dollars. In counties having a population of ninety-eight thousand or over, an additional five dollars shall be charged and collected to be known as the journal publication fee and used for the purposes provided for in section 618.13.

*b.* For filing and docketing an application for modification of a dissolution decree to which a written stipulation is attached at the time of filing containing the agreement of the parties to the terms of modification, fifty dollars.

*c.* For entering a final decree of dissolution of marriage, fifty dollars. It is the intent of the general assembly that the funds generated from the dissolution fees be appropriated and used for sexual assault and domestic violence centers.

*d.* For filing and docketing a small claims action, the amounts specified in section 631.6.

*e.* For an appeal from a judgment in small claims or for filing and docketing a writ of error, seventy-five dollars.

*f.* For a motion to show cause in a civil case, fifty dollars.

2. The clerk of the district court shall collect the following fees for miscellaneous services:

*a.* For filing, entering, and endorsing a mechanic's lien, twenty dollars, and if a suit is brought, the fee is taxable as other costs in the action.

*b.* For filing and entering an agricultural sup-

ply dealer's lien and any other statutory lien, twenty dollars.

*c.* For a certificate and seal, ten dollars. However, there shall be no charge for a certificate and seal to an application to procure a pension, bounty, or back pay for a member of the armed services or other person.

*d.* For certifying a change in title of real estate, twenty dollars.

*e.* Other fees provided by law.

3. The clerk of the district court shall pay to the treasurer of state all fees which have come into the clerk's possession and which are unclaimed pursuant to section 556.8 accompanied by a form prescribed by the treasurer. Claims for payment of the moneys must be filed pursuant to chapter 556.

2003 Acts, ch 44, §102  
Subsection 1, paragraph e amended

#### **602.8106 Collection of fees in criminal cases and disposition of fees and fines.**

1. The clerk of the district court shall collect the following fees:

*a.* Except as otherwise provided in paragraphs "b" and "c", for filing and docketing a criminal case to be paid by the county or city which has the duty to prosecute the criminal action, payable as provided in section 602.8109, thirty dollars. When judgment is rendered against the defendant, costs collected from the defendant shall be paid to the county or city which has the duty to prosecute the criminal action to the extent necessary for reimbursement for fees paid. However, the fees which are payable by the county to the clerk of the district court for services rendered in criminal actions prosecuted under state law and the court costs taxed in connection with the trial of those actions or appeals from the judgments in those actions are waived.

*b.* For filing and docketing of a complaint or information for a simple misdemeanor and a complaint or information for a nonscheduled simple misdemeanor under chapter 321, seventeen dollars.

*c.* For filing and docketing a complaint or information or uniform citation and complaint for parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, eight dollars, effective January 1, 2004. The court costs in cases of parking meter and overtime parking violations which are denied, and charged and collected pursuant to section 321.236, subsection 1, or pursuant to a uniform citation and complaint, are eight dollars per information or complaint or per uniform citation and complaint effective January 1, 1991.

*d.* The court costs in scheduled violation cases where a court appearance is required, seventeen dollars.

*e.* For court costs in scheduled violation cases where a court appearance is not required, seventeen dollars.

*f.* For an appeal of a simple misdemeanor to the district court, fifty dollars.

2. The clerk of the district court shall remit ninety percent of all fines and forfeited bail to the city that was the plaintiff in any action, and shall provide that city with a statement showing the total number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. The remaining ten percent shall be submitted to the state court administrator.

3. The clerk of the district court shall remit all fines and forfeited bail for violation of a county ordinance, except an ordinance relating to vehicle speed or weight restrictions, to the county treasurer of the county that was the plaintiff in the action, and shall provide that county with a statement showing the total number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. However, if a county ordinance provides a penalty for a violation which is also penalized under state law, the fines and forfeited bail collected for the violation shall be submitted to the state court administrator.

4. The clerk of the district court shall submit all other fines, fees, costs, and forfeited bail received from a magistrate to the state court administrator.

2003 Acts, ch 151, §47

Subsection 1, paragraphs b – e amended

**602.8107 Collection of fines, penalties, fees, court costs, surcharges, and restitution.**

1. Restitution as defined in section 910.1 and all other fines, penalties, fees, court costs, and surcharges owing and payable to the clerk shall be paid to the clerk of the district court. All amounts collected shall be distributed pursuant to sections 602.8106 and 602.8108 or as otherwise provided by this Code. The clerk may accept payment of an obligation or a portion thereof by credit card. Any fees charged to the clerk with respect to payment by credit card may be paid from receipts collected by credit card.

2. If the clerk receives payment from a person who is an inmate of a state institution or who is under the supervision of a judicial district department of correctional services, the payment shall be applied to the balance owed under the identified case number of the case which has resulted in the placement of the person in a state institution or under the supervision of the judicial district department of correctional services. If a case number is not identified, the clerk shall apply the payment to the balance owed in the criminal case with the oldest judgment against the person. Payments received under this section shall be applied in the following priority order:

*a.* Pecuniary damages as defined in section

910.1, subsection 3.

*b.* Fines or penalties and criminal penalty and law enforcement initiative surcharges.

*c.* Crime victim compensation program reimbursement.

*d.* Court costs, including correctional fees assessed pursuant to sections 356.7 and 904.108, court-appointed attorney fees, or public defender expenses.

3. A fine, penalty, court cost, fee, or surcharge is deemed delinquent if it is not paid within six months after the date it is assessed. An amount which was ordered by the court to be paid on a date fixed in the future pursuant to section 909.3 is deemed delinquent if it is not received by the clerk within six months after the fixed future date set out in the court order. If an amount was ordered to be paid by installments, and an installment is not received within thirty days after the date it is due, the entire amount of the judgment is deemed delinquent.

4. All fines, penalties, court costs, fees, surcharges, and restitution for court-appointed attorney fees or for expenses of a public defender which are delinquent may be collected by the county attorney or the county attorney's designee. Thirty-five percent of the amounts collected by the county attorney or the person procured or designated by the county attorney shall be deposited in the general fund of the county if the county attorney has filed the notice required in section 331.756, subsection 5, unless the county attorney has discontinued collection efforts on a particular delinquent amount. The remainder shall be paid to the clerk for distribution under section 602.8108.

This subsection does not apply to amounts collected for victim restitution, the victim compensation fund, criminal penalty surcharge, law enforcement initiative surcharge, amounts collected as a result of procedures initiated under subsection 5 or under section 8A.504, or sheriff's room and board fees.

The county attorney shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of the moneys collected in satisfaction of the obligation. The clerk of the district court shall record the notice and enter a satisfaction for the amounts collected.

5. If a county attorney does not file the notice and list of cases required in section 331.756, subsection 5, the judicial branch may assign cases to the centralized collection unit of the department of revenue or its designee to collect debts owed to the clerk of the district court.

The department of revenue may impose a fee established by rule to reflect the cost of processing which shall be added to the debt owed to the clerk of the district court. Any amounts collected by the unit will first be applied to the processing fee. The remaining amounts shall be remitted to the clerk of the district court for the county in which the debt is owed. The judicial branch may prescribe

rules to implement this section. These rules may provide for remittance of processing fees to the department of revenue or its designee.

Satisfaction of the outstanding obligation occurs only when all fees or charges and the outstanding obligation are paid in full. Payment of the outstanding obligation only shall not be considered payment in full for satisfaction purposes.

The department of revenue or its collection designee shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of the moneys collected in satisfaction of the obligation. The clerk of the district court shall record the notice and enter a satisfaction for the amounts collected.

2003 Acts, ch 145, §273, 286  
Terminology change applied  
Subsection 4, unnumbered paragraph 2 amended

#### **602.8108 Distribution of court revenue.**

1. The clerk of the district court shall establish an account and deposit in this account all revenue and other receipts. Not later than the fifteenth day of each month, the clerk shall distribute all revenues received during the preceding calendar month. Each distribution shall be accompanied by a statement disclosing the total amount of revenue received during the accounting period and any adjustments of gross revenue figures that are necessary to reflect changes in the balance of the account, including but not limited to reductions resulting from the dishonor of checks previously accepted by the clerk.

2. Except as otherwise provided, the clerk of the district court shall report and submit to the state court administrator, not later than the fifteenth day of each month, the fines and fees received during the preceding calendar month. Except as provided in subsections 4 and 5, the state court administrator shall deposit the amounts received with the treasurer of state for deposit in the general fund of the state. The state court administrator shall report to the legislative services agency within thirty days of the beginning of each fiscal quarter the amount received during the previous quarter in the account established under this section.

3. When a court assesses a criminal surcharge under section 911.2, the amounts collected shall be distributed as follows:

*a.* The clerk of the district court shall submit to the state court administrator, not later than the fifteenth day of each month, ninety-five percent of the surcharge collected during the preceding calendar month. The clerk shall remit the remainder to the county treasurer of the county that was the plaintiff in the action or to the city that was the plaintiff in the action.

*b.* Of the amount received from the clerk, the state court administrator shall allocate eighteen percent to be deposited in the fund established in section 915.94 and eighty-two percent to be depos-

ited in the general fund.

*c.* Notwithstanding provisions of this subsection to the contrary, all moneys collected from the drug abuse resistance education surcharge provided in section 911.2 shall be remitted to the treasurer of state for deposit in the general fund of the state and the amount deposited is appropriated to the governor's office of drug control policy for use by the drug abuse resistance education program and other programs directed for a similar purpose.

4. When a court assesses the law enforcement initiative surcharge under section 911.3, the clerk of court shall remit to the treasurer of the state, no later than the fifteenth day of each month, all the moneys collected during the preceding month, for deposit in the general fund of the state.

5. A court technology and modernization fund is established as a separate fund in the state treasury. The state court administrator shall allocate one million dollars of the moneys received under subsection 2 to be deposited in the fund, which shall be administered by the supreme court and shall be used to enhance the ability of the judicial branch to process cases more quickly and efficiently, to electronically transmit information to state government, local governments, law enforcement agencies, and the public, and to improve public access to the court system.

6. The state court administrator shall allocate all of the fines and fees attributable to commercial vehicle violation citations issued by motor vehicle division personnel of the state department of transportation to the treasurer of state for deposit in the road use tax fund.

2003 Acts, ch 35, §45, 49  
Terminology change applied

#### **602.9104 Deductions from judges' salaries — contributions by state.**

1. A judge to whom this article applies shall be paid an amount equal to ninety-five percent of the basic salary of the judge as set by the general assembly. An amount equal to five percent of the basic salary of the judge as set by the general assembly is designated as the judge's contribution to the judicial retirement fund, and shall be paid by the state in the manner provided in subsection 2.

2. The amount designated in subsection 1 as the judge's contribution to the judicial retirement fund shall be paid by the department of administrative services from the general fund of the state to the court administrator for deposit with the treasurer of state to the credit of the judicial retirement fund. Moneys in the fund are appropriated for the payment of annuities, refunds, and allowances provided by this article, except that the amount of the appropriations affecting payment of annuities, refunds, and allowances to judges of the municipal and superior court is limited to that part of the fund accumulated for their benefit as provided in this article. The corpus and income of the fund shall be used only for the exclu-

sive benefit of the judges covered under this article, their survivors, or an alternate payee who is assigned benefits pursuant to a domestic relations order.

3. A judge covered under this article is deemed to consent to the reduction in basic salary as provided in subsection 1.

4. *a.* As used in this subsection, unless the context otherwise requires:

(1) “*Actuarial valuation*” means an actuarial valuation of the judicial retirement system or an annual actuarial update of an actuarial valuation, as required pursuant to section 602.9116.

(2) “*Fully funded status*” means that the most recent actuarial valuation reflects that, using the projected unit credit method in accordance with generally recognized and accepted actuarial principles and practices set forth by the American academy of actuaries, the funded status of the system is at least one hundred percent.

(3) “*Required contribution rate*” means that percentage of the basic salary of all judges covered under this article which, in addition to the judge’s contribution established in subsection 1, the actuary of the system determines is necessary to maintain fully funded status.

*b.* Effective with the fiscal year commencing July 1, 1994, and for each subsequent fiscal year until the system attains fully funded status, based upon the benefits provided for judges through the judicial retirement system as of July 1, 2001, the state shall contribute annually to the judicial retirement fund an amount equal to at least twenty-three and seven-tenths percent of the basic salary of all judges covered under this article. Commencing with the first fiscal year in which the system attains fully funded status, based upon the benefits provided for judges through the judicial retirement system as of July 1, 2001, and for each subsequent fiscal year, the state shall contribute to the judicial retirement fund the required contribution rate. The state’s contribution shall be appropriated directly to the judicial retirement fund.

2003 Acts, ch 145, §286

Legislative intent regarding contribution rates when system attains fully funded status; notification, study, and report regarding adequate financing of system when fully funded status achieved; 2000 Acts, ch 1077, §117  
Terminology change applied

#### **602.9109 Payment of annuities.**

Annuities granted under the terms of this article are due and payable in monthly installments on the last business day of each month following the month or other period for which the annuity has accrued and shall continue during the life of the annuitant; and payment of all annuities, refunds, and allowances granted under this article shall be made by checks or warrants drawn and issued by the director of the department of administrative services. Applications for annuities shall be in such form as the director of the department

of administrative services may prescribe.

2003 Acts, ch 145, §286

Terminology change applied

#### **602.1115 District associate judges’ retirement.**

If a full-time judicial magistrate who became a district associate judge on January 1, 1981, pursuant to statute or a person who was appointed a district associate judge between January 1, 1981, and June 30, 1984, is a member of the Iowa public employees’ retirement system on June 30, 1984, the district associate judge may elect, by informing the state court administrator by June 30, 1984, one of the following retirement benefit options to be effective July 1, 1984:

1. To remain covered under the Iowa public employees’ retirement system pursuant to chapter 97B.

2. To commence coverage under the judicial retirement system pursuant to article 9, part 1, effective July 1, 1984, but to become an inactive member of the Iowa public employees’ retirement system pursuant to chapter 97B and remain eligible for benefits under sections 97B.49A through 97B.49H for the period of membership service under chapter 97B.

3. To commence coverage under the judicial retirement system pursuant to article 9, part 1, retroactive to the date the district associate judge became a district associate judge or a full-time judicial magistrate, whichever was earlier, and to cease to be a member of the Iowa public employees’ retirement system, effective July 1, 1984. The department of administrative services\* shall transmit by January 1, 1985, to the state court administrator for deposit in the judicial retirement fund the district associate judge’s accumulated contributions as defined in section 97B.1A, subsection 2 for the judge’s period of membership service as a district associate judge or full-time judicial magistrate, or both. Before July 1, 1986, or at retirement previous to that date, a district associate judge who becomes a member of the judicial retirement system pursuant to this subsection shall contribute to the judicial retirement fund an amount equal to the difference between four percent of the district associate judge’s total basic salary for the entire period of service before July 1, 1984, as a district associate judge or judicial magistrate, or both, and the district associate judge’s accumulated contributions transmitted by the department of administrative services\* to the state court administrator pursuant to this subsection. The district associate judge’s contribution shall not be limited to the amount specified in section 602.9104, subsection 1. The state court administrator shall credit a district associate judge with service under the judicial retirement system for the period of service for which contributions at

the four percent level are made.

2003 Acts, ch 145, §286

\*The department of administrative services became the successor agency to the department of personnel effective July 1, 2003

Terminology change applied

#### **602.11116 Associate juvenile judges and associate probate judges — retirement.**

If a full-time associate juvenile judge or full-time associate probate judge is a member of the Iowa public employees' retirement system on June 30, 1998, the associate juvenile judge or associate probate judge shall elect, by informing the state court administrator by June 30, 1998, one of the following retirement benefit options to be effective July 1, 1998:

1. To remain a member under the Iowa public employees' retirement system pursuant to chapter 97B.

2. To commence membership under the judicial retirement system pursuant to article 9, part 1, effective July 1, 1998, but to become an inactive member of the Iowa public employees' retirement system pursuant to chapter 97B and remain eligible for benefits under sections 97B.49A through 97B.49H, as applicable, for the period of membership service under chapter 97B.

3. To commence membership under the judicial retirement system pursuant to article 9, part 1, retroactive to the date the associate juvenile judge or associate probate judge became an associate juvenile judge or associate probate judge, and to cease to be a member of the Iowa public employees' retirement system, effective July 1, 1998.

The department of administrative services\* shall transmit by January 1, 1999, to the state court administrator for deposit in the judicial retirement fund the associate juvenile judge's or associate probate judge's accumulated contributions as defined in section 97B.1A, subsection 2, for the judge's period of membership service as an associate juvenile judge or associate probate judge. Before July 1, 2000, or at retirement previous to that date, an associate juvenile judge or associate probate judge who becomes a member of the judicial retirement system pursuant to this subsection shall contribute to the judicial retirement fund an amount equal to the difference between four percent of the associate juvenile judge's or associate probate judge's total salary received for the entire period of service before July 1, 1998, as an associate juvenile judge or associate probate judge, and the associate juvenile judge's or associate probate judge's accumulated contributions transmitted by the department of administrative services\* to the state court administrator pursuant to this subsection. The associate juvenile judge's or associate probate judge's contribution shall not be limited to the amount specified in section 602.9104, subsection 1. The state court administrator shall credit an associate juvenile judge or associate probate judge with service under the judicial retirement system for the period of service for which contributions at the four percent level are made.

2003 Acts, ch 145, §286

\*The department of administrative services became the successor agency to the department of personnel effective July 1, 2003

Terminology change applied

## CHAPTER 607A

### JURIES

#### **607A.9 Ex officio commissions.**

In counties utilizing a jury commission for the drawing of jurors, the clerk of the district court and the county auditor shall ex officio constitute the jury commission but shall receive no extra compensation for acting as jury commissioners. If

any of the above offices have been consolidated, the chief judge of the judicial district shall select another elected county officer to serve as a jury commissioner.

2003 Acts, ch 5, §4

Section amended

## CHAPTER 614

### LIMITATIONS OF ACTIONS

#### **614.1 Period.**

Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

1. *Penalties or forfeitures under ordinance.* Those to enforce the payment of a penalty or forfei-

ture under an ordinance, within one year.

2. *Injuries to person or reputation — relative rights — statute penalty.* Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years.

2A. *With respect to products.*

*a.* Those founded on the death of a person or injuries to the person or property brought against the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of a product based upon an alleged defect in the design, inspection, testing, manufacturing, formulation, marketing, packaging, warning, labeling of the product, or any other alleged defect or failure of whatever nature or kind, based on the theories of strict liability in tort, negligence, or breach of an implied warranty shall not be commenced more than fifteen years after the product was first purchased, leased, bailed, or installed for use or consumption unless expressly warranted for a longer period of time by the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product. This subsection shall not affect the time during which a person found liable may seek and obtain contribution or indemnity from another person whose actual fault caused a product to be defective. This subsection shall not apply if the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product intentionally misrepresents facts about the product or fraudulently conceals information about the product and that conduct was a substantial cause of the claimant's harm.

*b.* (1) The fifteen-year limitation in paragraph "a" shall not apply to the time period in which to discover a disease that is latent and caused by exposure to a harmful material, in which event the cause of action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause. This subsection shall not apply to cases governed by subsection 11 of this section.

(2) As used in this paragraph, "harmful material" means silicone gel breast implants, which were implanted prior to July 12, 1992; and chemical substances commonly known as asbestos, dioxins, tobacco, or polychlorinated biphenyls, whether alone or as part of any product; or any substance which is determined to present an unreasonable risk of injury to health or the environment by the United States environmental protection agency pursuant to the federal Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., or by this state, if that risk is regulated by the United States environmental protection agency or this state.

3. *Against sheriff or other public officer.* Those against a sheriff or other public officer for the nonpayment of money collected on execution within three years of collection.

4. *Unwritten contracts — injuries to property — fraud — other actions.* Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years, except

as provided by subsections 8 and 10.

5. *Written contracts — judgments of courts not of record — recovery of real property.* Those founded on written contracts, or on judgments of any courts except those provided for in the next subsection, and those brought for the recovery of real property, within ten years.

6. *Judgments of courts of record.* Those founded on a judgment of a court of record, whether of this or of any other of the United States, or of the federal courts of the United States, within twenty years, except that a time period limitation shall not apply to an action to recover a judgment for child support, spousal support, or a judgment of distribution of marital assets.

7. *Judgment quieting title.* No action shall be brought to set aside a judgment or decree quieting title to real estate unless the same shall be commenced within ten years from and after the rendition thereof.

8. *Wages.* Those founded on claims for wages or for a liability or penalty for failure to pay wages, within two years.

9. *Malpractice.*

*a.* Except as provided in paragraph "b", those founded on injuries to the person or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, physician assistant, or nurse, licensed under chapter 147, or a hospital licensed under chapter 135B, arising out of patient care, within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first, but in no event shall any action be brought more than six years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death unless a foreign object unintentionally left in the body caused the injury or death.

*b.* An action subject to paragraph "a" and brought on behalf of a minor who was under the age of eight years when the act, omission, or occurrence alleged in the action occurred shall be commenced no later than the minor's tenth birthday or as provided in paragraph "a", whichever is later.

10. *Secured interest in farm products.* Those founded on a secured interest in farm products, within two years from the date of sale of the farm products against the secured interest of the creditor.

11. *Improvements to real property.* In addition to limitations contained elsewhere in this section, an action arising out of the unsafe or defective condition of an improvement to real property based on tort and implied warranty and for contribution and indemnity, and founded on injury to property, real or personal, or injury to the person or wrongful death, shall not be brought more than

fifteen years after the date on which occurred the act or omission of the defendant alleged in the action to have been the cause of the injury or death. However, this subsection does not bar an action against a person solely in the person's capacity as an owner, occupant, or operator of an improvement to real property.

12. *Sexual abuse or sexual exploitation by a counselor, therapist, or school employee.* An action for damages for injury suffered as a result of sexual abuse, as defined in section 709.1, by a counselor, therapist, or school employee, as defined in section 709.15, or as a result of sexual exploitation by a counselor, therapist, or school em-

ployee shall be brought within five years of the date the victim was last treated by the counselor or therapist, or within five years of the date the victim was last enrolled in or attended the school.

13. *Public bonds or obligations.* Those founded on the cancellation, transfer, redemption, or replacement of public bonds or obligations by an issuer, trustee, transfer agent, registrar, depository, paying agent, or other agent of the public bonds or obligations, within eleven years of the cancellation, transfer, redemption, or replacement of the public bonds or obligations.

2003 Acts, ch 180, §62  
Subsection 12 amended

## CHAPTER 616

### PLACE OF BRINGING ACTIONS

#### 616.10 Insurance companies.

Insurance companies may be sued in any county in which their principal place of business is kept, or in which the contract of insurance was made, or in which the loss insured against occurred, or, in case of insurance against death or disability, in the county of the domicile of the insured at the time the loss occurred, or in the county of plaintiff's res-

idence. As used in this section the term "*insurance companies*" includes nonprofit hospital service corporations and nonprofit medical service corporations which have incorporated under the provisions of chapter 504, Code 1989, or chapter 504A.

2003 Acts, ch 108, §105  
Section amended

## CHAPTER 618

### PUBLICATION AND POSTING OF NOTICES

#### 618.3 Requirements for newspaper for official publication.

For the purpose of establishing and giving assured circulation to all notices and reports of proceedings required by statute to be published within the state, if newspapers are required to be used, only a newspaper which meets all of the following requirements shall be designated for official publication purposes:

1. Is a newspaper of general circulation that has been published at least once a week for at least fifty weeks per year within the area and regularly mailed through the post office of entry for at least two years.

2. Has a list of subscribers who have paid, or promised to pay, at more than a nominal rate, for copies to be received during a stated period.

3. Devotes at least twenty-five percent of its total column space in more than one-half of its issues during any twelve-month period to information of a public character other than advertising.

4. Is paid for by at least fifty percent of the persons or subscribers to whom it is distributed.

2003 Acts, ch 76, §1  
Subsection 1 amended

#### 618.5 Permissible selection.

Publications may be made in a newspaper published at least once a week.

2003 Acts, ch 108, §106  
Section amended

#### 618.9 Days of publication.

When the publication is in a newspaper which is published more than once a week, the succeeding publications of such notice shall be on the same day of the week as the first publication. This section shall not apply to any notice for the publication of which provision inconsistent herewith is specially made.

2003 Acts, ch 108, §107  
Section amended

#### 618.11 Fees for publication.

The compensation, when not otherwise fixed, for the publication in a newspaper of any notice, order, citation, or other publication required or allowed by law shall be at a rate of thirty-four cents for one insertion and twenty-three cents for each subsequent insertion for each line of eight point type two inches in length, or its equivalent. Begin-

ning June 1, 2001, and each June 1 thereafter, the director of the department of administrative services shall calculate a new rate for the following fiscal year as prescribed in this section, and shall publish this rate as a notice in the Iowa administrative bulletin prior to the first day of the following calendar month. The new rate shall be effective on the first day of the calendar month following its publication. The rate shall be calculated by applying the percentage change in the consumer price index for all urban consumers for the last

available twelve-month period published in the federal register by the federal department of labor, bureau of labor statistics, to the existing rate as an increase or decrease in the rate rounded to the nearest one-tenth of a cent. The calculation and publication of the rate by the director of the department of administrative services shall be exempt from the provisions of chapters 17A and 25B.

2003 Acts, ch 145, §274  
Section amended

## CHAPTER 622

### EVIDENCE

#### **622.10A Tax advice — confidential communications.**

1. With respect to communications involving tax advice between a taxpayer and a federally authorized tax practitioner, the same protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to that communication to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

2. The confidentiality privilege under this section applies to either of the following:

*a.* A noncriminal tax matter before the Iowa department of revenue.

*b.* A noncriminal tax proceeding in federal or state court brought by or against the state of Iowa.

3. As used in this section:

*a.* “*Federally authorized tax practitioner*”

means an individual who is authorized under federal law to practice before the Internal Revenue Service if such practice is subject to federal regulation under 31 U.S.C. § 330.

*b.* “*Tax advice*” means advice given by an individual with respect to a matter which is within the scope of the individual’s authority to practice described in paragraph “*a*”.

4. The confidentiality privilege under this section shall not apply to a written communication between a federally authorized tax practitioner and a director, shareholder, officer, employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of that corporation in a tax shelter as defined in section 6662(d)(2)(C)(iii) of the Internal Revenue Code.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 624

### TRIAL AND JUDGMENT

#### **624.20 Satisfaction of judgment.**

Where a judgment is set aside or satisfied by execution or otherwise, the clerk shall at once enter a memorandum thereof on the column left for that purpose in the judgment docket. However, the

clerk may enter satisfaction of judgment if the amount of the judgment that is unsatisfied is three dollars or less.

2003 Acts, ch 151, §48  
Section amended

## CHAPTER 625

### COSTS

#### **625.29 Fees — expenses.**

1. Unless otherwise provided by law, and if the prevailing party meets the eligibility requirements of subsection 2, the court in a civil action brought by the state or an action for judicial review brought against the state pursuant to chap-

ter 17A other than for a rulemaking decision, shall award fees and other expenses to the prevailing party unless the prevailing party is the state. However, the court shall not make an award under this section if it finds one of the following:

*a.* The position of the state was supported by

substantial evidence.

b. The state's role in the case was primarily adjudicative.

c. Special circumstances exist which would make the award unjust.

d. The action arose from a proceeding in which the role of the state was to determine the eligibility or entitlement of an individual to a monetary benefit or its equivalent or to adjudicate a dispute or issue between private parties or to establish or fix a rate.

e. The proceeding was brought by the state pursuant to Title XVI.\*

f. The proceeding involved eminent domain, foreclosure, collection of judgment debts, or was a proceeding in which the state was a nominal party.

g. The proceeding involved the department of administrative services under chapter 8A, subchapter IV.

h. The proceeding is a tort claim.

2. To be eligible for an award of fees and other expenses under this section, the prevailing party shall be one of the following:

a. A natural person.

b. A sole proprietorship, partnership, corporation, association, or public or private organization, any of which meets the following criteria:

(1) Its average daily employment was twenty persons or less for the twelve months preceding the filing of the action.

(2) Its gross receipts for the twelve-month period preceding the filing of the action were one million dollars or less, or its average gross receipts for the three twelve-month periods preceding the filing of the action were two million dollars or less.

3. A party seeking an award for fees and other expenses under this section must file a claim for relief as a part of the civil action or as a part of the action for judicial review brought against the state pursuant to chapter 17A. If the amount sought includes an attorney's fees or fees for an expert, the application shall include an itemized statement for these fees indicating the actual time expended in representing the party and the rate at which the fees were computed. The party seeking relief must establish that the state's case was not supported

by substantial evidence.

4. The court, in its discretion, may reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party, during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

5. An award pursuant to this section shall not personally obligate any officer or employee of this state for payment.

6. Fees and other expenses awarded under this section may be ordered in addition to any compensation awarded in a judgment. When awarding fees and other expenses against the state under this section, the court shall order the auditor of state to issue a warrant drawn on the state general fund for the amount of the award. The treasurer of state shall pay the warrant. However, if the court finds that an agency of state government, against which fees and other expenses are awarded for an action for judicial review of an agency proceeding under chapter 17A, has acted in bad faith in initiating an action deemed frivolous or without merit, then the agency shall make the payment ordered from the moneys appropriated to that agency.

7. Each agency that pays fees or other expenses for an action for judicial review of an agency proceeding under chapter 17A shall report annually to the chairs and ranking members of the appropriate appropriations subcommittees of the general assembly the amount of fees or other expenses paid during the preceding fiscal year by that agency. In its report the agency shall describe the number, nature, and amount of the awards, the claims involved in the action, and other relevant information which might aid the general assembly in evaluating the scope and impact of these awards.

2003 Acts, ch 145, §275

\*This provision does not include chapters 709A, 718A, 822, 904, 913, and 914, which were moved into Title XVI by the Code editor. Chapters 709A, 718A, 822, 904, 913, and 914 contain the applicable provisions pertaining to those chapters.

Subsection 1, paragraph g amended

## CHAPTER 625A

### APPELLATE COURT PROCEDURE

#### **625A.9 Execution on unstayed part of judgment — supersedeas bond waived.**

1. The taking of the appeal from part of a judgment or order, and the filing of a bond, does not stay execution as to that part of the judgment or order not appealed from.

2. If the judgment or order appealed from is for money, such bond shall not exceed one hundred ten percent of the amount of the money judgment.

3. Upon motion and for good cause shown, the district court may stay all proceedings under the order or judgment being appealed and permit the state or any of its political subdivisions to appeal a judgment or order to the supreme court without the filing of a supersedeas bond.

2003 Acts, 1st Ex, ch 1, §115, 133  
Section amended

## CHAPTER 626

### EXECUTION

#### **626.29 Distress warrant by director of revenue, director of inspections and appeals, or director of workforce development.**

In the service of a distress warrant issued by the director of revenue for the collection of taxes administered by or debts to be collected by the department of revenue, in the service of a distress warrant issued by the director of inspections and appeals for the collection of overpayment debts owed to the department of human services, or in the service of a distress warrant issued by the director of the department of workforce development for the collection of employment security contributions, the property of the taxpayer or the employer in the possession of another, or debts due the taxpayer or the employer, may be reached by garnishment.

2003 Acts, ch 145, §286  
Terminology change applied

#### **626.30 Expiration or return of distress warrant.**

Proceedings by garnishment under a distress warrant issued by the Iowa director of revenue or the director of inspections and appeals shall not be

affected by its expiration or its return.

2003 Acts, ch 145, §286  
Terminology change applied

#### **626.31 Return of garnishment — action docketed — distress action.**

Where parties have been garnished under a distress warrant issued by the director of revenue or the director of inspections and appeals, the officer shall make return thereof to the court in the county where the garnishee lives, if the garnishee lives in Iowa, otherwise in the county where the taxpayer resides, if the taxpayer lives in Iowa; and if neither the garnishee nor the taxpayer lives in Iowa, then to the district court in Polk county, Iowa; the officer shall make return in the same manner as a return is made on a garnishment made under a writ of execution so far as they relate to garnishments, and the clerk of the district court shall docket an action thereon without fee the same as if a judgment had been recovered against the taxpayer in the county where the return is made, an execution issued thereon, and garnishment made thereunder, and thereafter the proceedings shall conform to proceedings in garnishment under attachments as nearly as may be.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 631

### SMALL CLAIMS

#### **631.1 Small claims.**

1. The following actions or claims are small claims and shall be commenced, heard and determined as provided in this chapter:

A civil action for a money judgment where the amount in controversy is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002, exclusive of interest and costs.

2. The district court sitting in small claims shall have concurrent jurisdiction of an action for forcible entry and detainer which is based on those grounds set forth in section 648.1, subsections 1, 2, 3 and 5. When commenced under this chapter, the action shall be a small claim for the purposes of this chapter.

3. The district court sitting in small claims has concurrent jurisdiction of an action of replevin if the value of the property claimed is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for ac-

tions commenced on or after July 1, 2002. When commenced under this chapter, the action is a small claim for the purposes of this chapter.

4. The district court sitting in small claims has concurrent jurisdiction of motions and orders relating to executions against personal property, including garnishments, where the value of the property or garnisheed money involved is four thousand dollars or less for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002.

5. The district court sitting in small claims has concurrent jurisdiction of an action for abandonment of a manufactured or mobile home or personal property pursuant to section 555B.3, if no money judgment in excess of four thousand dollars is sought for actions commenced before July 1, 2002, and five thousand dollars or less for actions commenced on or after July 1, 2002. If commenced under this chapter, the action is a small claim for the purposes of this chapter.

6. The district court sitting in small claims has

concurrent jurisdiction of an action to challenge a mechanic's lien pursuant to sections 572.24 and 572.32.

7. The district court sitting in small claims has concurrent jurisdiction of an action for the collection of taxes brought by a county treasurer pursuant to sections 445.3 and 445.4 where the amount in controversy is five thousand dollars or less for actions commenced on or after July 1, 2003, exclusive of interest and costs.

2003 Acts, ch 178, §20  
Jurisdictional amount to revert to \$4,000 if a proper court declares the \$5,000 amount unconstitutional; 2002 Acts, ch 1087, §3

Jurisdictional amount to revert to \$2,000 if a proper court declares the previous \$3,000 or \$4,000 jurisdictional amounts unconstitutional; 94 Acts, ch 1117, §2; 95 Acts, ch 49, §28  
NEW subsection 7

### 631.5 Appearance — default.

This section applies to all small claims except actions for forcible entry or detention of real property and actions for abandonment of mobile homes or personal property pursuant to chapter 555B.

1. *Appearance.* A defendant may appear in person or by attorney, and by the denial of a claim a defendant does not waive any defenses.

2. *Hearing set.* If all defendants either have entered a timely appearance or have defaulted, the clerk shall assign a contested claim to the small claims calendar for hearing at a place and time certain. The time of hearing shall be not less than five days nor more than twenty days after the latest timely appearance, unless otherwise ordered by the court. The clerk shall transmit the original notice and all other papers relating to the case to the judicial officer to whom the case is assigned, and copies of all papers so transmitted shall be retained in the clerk's office.

3. *Partial service.* If the plaintiff has joined more than one defendant, and less than all defendants are served with notice as determined by subsection 4, the plaintiff may elect to proceed against all defendants served or may elect to have a continuance, issuable by the clerk, to a date certain

not more than sixty days thereafter. If the plaintiff elects to proceed, the action shall be dismissed without prejudice as against each defendant not served with notice.

4. *Return of service.* Proper notice shall be established by a signed return receipt or a return of service as provided in rule of civil procedure 1.308.

5. *Notification to parties.* When a small claim is set for hearing the clerk immediately shall notify by ordinary mail each party or the attorney representing the party, and the judicial officer to whom the action is assigned, of the date, time and place of hearing.

6. *Default.* If a defendant fails to appear and the clerk in accordance with subsection 4 determines that proper notice has been given, judgment shall be rendered against the defendant by the clerk if the relief is readily ascertainable. If the relief is not readily ascertainable the claim shall be assigned to a judicial magistrate for determination.

2003 Acts, ch 151, §49  
Subsection 6 amended

### 631.6 Fees and costs.

1. The clerk of the district court shall collect the following fees and costs in small claims actions, which shall be paid in advance and assessed as costs in the action:

a. Fees for filing and docketing shall be fifty dollars.

b. Fees for service of notice on nonresidents are as provided in section 617.3.

c. Postage charged for the mailing of original notice shall be eight dollars.

d. Fees for personal service by peace officers or other officials of the state are the amounts specified by law.

2. The amounts collected for filing and docketing shall be distributed as provided in section 602.8108.

2003 Acts, ch 151, §50  
Subsection 1, paragraph c amended

## CHAPTER 633

### PROBATE CODE

**633.15 Probate court always open.** Repealed by 2003 Acts, ch 151, § 62.

### 633.20B Appointment and resignation of full-time associate probate judges.

1. Full-time associate probate judges shall be appointed by the district judges of the judicial election district from persons nominated by the county magistrate appointing commission. In the case of a full-time associate probate judge to be appointed to more than one county, the appointment shall be

from persons nominated by the county magistrate appointing commissions acting jointly and in the case of a full-time associate probate judge to be appointed to more than one judicial election district of the same judicial district, the appointment shall be by a majority of the district judges in each judicial election district.

2. In November of any year in which an impending vacancy is created because a full-time associate probate judge is not retained in office pursuant to a judicial election, the county magistrate

appointing commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate probate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district not later than December 15 of that year the names of three applicants who are nominated by the commission for the vacancy, unless the chief justice has ordered the commission to delay the certification of the nominees to the chief judge. The chief justice may order the delay of the certification for up to one hundred eighty days for budgetary reasons. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered.

3. Within thirty days after a county magistrate appointing commission receives notification of an actual or impending vacancy in the office of full-time associate probate judge, other than a vacancy referred to in subsection 2, the commission shall certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy, unless the chief justice has ordered the commission to delay the certification of the nominees to the chief judge. The chief justice may order the delay of the certification for up to one hundred eighty days for budgetary reasons. The commission shall publicize notice of the vacancy in at least two publications in the official county newspaper. The commission shall accept applications for consideration for nomination as full-time associate probate judge for a minimum of fifteen days prior to certifying nominations. The commission shall consider the applications and shall, by majority vote, certify to the chief judge of the judicial district the names of three applicants who are nominated by the commission for the vacancy. If there are three or fewer applicants, the commission shall certify all applicants who meet the statutory qualifications. Nominees shall be chosen solely on the basis of the qualifications of the applicants, and political affiliation shall not be considered. As used in this subsection, a vacancy is created by the death, retirement, resignation, or removal of a full-time associate probate judge, or by an increase in the number of positions authorized.

4. Within fifteen days after the chief judge of a judicial district has received the list of nominees to fill a vacancy in the office of full-time associate probate judge, the district judges in the judicial election district shall, by majority vote, appoint one of those nominees to fill the vacancy.

5. A full-time associate probate judge who

seeks to resign from the office of full-time associate probate judge shall notify in writing the chief judge of the judicial district as to the full-time associate probate judge's intention to resign and the effective date of the resignation. The chief judge of the judicial district, upon receipt of the notice, shall notify the county magistrate appointing commission and the state court administrator of the actual or impending vacancy in the office of full-time associate probate judge due to resignation.

6. The supreme court may prescribe rules of procedure to be used by county magistrate appointing commissions when exercising the duties specified in this section.

2003 Acts, ch 151, §51  
For future repeal of 2003 amendments to subsections 2 and 3 effective July 1, 2006, see 2003 Acts, ch 151, §64  
Subsections 2 and 3 amended

#### **633.47 Proof of service and payment of costs.**

Proof of service of any notice, required by this Code or by order of court, including those by publication, shall be filed with the clerk. The costs of serving any notice given by the fiduciary shall be paid directly by the estate.

2003 Acts, ch 151, §52  
Section amended

#### **633.63 Qualification of fiduciary — resident.**

1. Any natural person of full age, who is a resident of this state, is qualified to serve as a fiduciary, except the following:

a. One who is under legal incompetency or is a chronic alcoholic or a spendthrift.

b. Any other person whom the court determines to be unsuitable.

2. Banks and trust companies organized under the laws of the United States or state banks, when approved by the superintendent of banking under section 524.1001, and trust companies authorized to engage in trust business pursuant to section 524.1005, are authorized to act in a fiduciary capacity in Iowa.

3. A private nonprofit corporation organized under chapter 504, Code 1989, or chapter 504A is qualified to act as a guardian, as defined in section 633.3, subsection 20, or a conservator, as defined in section 633.3, subsection 7, where the assets subject to the conservatorship at the time when such corporation is appointed conservator are less than or equal to seventy-five thousand dollars and the corporation does not possess a proprietary or legal interest in an organization which provides direct services to the individual.

2003 Acts, ch 108, §108  
Subsection 3 amended

#### **633.301 Copy of will for executor.**

When a will has been admitted to probate and certified pursuant to section 633.300, the clerk

shall cause a certified copy thereof to be placed in the hands of the executor to whom letters are issued. The clerk shall retain the will in a separate file provided for that purpose until the time for contest has expired, and promptly thereafter shall place it with the files of the estate.

2003 Acts, ch 151, §53  
Section amended

#### **633.479 Discharge.**

Upon final settlement of an estate, an order shall be entered discharging the personal representative from further duties and responsibilities. The order approving the final report shall constitute a waiver of the omission from the final report of any of the recitals required in section 633.477.

An order approving the final report and discharging the personal representative shall not be required if all distributees otherwise entitled to notice are adults, under no legal disability, have signed waivers of notice as provided in section 633.478, have signed statements of consent agreeing that the prayer of the final report shall constitute an order approving the final report and discharging the personal representative, and if the statements of consent are dated not more than thirty days prior to the date of the final report, and if compliance with sections 422.27 and 450.58 have been fulfilled and receipts and certificates are on file. In those instances final order shall not be required and the prayer of the final report shall be considered as granted and shall have the same force and effect as an order of discharge of the personal representative and an order approving the final report.

2003 Acts, ch 151, §54  
Unnumbered paragraph 2 amended

#### **633.480 Certificate to county recorder for tax purposes with administration.**

After discharge as provided in section 633.479, the personal representative shall deliver to the county recorder of the county in which the real estate is situated a certificate pertaining to each parcel of real estate described in the final report of the personal representative which has not been sold by the personal representative. The certificate shall include the name and complete mailing address, as shown on the final report, of the individual or entity in whose name each parcel of real estate is to be taxed. The county recorder shall deliver the certificate to the county auditor as provided in section 558.58.

2003 Acts, ch 151, §55  
Section amended

#### **633.481 Certificate to county recorder for tax purposes without administration.**

When an inventory or report is filed under section 450.22, without administration of the estate of the decedent, the heir or heir's attorney shall prepare and deliver to the county recorder of the

county in which the real estate is situated a certificate pertaining to each parcel of real estate described in the inventory or report. Any fees for certificates or recording fees required by this section or section 633.480 shall be assessed as costs of administration. The fee for recording and indexing the instrument shall be as provided in section 331.604. The county recorder shall deliver the certificates to the county auditor as provided in section 558.58.

2003 Acts, ch 151, §56  
Section amended

#### **633.527 Limitation of application.**

Sections 633.523, 633.524 and 633.526 shall not apply in the case of wills, living trusts, deeds, contracts of insurance, or other contracts wherein provision has been made for distribution of property different from the provisions of those sections.

2003 Acts, ch 95, §5  
Section amended

#### **633.545 Sale — proceeds.**

If within six months from the giving of notice, a claimant does not appear, the property may be sold and the proceeds paid over by the personal representative to the department of administrative services for the benefit of the permanent school fund.

2003 Acts, ch 145, §286  
Terminology change applied

#### **633.808 Death of the owner.**

On the death of a sole owner or on the death of the sole surviving owner of multiple owners, the ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. A registering entity shall provide notice to the department of revenue of all reregistrations made pursuant to this division. The notice shall include the name, address, and social security number of the decedent and all transferees. Until the division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of multiple owners.

2003 Acts, ch 145, §286  
Terminology change applied

#### **633.1102 Definitions.**

For purposes of this division:

1. *“Beneficiary”*, as it relates to a trust beneficiary, includes a person who has any present or future interest in the trust, vested or contingent, and also includes the owner of an interest by assignment or other transfer.

2. “*Charitable trust*” means a trust created for a charitable purpose as specified in section 633.5101.

3. “*Competency*” means any one of the following:

a. In the case of a revocable transfer, “*competency*” means the degree of understanding required to execute a will.

b. In the case of an irrevocable transfer, “*competency*” means the ability to understand the effect the gift may have on the future financial security of the donor and anyone who may be dependent on the donor.

4. “*Conservator*” means a person appointed by a court to manage the estate of a minor or adult individual.

5. “*Court*” means any Iowa district court.

6. “*Fiduciary*” includes a personal representative, executor, administrator, guardian, conservator, and trustee.

7. “*Guardian*” means a person appointed by a court to make decisions with respect to the support, care, education, health, and welfare of a minor or adult individual, but excludes one who is merely a guardian ad litem. A minor’s custodial parent shall be deemed to be the child’s guardian in the absence of a court-appointed guardian.

8. “*Instrument*” means a signed writing.

9. “*Interested person*” includes a trustee, an acting successor trustee, a beneficiary who may receive income or principal currently from the trust, or would receive principal of the trust if the trust were terminated at the time relevant to the determination, and a fiduciary representing an interested person. The meaning as it relates to particular persons may vary from time to time according to the particular purpose of, and matters involved in, any proceeding.

10. “*Person*” means an individual or any legal or commercial entity.

11. “*Petition*” includes a complaint or statement of claim.

12. “*Property*” means anything that may be the subject of ownership, whether real or personal, legal or equitable, tangible or intangible, and includes any interest in such item, including a chose in action, claim, or beneficiary designation under a policy of insurance, employees’ trust, or other arrangement, whether revocable or irrevocable.

13. “*Qualified beneficiary*” means a beneficiary who, on the date the beneficiary’s qualification is determined, is any of the following:

a. Eligible to receive distributions of income or principal from the trust.

b. Would receive property from the trust upon immediate termination of the trust.

14. “*Settlor*” means a person, including a testator, who creates a trust.

15. “*State*” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession

subject to the jurisdiction of the United States.

16. “*Term*” or “*terms*”, when used in relation to a trust, means the manifestation of the settlor’s intent regarding a trust’s provisions at the time of the trust’s creation or amendment. “*Term*” includes those concepts expressed directly in writing, as well as those inferred from constructional preferences or rules, or by other proof admissible under the rules of evidence.

17. “*Trust*” means an express trust, charitable or noncharitable, with additions thereto, wherever and however created, including a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. “*Trust*” does not include any of the following:

a. A Totten trust account.

b. A custodial arrangement pursuant to the uniform transfers to minors Act of any state.

c. A business trust that is taxed as a partnership or corporation.

d. An investment trust subject to regulation under the laws of this state or any other jurisdiction.

e. A common trust fund.

f. A voting trust.

g. A security arrangement.

h. A transfer in trust for purpose of suit or enforcement of a claim or right.

i. A liquidation trust.

j. A trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind.

k. An arrangement under which a person is a nominee or escrow agent for another.

l. Constructive or resulting trusts.

18. “*Trust company*” means a person who has qualified to engage in and conduct a trust business in this state.

19. “*Trustee*” includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

2003 Acts, ch 95, §6  
Subsection 3 amended

### 633.1105 Trust provisions control.

The provisions of a trust shall always control and take precedence over any section of this trust code to the contrary. If a provision of the trust instrument makes any section of this trust code inapplicable to a trust, the common law shall apply to any issues raised by such provision.

2003 Acts, ch 95, §7  
Section amended

### 633.1108 Governing law.

1. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which at the time the trust was created the settlor was domiciled, had a place of abode, or was a national.

2. The meaning and effect of the terms of the trust not created by will shall be determined by any of the following:

*a.* Except as provided in paragraph “c”, the law of the jurisdiction designated in the terms of the trust, on the condition that at the time the trust was created the designated jurisdiction had a substantial relationship to the trust. A jurisdiction has a substantial relationship to the trust if it is the residence or domicile of the settlor or of any qualified beneficiary, the location of a substantial portion of the assets of the trust, or a place where the trustee was domiciled or had a place of business.

*b.* Except as provided in paragraph “c”, in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction that has the most significant relationship to the matter at issue.

*c.* As to real property, the law of the jurisdiction where the real property is located.

2003 Acts, ch 95, §8  
NEW section

#### **633.2102 Requirements for validity.**

1. A trust is created only if all of the following elements are satisfied:

*a.* The settlor was competent and indicated an intention to create a trust.

*b.* The same person is not the sole trustee and sole beneficiary.

*c.* The trust has a definite beneficiary or a beneficiary who will be definitely ascertained within the period of the applicable rule against perpetuities, unless the trust is a charitable trust, an honorary trust, or a trust for pets.

*d.* The trustee has duties to perform.

2. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property passes to the person or persons who would have taken the property had the power not been conferred.

3. A trust is not merged or invalid because a person, including but not limited to the settlor of the trust, is or may become the sole trustee and the sole holder of the present beneficial interest in the trust, provided that one or more other persons hold a beneficial interest in the trust, whether such interest be vested or contingent, present or future, and whether created by express provision of the instrument or as a result of reversion to the settlor’s estate.

2003 Acts, ch 95, §9  
Section amended

#### **633.2103 Statute of frauds.**

1. A trust is enforceable when evidenced by either of the following:

*a.* A written instrument signed by the trustee, or by the trustee’s agent if authorized in writing.

*b.* A written instrument conveying the trust

property signed by the settlor, or by the settlor’s agent if authorized in writing.

2. If an owner of property declares that property is held upon a trust, the written instrument evidencing the trust must be signed by the settlor according to one of the following:

*a.* Before or at the time of the declaration.

*b.* After the time of the declaration but before the settlor has transferred the property.

3. If an owner of property while living transfers property to another person to hold upon a trust, the written instrument evidencing the trust must be signed according to one of the following:

*a.* By the settlor, concurrently with or before the transfer.

*b.* By the trustee, concurrently with or before the transfer, or after the transfer but before the trustee has transferred the property to a third person.

4. Oral trusts that have not been reduced to writing as specified in this section are not enforceable. This section does not affect the power of a court to declare a resulting or constructive trust in the appropriate case or to order other relief where appropriate.

2003 Acts, ch 95, §10, 11  
Subsections 2 and 3 amended  
NEW subsection 4

#### **633.4105 Filling vacancy.**

1. A trustee must be appointed to fill a vacancy in the office of the trustee only if the trust has no trustee or the terms of the trust require a vacancy in the office of cotrustee to be filled.

2. A vacancy in the office of trustee shall be filled according to the following:

*a.* By the person named in or nominated pursuant to the method specified by the terms of the trust.

*b.* If the terms of the trust do not name a person or specify a method for filling the vacancy, or if the person named or nominated pursuant to the method specified fails to accept, one of the following methods shall be used:

(1) By majority vote of all qualified beneficiaries, who are adults, and the representative of any minor or incompetent qualified beneficiary as provided in section 633.6303.

(2) By a person appointed by the court on petition of an interested person or of a person named as trustee by the terms of the trust. The court, in selecting a trustee, shall consider any nomination made by the adult beneficiaries and representatives of any minor and incompetent beneficiaries as designated in section 633.6303.

2003 Acts, ch 44, §103; 2003 Acts, ch 95, §12  
Subsection 2, paragraph b, subparagraphs (1) and (2) amended

#### **633.4107 Removal of trustee.**

1. A trustee may be removed in accordance with the terms of the trust, or on petition of a settlor, cotrustee, or beneficiary under section 633.6202.

2. The court may remove a trustee, or order other appropriate relief if any of the following occurs:

a. If the trustee has committed a material breach of the trust.

b. If the trustee is unfit to administer the trust.

c. If hostility or lack of cooperation among co-trustees impairs the administration of the trust.

d. If the trustee's investment performance is consistently and substantially substandard.

e. If the trustee's compensation is excessive under the circumstances.

f. If the trustee merges with another institution or the location or place of administration of the trust changes.

g. For other good cause shown.

3. If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a final decision on a petition for removal of a trustee, the court may suspend the powers of the trustee, compel the trustee to surrender trust property to a cotrustee, receiver, or temporary trustee, or order other appropriate relief.

2003 Acts, ch 95, §13

Subsection 2, NEW paragraph f and former paragraph f redesignated as g

### 633.4207 Directory powers.

1. While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the terms of the trust.

2. If the terms of the trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the trustee knows the attempted exercise violates the terms of the trust or the trustee knows that the person holding the power is incompetent.

3. A person other than a beneficiary who holds a power to direct is presumptively a fiduciary who is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from a breach of a fiduciary duty.

2003 Acts, ch 95, §14

Section stricken and rewritten

### 633.4213 Duty to inform and account.

A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and the material facts necessary to protect the beneficiaries' interests.

1. The trustee shall inform each qualified beneficiary of the beneficiary's right to receive an annual accounting and a copy of the trust instrument. The trustee shall also inform each qualified beneficiary about the process necessary to obtain an annual accounting or a copy of the trust instrument, if not provided. The trustee shall further in-

form each qualified beneficiary whether the beneficiary will, or will not, receive an annual accounting if the beneficiary fails to take any action. If a qualified beneficiary has previously been provided the notice required by this section, additional notice shall not be required due to a change of trustees or a change in the composition of the qualified beneficiaries.

2. The trustee shall provide the notice required in subsection 1 to each qualified beneficiary within a reasonable time following any of the following events:

a. The commencement of the trust administration.

b. The trustee becoming aware that there is a new qualified beneficiary or a representative of any minor or incompetent beneficiary.

c. The trust becoming irrevocable.

d. The time that no person, except the trustee, has the right to change the beneficiaries of the trust.

3. A trustee of an irrevocable trust shall provide annually to each adult beneficiary and the representative of any minor or incompetent beneficiary who may receive a distribution of income or principal during the accounting time period, an accounting, unless an accounting has been waived specifically for that accounting time period.

4. This section does not apply to any trust where the grantor has retained the right, or has transferred the right, to change the beneficiaries of the trust.

5. The only consequence to a trustee's failure to provide a required accounting or notice is that the trustee shall not be able to rely upon the statute of limitations under section 633.4504. If the trustee has refused, after a reasonable request, to provide an accounting to a qualified beneficiary, the court may assess costs, including attorney fees, against the trustee personally.

6. The format and content of an accounting required by this section shall be within the discretion of the trustee, as long as sufficient to reasonably inform the beneficiary of the condition and activities of the trust during the accounting period.

7. This section does not apply to any trust created prior to July 1, 2002. This section applies to any trust created on or after July 1, 2002, unless the settlor has specifically waived the requirements of this section in the trust instrument. Waiver of this section shall not bar any beneficiary's common-law right to an accounting, and shall not provide any immunity to a trustee, acting under the terms of the trust, for liability to any beneficiary who discovers facts giving rise to a cause of action against the trustee.

2003 Acts, ch 95, §15

Subsections 1, 3, 6, and 7 amended

### 633.4214 Duties with regard to discretionary powers.

1. A trustee shall exercise a discretionary pow-

er within the bounds of reasonable judgment and in accordance with applicable fiduciary principles and the terms of the trust.

2. Notwithstanding the use of such terms as “absolute”, “sole”, or “uncontrolled” in the grant of discretion, a trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust or the power. Absent an abuse of discretion, a trustee’s exercise of discretion is not subject to control by a court.

3. Subject to paragraph “c” and unless the terms of the trust expressly indicate that a rule in this subsection does not apply, all of the following shall apply:

a. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee the power to make discretionary distributions to or for the trustee’s personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee’s individual health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986.

b. A trustee shall not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes to another person.

c. This subsection does not apply to the following:

(1) A power held by the settlor’s spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, was previously allowed.

(2) A trust that may be revoked or amended by the settlor.

(3) A trust, if contributions to the trust qualify for an annual exclusion under section 2503(c) of the Internal Revenue Code of 1986.

4. A power whose exercise is limited or prohibited by subsection 3 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

2003 Acts, ch 95, §16; 2003 Acts, ch 108, §109  
See Code editor’s note to §2.9  
Subsection 3, paragraph c amended

**633.4506 Beneficiary’s consent, release, or affirmation — nonliability of trustee.**

1. A beneficiary shall not hold a trustee liable for a breach of trust if the beneficiary does any of the following:

a. Consents to the conduct constituting the breach.

b. Releases the trustee from liability for the breach.

c. Affirms the transaction constituting the breach.

2. A beneficiary may hold a trustee liable for breach of trust despite a consent, release, or affirmation by the beneficiary if, at the time of the consent, release, or affirmation, all of the following applied:

a. The beneficiary did not know of the beneficiary’s rights.

b. The beneficiary did not know the material facts known to the trustee or which the trustee should have known.

c. The trustee did not reasonably believe that the beneficiary knew the beneficiary’s rights and that the beneficiary knew material facts known to the trustee or which the trustee should have known.

3. A beneficiary may hold a trustee liable for breach of a trust despite a consent, release, or affirmation by the beneficiary if the consent, release, or affirmation was induced by improper conduct of the trustee.

2003 Acts, ch 95, §17  
Subsection 2, paragraph c amended

**633.4701 Survivorship with respect to future interests under terms of trust — substitute takers.**

1. Unless otherwise specifically stated by the terms of the trust, the interest of each beneficiary is contingent on the beneficiary surviving until the date on which the beneficiary becomes entitled to possession or enjoyment of the beneficiary’s interest in the trust.

2. If a beneficiary dies prior to becoming entitled to possession or enjoyment of the beneficiary’s interest and the terms of the trust provide for an alternate beneficiary who is living on the date the interest becomes possessory, the alternate beneficiary succeeds to the interest in accordance with the terms of the trust.

3. If a beneficiary dies prior to becoming entitled to possession or enjoyment of the beneficiary’s interest and no alternate beneficiary is named in the trust, and the beneficiary has issue who are living on the date the interest becomes possessory, the issue of the beneficiary who are living on such date shall receive the interest of the beneficiary.

4. If both a beneficiary of an interest and any alternate beneficiary of that interest named in the trust die prior to the interest becoming possessory, and the beneficiary has no issue who are living on the date the interest becomes possessory, the issue of the alternate beneficiary who are living on such date shall take the interest of the beneficiary.

5. If both the beneficiary of an interest and any alternate beneficiary of that interest named in the trust die prior to the interest becoming possessory, and neither the beneficiary nor the alternate beneficiary has issue who are living on the date the interest becomes possessory, the beneficiary’s interest shall be distributed to the takers of the settlor’s residuary estate, or, if the trust is the sole taker of the settlor’s residuary estate, in accor-

dance with section 633.2106.

6. If both the beneficiary of an interest and any alternate beneficiary of that interest named in the trust die prior to the interest becoming possessory, and both the beneficiary and the alternate beneficiary have issue who are living on the date the interest becomes possessory, the issue of the beneficiary succeed to the interest of the beneficiary. The issue of the alternate beneficiary shall not succeed to any part of the interest of the beneficiary.

7. For the purposes of this section, persons appointed under a power of appointment shall be considered beneficiaries under this section and takers in default of appointment designated by the instrument creating the power of appointment shall be considered alternate beneficiaries under this section.

8. Subsections 2, 3, 4, 5, 6, and 7 do not apply to any interest subject to an express condition of survivorship imposed by the terms of the trust. For the purposes of this section, words of survivorship including, but not limited to, “my surviving children”, “if a person survives” a named period, and terms of like import, shall be construed to create an express condition of survivorship. Words of survivorship include language requiring survival to the distribution date or to any earlier or unspecified time, whether those words are expressed in condition precedent, condition subsequent, or any other form.

9. If an interest to which this section applies is given to a class, other than a class described as “issue”, “descendants”, “heirs of the body”, “heirs”, “next of kin”, “relatives”, or “family”, or a class described by language of similar import, the members of the class who are living on the date on which the class becomes entitled to possession or enjoyment of the interest shall be considered as alternate beneficiaries under this section. However, neither the residuary beneficiaries under the settlor’s will nor the settlor’s heirs shall be considered as alternate beneficiaries for the purposes of this section.

2003 Acts, ch 95, §18, 19  
Subsection 5 amended  
NEW subsections 6 – 9

### 633.6105 Transfer of jurisdiction.

1. The court may transfer the place of administration of a trust to or from this state or transfer some or all of the trust property to a trustee in or outside this state if it finds that the transfer of the trust property to a trustee in this or another jurisdiction, or the transfer of the place of administration of a trust to this or another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the economical and convenient administration of the trust and the views of the qualified beneficiaries.

2. A new trustee to whom the trust property is to be transferred shall be qualified, willing, and

able to administer the trust or trust property under the terms of the trust.

3. If the trust or any portion of the trust property is transferred to another jurisdiction and if approval of the transfer by the other court is required under the law of the other jurisdiction, the proper court in the other jurisdiction must have approved the transfer in order for the transfer to be effective.

4. If a transfer is ordered, the court may direct the manner of transfer and impose terms and conditions as may be just, including a requirement for the substitution of a successor trustee in any pending litigation in this state. A delivery of property in accordance with the order of the court is a full discharge of the trustee with respect to all property specified in the order.

5. If the court grants a petition to transfer a trust or trust property to this state, the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in section 633.4102.

6. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the trustee’s duty to administer the trust at a place appropriate to its purpose or administration, and the interests of the beneficiaries, may transfer the trust’s principal place of administration to another state or to a jurisdiction outside the United States.

2003 Acts, ch 95, §20  
NEW subsection 6

### 633.6301 Definition and applicability.

1. For purposes of this subpart, “*fiduciary matter*” includes any item listed in section 633.6202, subsection 2.

2. Persons interested in a fiduciary matter may approve a judicial settlement and represent and bind other persons interested in the fiduciary matter.

3. Notice to a person who may represent and bind another person under this trust code has the same effect as if notice were given directly to the person represented.

4. The consent of a person who may represent and bind another person under this trust code is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

2003 Acts, ch 95, §21  
Subsection 3 stricken and former subsections 4 and 5 amended and renumbered as 3 and 4

### 633.6308 Nonjudicial settlement agreements.

1. For purposes of this subpart, “*interested persons*” means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

2. Except as otherwise provided in subsection

3, or as to a modification or termination of a trust under section 633.2203, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

3. A nonjudicial settlement is valid only to the extent the settlement does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this trust code or other applicable law.

4. Matters that may be resolved by a nonjudicial settlement agreement include any of the following:

- a. The interpretation or construction of the terms of the trust.
- b. The approval of a trustee's report or accounting.
- c. Direction to a trustee to refrain from per-

forming a particular act or the grant to a trustee of any necessary or desirable power.

d. The resignation or appointment of a trustee and the determination of a trustee's compensation.

e. The transfer of a trust's principal place of administration.

f. The liability of a trustee for an action relating to the trust.

5. Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation provided was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

2003 Acts, ch 95, §22  
NEW section

## CHAPTER 635

### ADMINISTRATION OF SMALL ESTATES

#### **635.7 Report and inventory — excess value and termination.**

The executor or administrator is required to file the report and inventory for which provision is made in section 633.361. Nothing in sections 635.1 to 635.3 shall exempt the executor or administrator from complying with the requirements of section 422.27, 450.22, 450.58, or 633.481. If the inventory and report shows assets subject to the jurisdiction of this state which exceed the total

gross value of the amount permitted the small estate under the applicable provision of section 635.1, the clerk shall terminate the letters issued under section 635.1 without prejudice to the rights of persons who delivered property as permitted under section 635.3. The executor or administrator shall then be required to petition for administration of the estate as provided in chapter 633.

2003 Acts, ch 151, §57  
Section amended

## CHAPTER 637

### UNIFORM PRINCIPAL AND INCOME ACT

#### **637.601 Definitions.**

For purposes of this subchapter:

1. "*Disinterested person*" means a person who is not a related or subordinate party as defined in section 672(c) of the Internal Revenue Code with respect to the person acting as trustee of the trust and excludes the trustor of the trust and any interested trustee.

2. "*Income trust*" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. However, a trust that does not meet this definition is nonetheless an income trust if the trust is subject to taxation under section 2001 or 2501 of the Internal Revenue Code, until the expiration of the period for filing the return, including extensions.

3. "*Interested distributee*" means a person, to

whom distributions of income or principal can currently be made, who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party, as defined in section 672(c) of the Internal Revenue Code, with respect to such distributee.

4. "*Interested trustee*" means any of the following:

a. An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were to terminate and be distributed.

b. Any trustee who may be removed and replaced by an interested distributee.

c. An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

5. "*Total return unitrust*" means an income trust which has been converted under and meets the provisions of this subchapter.

6. “Trustee” means a person acting as trustee of the trust, except where expressly noted otherwise, whether acting in the trustee’s discretion or on the direction of one or more persons acting in a fiduciary capacity.

7. “Trustor” means an individual who creates an inter vivos or a testamentary trust.

8. “Unitrust amount” means an amount computed as a percentage of the fair market value of the trust.

2003 Acts, ch 108, §110  
Unnumbered paragraph 1 amended

**637.603 Trustee requirements to convert or change computation method.**

A trustee may proceed to take action under section 637.602 if all of the following apply:

1. The trustee adopts a written policy for the trust as follows:

a. In the case of a trust being administered as an income trust, requiring that future distributions from the trust will be unitrust amounts rather than net income.

b. In the case of a trust being administered as a total return unitrust, requiring that future distributions from the trust will be net income rather than unitrust amounts.

c. Requiring that the method used to determine the fair market value of the trust will be changed as stated in the policy.

2. The trustee sends written notice of the trustee’s intention to take any action described in section 637.602, along with copies of such written policy and this subchapter, to all of the following persons:

a. The trustor of the trust, if living.

b. All living persons who are currently receiving or eligible to receive distributions of income of the trust.

c. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in paragraph “b” were deceased.

d. All persons named in the governing instrument as adviser to or protector of the trust.

3. At least one person receiving notice under subsection 2, paragraphs “b” and “c”, is legally competent.

4. No person receiving such notice under subsection 2, objects, by written instrument delivered to the trustee, to the proposed action of the trustee

within sixty days of receipt of such notice.

2003 Acts, ch 44, §104  
Subsection 2, unnumbered paragraph 1 amended

**637.605 Interested trustee requirements to convert or change computation method.**

An interested trustee may proceed to take action under section 637.604 if all of the following apply:

1. The trustee adopts a written policy for the trust as follows:

a. In the case of a trust being administered as an income trust, requiring that future distributions from the trust will be unitrust amounts rather than net income.

b. In the case of a trust being administered as a total return unitrust, requiring that future distributions from the trust will be net income rather than unitrust amounts.

c. Requiring that the method used to determine the fair market value of the trust will be changed as stated in the policy.

2. The trustee appoints a disinterested person who, in the person’s sole discretion, but acting in a fiduciary capacity, determines for the trustee the method to be used in determining the fair market value of the trust, and which assets, if any, are to be excluded in determining the unitrust amount.

3. The trustee sends written notice of the trustee’s intention to take any action described in section 637.604, along with copies of such written policy, this subchapter, and the determination of the disinterested person to all of the following persons:

a. The trustor of the trust, if living.

b. All living persons who are currently receiving or eligible to receive distributions of income of the trust.

c. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in paragraph “b” were deceased.

d. All persons named in the governing instrument as adviser to or protector of the trust.

4. At least one person receiving notice under subsection 3, paragraphs “b” and “c”, is legally competent.

5. No person receiving the notice described in subsection 3 objects, by written instrument delivered to the trustee, to the proposed action of the trustee within sixty days of receipt of such notice.

2003 Acts, ch 44, §105; 2003 Acts, ch 108, §111  
Subsection 2 amended  
Subsection 3, unnumbered paragraph 1 amended

## CHAPTER 641

### ATTACHMENT BY THE STATE

#### 641.5 Sheriff indemnified.

In case any sheriff shall be held liable to pay any damages by reason of the wrongful execution of any writ of attachment issued under sections 641.2 to 641.4 and if a judgment is rendered therefor, the amount thereof, when paid by such sheriff,

shall become a claim against the state in the sheriff's favor, and a warrant therefor shall be drawn by the director of the department of administrative services upon proper proof.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 642

### GARNISHMENT

#### 642.1 Who may be garnished.

A sheriff may be garnished for money of the defendant in the sheriff's hands; a judgment debtor of the defendant, when the judgment has not been assigned on the record, or by writing filed in the office of the clerk and by the clerk minuted as an as-

signment on the margin of the judgment docket; and an executor, for money due from decedent.

Garnishment proceedings by director of revenue, director of inspections and appeals, or director of workforce development, §626.29 – 626.31  
Section not amended; footnote revised

## CHAPTER 648

### FORCIBLE ENTRY OR DETENTION OF REAL PROPERTY

#### 648.1A Nonprofit transitional housing exempted.

This chapter shall not apply to occupancy in housing owned by a nonprofit organization whose purpose is to provide transitional housing for persons released from drug or alcohol treatment facilities or to provide housing for homeless persons. Absent an applicable provision in a lease, contract, or other agreement, a person who unlawfully remains on the premises of such housing may be subject to criminal trespass penalties pursuant to section 716.8.

2003 Acts, ch 154, §3  
NEW section

#### 648.6 Notice to lienholders.

In cases covered by chapter 562B, a plaintiff shall send a copy of the petition, prior to the date set for hearing, by regular, certified, or restricted certified mail to the county treasurer and to each lienholder whose name and address are of record in the office of the county treasurer of the county where the mobile home or manufactured home is located.

2003 Acts, ch 154, §4  
Section amended

#### 648.22A Executions involving mobile homes and manufactured homes.

1. In cases covered by chapter 562B, prior to

the expiration of three days from the date the judgment is entered pursuant to section 648.22, the plaintiff or defendant may elect to leave a mobile home or manufactured home and its contents in the manufactured home community or mobile home park for up to sixty days after the date of the judgment provided all of the following occur:

a. The plaintiff consents and the plaintiff has complied with the provisions of section 648.6.

b. The party making the election files a written notice of such election with the court and sends a copy of the notice of election with a copy of the judgment to the sheriff, the other party at the other party's last known address, each record lienholder, and the county treasurer in the same manner as in section 648.6.

c. All utilities to the mobile home or manufactured home are disconnected prior to expiration of three days from the filing of the election. Payment of any reasonable costs incurred in disconnecting utilities and protecting the home from damage is the responsibility of the defendant.

2. During the sixty-day period the defendant may have reasonable access to the home site to show the home to prospective purchasers, prepare the home for removal, remove any personal property, or remove the home, provided that the defendant gives the plaintiff at least twenty-four hours' notice prior to each exercise of the defendant's right of access. The plaintiff may also have reason-

able access to the home site to disconnect utilities and to show the home to prospective purchasers sent by the defendant. The plaintiff shall not have the right to sell the home during the sixty-day period unless the defendant enters into a written agreement for the plaintiff to sell the home.

3. During the sixty-day period the defendant shall not occupy the home or be present on the premises between the hours of seven p.m. and seven a.m. A violation of this subsection shall be punishable as contempt.

4. If the plaintiff or defendant finds a purchaser of the home, who is a prospective tenant of the manufactured home community or mobile home park, the provisions of section 562B.19, subsection 3, paragraph “c”, shall apply.

5. If, within the sixty-day period, the home is not sold to an approved purchaser or removed from the manufactured home community or mobile home park, the plaintiff may sell or dispose of the home in accordance with the provisions of section 555B.9 without an order for disposal, or chapter 555C, and may do so free and clear of all liens, claims, or encumbrances of third parties except any tax lien, at which time all of the following shall occur:

*a.* The proceeds from the sale shall first be applied to any judgments against the defendant obtained by the plaintiff, any unpaid rent or additional costs incurred by plaintiff, and reasonable attorney fees. Any remaining proceeds shall next be applied to any tax lien with the remainder to be held in accordance with section 555B.9, subsection 3, paragraph “c”.

*b.* Any money judgment against the defendant and in favor of the plaintiff relating to the previous

tenancy shall be deemed satisfied, except those arising from independent torts.

*c.* If plaintiff elects to retain the home pursuant to section 555B.9, the county treasurer, upon receipt of a fee equal to the fee specified in section 321.42 for replacement of certificates of title for motor vehicles, and upon receipt of an affidavit submitted by the plaintiff verifying that the home was not sold to an approved purchaser or removed within the time specified in this subsection, shall issue to the plaintiff a new title for the home.

6. A purchaser of the home shall be liable for any unpaid sums due the plaintiff, sheriff, or county treasurer. For the purposes of this section, “purchaser” includes a lienholder or other claimant acquiring title to the home in whole or in part by reason of a lien or other claim.

7. Nothing in this section shall prevent the defendant from removing the mobile home or manufactured home prior to the expiration of three days after entry of judgment, after which time a mobile home or manufactured home shall not be removed without the prior payment to the plaintiff of all sums owing at the time of entry of judgment, interest accrued on such sums as provided by law, and per diem rent for that portion of the sixty-day period which has expired prior to removal, and payment of any taxes due on the home which are not abated pursuant to subsection 5.

8. In any case where this section has become operative, section 648.18 does not apply.

9. This section does not preclude the exercise of a lienholder’s rights under section 648.22B.

2003 Acts, ch 154, §5  
Section amended

## CHAPTER 656

### FORFEITURE OF REAL ESTATE CONTRACTS

#### 656.2 Notice.

1. The forfeiture shall be initiated by the vendor by serving on the vendee a written notice which shall:

*a.* Reasonably identify the contract by a document reference number and accurately describe the real estate covered.

*b.* Specify the terms of the contract with which the vendee has not complied.

*c.* State that unless, within thirty days after the completed service of the notice, the vendee performs the terms in default and pays the reasonable costs of serving the notice, the contract will be forfeited.

*d.* Specify the amount of attorney fees claimed by the vendor pursuant to section 656.7 and state

that payment of the attorney fees is not required to comply with the notice and prevent forfeiture.

2. The vendor shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the vendee; on all the vendee’s mortgagees of record; and on a person who asserts a claim against the vendee’s interest, except a government or governmental subdivision or agency holding a lien for real estate taxes or assessments, if the person has done both of the following:

*a.* Requested, on a form which substantially complies with the following form, that notice of forfeiture be served on the person at an address specified in the request.

REQUEST FOR NOTICE PURSUANT TO IOWA CODE SECTION 656.2, SUBSECTION 2

The undersigned requests service of notice under Iowa Code sections 656.2 and 656.3 to forfeit the contract recorded on the . . . . . day of . . . . . (month), . . . . . (year), in book or roll . . . . . , image or page . . . . . , office of the . . . . . county recorder, . . . . . county, Iowa, wherein . . . . . is/are seller(s) and . . . . . is/are buyer(s), for sale of real estate legally described as: [insert complete legal description]

NAME
ADDRESS

CAUTION: Your name and address must be correct. If not correct, you will not receive notice requested because notice need only be served on you at the above address. If your address changes, a new request for notice must be filed.

The request for notice shall be indexed.
b. Filed the request form for record in the office of the county recorder after acquisition of the vendee's interest but prior to the date of recording of the proof and record of service of notice of forfeiture required by section 656.5 and paid a fee of five dollars.

The request for notice is valid for a period of five years from the date of filing with the county recorder. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection. The request for notice may be amended at any time by the procedure specified in this subsection.

The vendee's mortgagees of record include all assignees of record for collateral purposes.

3. As used in this section, the terms "vendor" and "vendee" include a successor in interest but the term "vendee" excludes a vendee who assigned or conveyed of record all of the vendee's interest in the real estate.

2003 Acts, ch 108, §112; 2003 Acts, 1st Ex, ch 2, §44, 209 Subsection 2, paragraph a, unnumbered paragraph 3 amended

CHAPTER 663
HABEAS CORPUS

663.44 Costs.
If the plaintiff is discharged, the costs shall be assessed to the defendant, unless the defendant is an officer holding the plaintiff in custody under a commitment, or under other legal process, in which case the costs shall be assessed to the county. If the plaintiff's application is refused, the costs shall be assessed against the plaintiff, and, in the discretion of the court, against the person who filed the petition in the plaintiff's behalf.

However, where the plaintiff is confined in any state institution, and is discharged in habeas corpus proceedings, or where the habeas corpus proceedings fail and costs and fees cannot be collected from the person liable to pay the same, such costs and fees shall be paid by the county in which such state institution is located. The facts of such payment and the proceedings on which it is based, with a statement of the amount of fees or costs in-

curred, with approval in writing by the presiding judge appended to such statement or endorsed thereon, shall then be certified by the clerk of the district court under the seal of office to the state executive council. The executive council shall then review the proceedings and authorize reimbursement for all such fees and costs or such part thereof as the executive council shall find justified, and shall notify the director of the department of administrative services to draw a warrant to such county treasurer on the state general fund for the amount authorized. The costs and fees referred to above shall include any award of fees made to a court appointed attorney representing an indigent party bringing the habeas corpus action.

2003 Acts, ch 145, §286 Appropriation limited for fiscal years beginning July 1, 1993; see §8.59 Terminology change applied

CHAPTER 668
LIABILITY IN TORT — COMPARATIVE FAULT

668.13 Interest on judgments.
Interest shall be allowed on all money due on judgments and decrees on actions brought pur-

suant to this chapter, subject to the following:
1. Interest, except interest awarded for future damages, shall accrue from the date of the com-

mencement of the action.

2. If the interest rate is fixed by a contract on which the judgment or decree is rendered, the interest allowed shall be at the rate expressed in the contract, not exceeding the maximum rate permitted under section 535.2.

3. Interest shall be calculated as of the date of judgment at a rate equal to the one-year treasury constant maturity published by the federal reserve in the H15 report settled immediately prior to the date of the judgment plus two percent. The state court administrator shall distribute notice monthly of that rate and any changes to that rate to all district courts.

4. Interest awarded for future damages shall not begin to accrue until the date of the entry of the judgment.

5. Interest shall be computed daily to the date of the payment, except as may otherwise be ordered by the court pursuant to a structured judgment under section 668.3, subsection 7.

6. Structured, periodic, or other nonlump-sum payments ordered pursuant to section 668.3, subsection 7, shall reflect interest in accordance with annuity principles.

2003 Acts, ch 151, §58  
Subsection 3 amended

## CHAPTER 669

### STATE TORT CLAIMS

#### 669.14 Exceptions.

The provisions of this chapter shall not apply with respect to any claim against the state, to:

1. Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion be abused.

2. Any claim arising in respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer.

3. Any claim for damages caused by the imposition or establishment of a quarantine by the state, whether such quarantine relates to persons or property.

4. Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

5. Any claim by an employee of the state which is covered by the Iowa workers' compensation law or the Iowa occupational disease law.

6. Any claim by an inmate as defined in section 85.59.

7. A claim based upon damage to or loss or destruction of private property, both real and personal, or personal injury or death, when the damage, loss, destruction, injury or death occurred as an incident to the training, operation, or maintenance of the national guard while not in "state active duty" as defined in section 29A.1.

8. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negli-

gent construction or reconstruction of a highway, secondary road, or street as defined in section 321.1, subsection 78, that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing highway, secondary road, or street, to new, changed, or altered design standards. In respect to highways and roads, sealcoating, asphaltting, patching, resurfacing, ditching, draining, repairing, graveling, rocking, blading, or maintaining an existing highway or road does not constitute reconstruction. This subsection shall not apply to claims based upon gross negligence.

9. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public improvement as defined in section 384.37, subsection 19, or other public facility that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing public improvement or other public facility to new, changed, or altered design standards. This subsection shall not apply to claims based upon gross negligence. This subsection takes effect July 1, 1984, and applies to all cases tried or retried on or after July 1, 1984.

10. Any claim based upon the enforcement of chapter 89B.

11. Any claim for financial loss based upon an act or omission in financial regulation, including but not limited to examinations, inspections, au-

dits, or other financial oversight responsibilities, pursuant to chapters 87, 203, 203C, 203D, 421B, 486,\* 487, and 490 through 553, excluding chapters 540A, 542, 542B, 543B, 543C, 543D, 544A, and 544B.

This subsection applies to all cases filed on or after July 1, 1986, and does not expand any existing cause of action or create any new cause of action against the state.

12. Any claim based upon the actions of a resident advocate committee member in the performance of duty if the action is undertaken and carried out in good faith.

13. A claim relating to a swimming pool or spa as defined in section 135I.1 which has been in-

spected in accordance with chapter 135I, or a swimming pool or spa inspection program, which has been established or certified by the state in accordance with that chapter, unless the claim is based upon an act or omission of an officer or employee of the state and the act or omission constitutes actual malice or a criminal offense.

14. Any claim arising in respect to technical assistance provided by the department of education pursuant to section 279.14A.

2003 Acts, ch 69, §49

Legislative intent that subsection 8 not apply to areas of litigation other than highway or road construction or reconstruction; applicability of rule of exclusion; see 83 Acts, ch 198, §27

\*Chapter 486 repealed effective January 1, 2001, by 98 Acts, ch 1201, §78; chapter 486A probably intended; corrective legislation is pending  
Subsection 11, unnumbered paragraph 1 amended

## CHAPTER 670

### TORT LIABILITY OF GOVERNMENTAL SUBDIVISIONS

#### 670.4 Claims exempted.

The liability imposed by section 670.2 shall have no application to any claim enumerated in this section. As to any such claim, a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such claims and, in the absence of such express statute, the municipality shall be immune from liability.

1. Any claim by an employee of the municipality which is covered by the Iowa workers' compensation law.

2. Any claim in connection with the assessment or collection of taxes.

3. Any claim based upon an act or omission of an officer or employee of the municipality, exercising due care, in the execution of a statute, ordinance, or regulation whether the statute, ordinance or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the municipality or an officer or employee of the municipality, whether or not the discretion is abused.

4. Any claim against a municipality as to which the municipality is immune from liability by the provisions of any other statute or where the action based upon such claim has been barred or abated by operation of statute or rule of civil procedure.

5. Any claim for punitive damages.

6. Any claim for damages caused by a municipality's failure to discover a latent defect in the course of an inspection.

7. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a highway, secondary road, or street as defined in section 321.1, subsection 78, that was constructed or re-

constructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing highway, secondary road, or street, to new, changed, or altered design standards. In respect to highways and roads, sealcoating, asphaltting, patching, resurfacing, ditching, draining, repairing, graveling, rocking, blading, or maintaining an existing highway or road does not constitute reconstruction. This subsection shall not apply to claims based upon gross negligence.

8. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public improvement as defined in section 384.37, subsection 19, or other public facility that was constructed or reconstructed in accordance with a generally recognized engineering or safety standard, criteria, or design theory in existence at the time of the construction or reconstruction. A claim under this chapter shall not be allowed for failure to upgrade, improve, or alter any aspect of an existing public improvement or other public facility to new, changed, or altered design standards. This subsection shall not apply to claims based upon gross negligence. This subsection takes effect July 1, 1984 and applies to all cases tried or retried on or after July 1, 1984.

9. Any claim based upon an act or omission by an officer or employee of the municipality or the municipality's governing body, in the granting, suspension, or revocation of a license or permit, where the damage was caused by the person to whom the license or permit was issued, unless the act of the officer or employee constitutes actual

malice or a criminal offense.

10. Any claim based upon an act or omission of an officer or employee of the municipality, whether by issuance of permit, inspection, investigation, or otherwise, and whether the statute, ordinance, or regulation is valid, if the damage was caused by a third party, event, or property not under the supervision or control of the municipality, unless the act or omission of the officer or employee constitutes actual malice or a criminal offense.

11. A claim based upon or arising out of an act or omission in connection with an emergency response including but not limited to acts or omissions in connection with emergency response communications services.

12. A claim relating to a swimming pool or spa as defined in section 135I.1 which has been inspected by a municipality or the state in accordance with chapter 135I, or a swimming pool or spa inspection program which has been certified by the state in accordance with that chapter, whether or not owned or operated by a municipality, unless the claim is based upon an act or omission of an officer or employee of the municipality and the act or omission constitutes actual malice or a criminal offense.

13. A claim based on an act or omission by a county or city pursuant to section 717.2A or chapter 717B relating to either of the following:

- a. Rescuing neglected livestock or another animal by a law enforcement officer.
- b. Maintaining or disposing of neglected livestock or another animal by a county or city.

14. Any claim based upon or arising out of a claim of negligent design or specification, negligent adoption of design or specification, or negligent construction or reconstruction of a public fa-

cility designed for purposes of skateboarding, in-line skating, bicycling, unicycling, scootering, river rafting, canoeing, or kayaking that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction.

15. Any claim based upon or arising out of an act or omission of an officer or employee of the municipality or the municipality's governing body by a person skateboarding, in-line skating, bicycling, unicycling, scootering, river rafting, canoeing, or kayaking on public property when the person knew or reasonably should have known that the skateboarding, in-line skating, bicycling, unicycling, scootering, river rafting, canoeing, or kayaking created a substantial risk of injury to the person and was voluntarily in the place of risk. The exemption from liability contained in this subsection shall only apply to claims for injuries or damage resulting from the risks inherent in the activities of skateboarding, in-line skating, bicycling, unicycling, scootering, river rafting, canoeing, or kayaking.

The remedy against the municipality provided by section 670.2 shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the officer, employee or agent whose act or omission gave rise to the claim, or the officer's, employee's, or agent's estate.

This section does not expand any existing cause of action or create any new cause of action against a municipality.

2003 Acts, ch 162, §2  
Subsections 14 and 15 amended

## CHAPTER 679B

### BOARDS OF ARBITRATION AND CONCILIATION

#### **679B.7 Compensation and expenses.**

The members of the board shall be paid a per diem as specified in section 7E.6 and shall be reimbursed for actual and necessary expenses, these moneys to be payable out of the state treasury

upon warrants drawn by the director of the department of administrative services.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 691

### STATE CRIMINALISTICS LABORATORY AND MEDICAL EXAMINER

#### **691.1 Laboratory created.**

There is hereby created under the control, direction, and supervision of the commissioner of public safety a state criminalistics laboratory. The commissioner of public safety may assign the crimi-

nalistics laboratory to a division or bureau within the public safety department. The laboratory shall, within its capabilities, conduct analyses, comparative studies, fingerprint identification, firearms identification, questioned documents

studies, and other studies normally performed by a criminalistics laboratory when requested by a county attorney, medical examiner, or law enforcement agency of this state to aid in any criminal investigation. Agents of the division of criminal investigation and bureau of identification may be assigned to the criminalistics laboratory by the commissioner. New employees shall be appointed pur-

suant to chapter 8A, subchapter IV, and need not qualify as agents for the division of criminal investigation and bureau of identification, and shall not participate in the peace officers' retirement plan established pursuant to chapter 97A.

2003 Acts, ch 145, §276  
Section amended

## CHAPTER 692

### CRIMINAL HISTORY AND INTELLIGENCE DATA

#### 692.1 Definitions of words and phrases.

As used in this chapter, unless the context otherwise requires:

1. "*Adjudication data*" means information that an adjudication of delinquency for an act which would be a serious or aggravated misdemeanor or felony if committed by an adult was entered against a juvenile and includes the date and location of the delinquent act and the place and court of adjudication.

2. "*Arrest data*" means information pertaining to an arrest for a public offense and includes the charge, date, time and place. Arrest data includes arrest warrants for all public offenses outstanding and not served and includes the filing of charges, by preliminary information when filed by a peace officer or law enforcement officer or indictment, the date and place of alleged commission and county of jurisdiction.

3. "*Bureau*" means the department of public safety, division of criminal investigation and bureau of identification.

4. "*Conviction data*" means information that a person was convicted of or entered a plea of guilty to a public offense and includes the date and location of commission and place and court of conviction.

5. "*Correctional data*" means information pertaining to the status, location, and activities of persons under the supervision of the county sheriff, the Iowa department of corrections, the board of parole, or any other state or local agency performing the same or similar function, but does not include investigative, sociological, psychological, economic, or other subjective information maintained by the Iowa department of corrections or board of parole.

6. "*Criminal history data*" means any or all of the following information maintained by the department or bureau in a manual or automated data storage system and individually identified:

- a. Arrest data.
- b. Conviction data.
- c. Disposition data.
- d. Correctional data.

e. Adjudication data.

f. Custody data.

7. "*Criminal investigative data*" means information collected in the course of an investigation where there are reasonable grounds to suspect that specific criminal acts have been committed by a person.

8. "*Criminal or juvenile justice agency*" means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such agencies or departments which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal or juvenile offenders.

9. "*Custody data*" means information pertaining to the taking into custody, pursuant to section 232.19, of a juvenile for a delinquent act which would be a serious or aggravated misdemeanor or felony if committed by an adult, and includes the date, time, place, and facts and circumstances of the delinquent act. Custody data includes warrants for the taking into custody for all delinquent acts outstanding and not served and includes the filing of a petition pursuant to section 232.35, the date and place of the alleged delinquent act, and the county of jurisdiction.

10. "*Department*" means the department of public safety.

11. "*Disposition data*" means information pertaining to a recorded court proceeding subsequent and incidental to a public offense arrest and includes dismissal of the charge, suspension or deferral of sentence.

12. "*Individually identified*" means criminal history data which relates to a specific person by one or more of the following means of identification:

- a. Name and alias, if any.
- b. Social security number.
- c. Fingerprints.
- d. Other index cross-referenced to paragraph "a", "b", or "c".
- e. Other individually identifying characteristics.

13. “*Intelligence assessment*” means an analysis of information based in whole or in part upon intelligence data.

14. “*Intelligence data*” means information on identifiable individuals compiled in an effort to anticipate, prevent, or monitor possible criminal activity.

15. “*Public offense*” as used in subsections 2, 4 and 11 does not include nonindictable offenses under either chapter 321 or local traffic ordinances.

16. “*Surveillance data*” means information on individuals, pertaining to participation in organizations, groups, meetings or assemblies, where there are no reasonable grounds to suspect involvement or participation in criminal activity by any person.

2003 Acts, ch 14, §1, 5

NEW subsection 13 and former subsections 13 – 15 renumbered as 14 – 16

### 692.8 Intelligence data.

Intelligence data contained in the files of the department of public safety or a criminal or juvenile justice agency may be placed within a computer data storage system, provided that access to the computer data storage system is restricted to authorized employees of the department or criminal or juvenile justice agency. The department shall adopt rules to implement this paragraph.

Intelligence data in the files of the department may be disseminated only to a peace officer, criminal or juvenile justice agency, or state or federal regulatory agency, and only if the department is satisfied that the need to know and the intended use are reasonable. However, intelligence data may also be disseminated to an agency, organization, or person when disseminated for an official purpose, and in order to protect a person or property from a threat of imminent serious harm. Whenever intelligence data relating to a defendant or juvenile who is the subject of a petition under section 232.35 for the purpose of sentencing or adjudication has been provided a court, the court shall inform the defendant or juvenile or the defendant’s or juvenile’s attorney that it is in possession of such data and shall, upon request of the defendant or juvenile or the defendant’s or juvenile’s attorney, permit examination of such data.

If the defendant or juvenile disputes the accuracy of the intelligence data, the defendant or juvenile shall do so by filing an affidavit stating the substance of the disputed data and wherein it is inaccurate. If the court finds reasonable doubt as to the accuracy of such information, it may require a hearing and the examination of witnesses relating thereto on or before the time set for sentencing or adjudication.

2003 Acts, ch 14, §2, 5

Unnumbered paragraph 2 amended

### 692.8A Dissemination of intelligence data.

1. A criminal or juvenile justice agency, state or federal regulatory agency, or a peace officer shall not disseminate intelligence data, which has been received from the department or bureau or from any other source, outside the agency or the peace officer’s agency unless all of the following apply:

a. The intelligence data is for official purposes in connection with prescribed duties of a criminal or juvenile justice agency.

b. The agency maintains a list of the agencies, organizations, or persons receiving the intelligence data and the date and purpose of the dissemination.

c. The agency disseminating the intelligence data is satisfied that the need to know and the intended use are reasonable.

2. Notwithstanding subsection 1, a criminal or juvenile justice agency, state or federal regulatory agency, or peace officer may disseminate intelligence data to an agency, organization, or person when disseminated for an official purpose, and in order to protect a person or property from a threat of imminent serious harm, and if the dissemination complies with paragraphs “b” and “c” of subsection 1.

3. An agency, organization, or person receiving intelligence data from a criminal or juvenile justice agency, state or federal regulatory agency, or a peace officer pursuant to this chapter may only redisseminate the intelligence data if authorized by the agency or peace officer providing the data. A criminal or juvenile justice agency, state or federal regulatory agency, or a peace officer who disseminates intelligence data pursuant to this chapter may limit the type of data released in order to protect the intelligence methods and sources used to gather the data, and may also place restrictions on the redissemination by the agency, organization, or person receiving the intelligence data. An agency, organization, or person receiving intelligence data is also subject to the provisions of this chapter and shall comply with any administrative rules adopted pursuant to this chapter.

4. This section shall not be construed to prohibit the dissemination of an intelligence assessment to any agency or organization if necessary for carrying out the official duties of the agency or organization, or to a person if disseminated for an official purpose, and if necessary to protect a person or property from a threat of imminent serious harm.

2003 Acts, ch 14, §3, 5

Section amended

### 692.18 Public records.

Nothing in this chapter shall prohibit the public from examining and copying the public records of

any public body or agency as authorized by chapter 22.

Intelligence data in the possession of a criminal or juvenile justice agency, state or federal regulatory agency, or peace officer, or disseminated by

such agency or peace officer, are not public records within the provisions of chapter 22.

2003 Acts, ch 14, §4, 5  
Unnumbered paragraph 2 amended

## CHAPTER 692A

### SEX OFFENDER REGISTRY

#### 692A.1 Definitions.

As used in this chapter and unless the context otherwise requires:

1. “*Aggravated offense*” means a conviction for any of the following offenses:

a. Sexual abuse in the first degree in violation of section 709.2.

b. Sexual abuse in the second degree in violation of section 709.3.

c. Sexual abuse in the third degree in violation of section 709.4, subsection 1.

d. Lascivious acts with a child in violation of section 709.8, subsection 1.

e. Assault with intent to commit sexual abuse in violation of section 709.11.

f. Burglary in the first degree in violation of section 713.3, subsection 1, paragraph “d”.

g. Kidnapping, if sexual abuse as defined in section 709.1 is committed during the offense.

h. Murder, if sexual abuse as defined in section 709.1 is committed during the offense.

i. Criminal transmission of human immunodeficiency virus in violation of section 709C.1, subsection 1, paragraph “a”.

2. “*Child care facility*” means as defined in section 237A.1.

3. “*Convicted*” or “*conviction*” means a person who is found guilty of, pleads guilty to, or is sentenced or adjudicated delinquent for an act which is an indictable offense in this state or in another jurisdiction, including, but not limited to, a juvenile who has been adjudicated delinquent, but whose juvenile court records have been sealed under section 232.150, and a person who has received a deferred sentence or a deferred judgment or has been acquitted by reason of insanity. “*Convicted*” or “*conviction*” does not mean a plea, sentence, adjudication, deferral of sentence or judgment which has been reversed or otherwise set aside.

4. “*Criminal or juvenile justice agency*” means an agency or department of any level of government or an entity wholly owned, financed, or controlled by one or more such agencies or departments which performs as its principal function the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal or juvenile offenders.

5. “*Criminal offense against a minor*” means any of the following criminal offenses or conduct:

a. Kidnapping of a minor, except for the kid-

napping of a minor in the third degree committed by a parent.

b. False imprisonment of a minor, except if committed by a parent.

c. Any indictable offense involving sexual conduct directed toward a minor.

d. Solicitation of a minor to engage in an illegal sex act.

e. Use of a minor in a sexual performance.

f. Solicitation of a minor to practice prostitution.

g. Any indictable offense against a minor involving sexual contact with the minor.

h. An attempt to commit an offense enumerated in this subsection.

i. Incest committed against a minor.

j. Dissemination and exhibition of obscene material to minors in violation of section 728.2.

k. Admitting minors to premises where obscene material is exhibited in violation of section 728.3.

l. Stalking in violation of section 708.11, subsection 3, paragraph “b”, subparagraph (3), if the fact-finder determines by clear and convincing evidence that the offense was sexually motivated.

m. Sexual exploitation of a minor in violation of section 728.12.

n. Enticing away a minor in violation of section 710.10, subsection 1.

o. An indictable offense committed in another jurisdiction which would constitute an indictable offense under paragraphs “a” through “n”.

6. “*Department*” means the department of public safety.

7. “*Other relevant offense*” means any of the following offenses:

a. Telephone dissemination of obscene materials in violation of section 728.15.

b. Rental or sale of hard-core pornography in violation of section 728.4.

c. Indecent exposure in violation of section 709.9.

d. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs “a” through “c” if committed in this state.

8. “*Residence*” means the place where a person sleeps, which may include more than one location, and may be mobile or transitory.

9. “*Sexually violent offense*” means any of the

following indictable offenses:

a. Sexual abuse as defined under section 709.1.

b. Assault with intent to commit sexual abuse in violation of section 709.11.

c. Sexual misconduct with offenders in violation of section 709.16.

d. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.

e. A criminal offense committed in another jurisdiction which would constitute an indictable offense under paragraphs "a" through "d" if committed in this state.

10. "*Sexual exploitation*" means sexual exploitation by a counselor, therapist, or school employee under section 709.15.

11. "*Sexually violent predator*" means a person who has been convicted of an offense under the laws of this state or of another state which would qualify the person as a sexually violent predator under the federal Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14071(a)(3)(B), (C), (D), and (E).

2003 Acts, ch 180, §63  
Child or dependent adult abuse information and criminal records access,  
see §135C.33  
Subsection 10 amended

### 692A.13 Availability of records.

Information contained in the sex offender registry is a confidential record under section 22.7, subsection 9, and shall only be disseminated or redisseminated as provided in section 692A.13A or as follows:

1. The department, sheriff, or a police department may disclose information to criminal or juvenile justice agencies for law enforcement or prosecution purposes.

2. A department listed under section 692A.13A or a juvenile court officer conducting a risk assessment may disclose information to government agencies which are conducting confidential background investigations.

3. The department or a criminal or juvenile justice agency may release relevant information from the registry except as otherwise provided in section 692A.13A, subsection 3, to members of the general public concerning a specific person who is required to register under this chapter as follows:

a. Any person may contact a sheriff's office or a police department in writing to request information regarding any person required to register. A request for information shall include the name and one or more of the following identifiers pertaining to the person about whom information is sought:

- (1) The person's date of birth.
- (2) The person's social security number.
- (3) The person's address.

b. A county sheriff or a police department shall also provide to any person upon request, access to the list of all registrants in that county who have been classified as "at-risk" in this state, however, records of persons protected under 18 U.S.C. § 3521 shall not be disclosed.

c. Upon the appropriation of sufficient funds, the department shall provide electronic access to relevant information from the registry for the following:

(1) Persons who commit a criminal offense against a minor, an aggravated offense, sexual exploitation, a sexually violent offense, or an other relevant offense on or after July 1, 1999, and who have been assessed to be "moderate-risk" or "high-risk".

(2) Persons who committed an offense prior to July 1, 1999, and who have been assessed to be "moderate-risk" or "high-risk" and whose opportunity to request a hearing regarding the assessment of risk has lapsed.

4. The department may disseminate departmental analyses of information contained in the sex offender registry to persons conducting bona fide research, if the data does not contain individually identified information, as defined under section 692.1.

5. Criminal history data contained in the registry may be released as provided in chapter 692 or used by criminal or juvenile justice agencies as an index for purposes of locating a relevant conviction record.

6. A criminal or juvenile justice agency shall not initiate affirmative public notification regarding an individual who has been convicted of kidnapping or false imprisonment, and the crime did not involve attempted sexual abuse or sexual abuse, and the person has not committed another offense that would require the person to register.

7. Notwithstanding sections 232.147 through 232.151, records concerning convictions for criminal offenses against a minor, sexual exploitation, other relevant offenses, or sexually violent offenses which are committed by a minor may be released in the same manner as records of convictions of adults.

8. The department shall provide information for purposes of the single contact repository established pursuant to section 135C.33, in accordance with rules adopted by the department.

9. If the department of human services determines that disclosure is necessary for the protection of a child or a dependent adult, the department may disclose to a subject of a child abuse report referred to in section 235A.15, subsection 2, paragraph "a", or to a subject of a dependent adult abuse report referred to in section 235B.6, subsection 2, paragraph "a", that an individual is listed in the child or dependent adult abuse registry or is required to register under this chapter.

2003 Acts, ch 123, §3; 2003 Acts, ch 179, §76  
NEW subsection 9

## CHAPTER 701

### GENERAL CRIMINAL LAW PROVISIONS

#### 701.11 Evidence of similar offenses — sexual abuse.

1. In a criminal prosecution in which a defendant has been charged with sexual abuse, evidence of the defendant's commission of another sexual abuse is admissible and may be considered for its bearing on any matter for which the evidence is relevant. This evidence, though relevant, may be excluded if the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. This evidence is not admissible unless the state presents clear proof of the commission of the prior act of sexual abuse.

2. If the prosecution intends to offer evidence

pursuant to this section, the prosecution shall disclose such evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, ten days prior to the scheduled date of trial. The court may for good cause shown permit disclosure less than ten days prior to the scheduled date of trial.

3. For purposes of this section, “sexual abuse” means any commission of or conviction for a crime defined in chapter 709. “Sexual abuse” also means any commission of or conviction for a crime in another jurisdiction under a statute that is substantially similar to any crime defined in chapter 709.

2003 Acts, ch 132, §1  
NEW section

## CHAPTER 702

### DEFINITIONS

#### 702.11 Forcible felony.

1. A “forcible felony” is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree.

2. Notwithstanding subsection 1, the following offenses are not forcible felonies:

a. Willful injury in violation of section 708.4, subsection 2.

b. Sexual abuse in the third degree committed between spouses.

c. Sexual abuse in violation of section 709.4, subsection 2, paragraph “c”, subparagraph (4).

d. Sexual exploitation by a counselor, therapist, or school employee in violation of section 709.15.

e. Child endangerment resulting in bodily injury to a child or a minor in violation of section 726.6, subsection 5.

2003 Acts, ch 180, §64  
Subsection 2, paragraph d amended

## CHAPTER 708

### ASSAULT

#### 708.2 Penalties for assault.

1. A person who commits an assault, as defined in section 708.1, with the intent to inflict a serious injury upon another, is guilty of an aggravated misdemeanor.

2. A person who commits an assault, as defined in section 708.1, and who causes bodily injury or mental illness, is guilty of a serious misdemeanor.

3. A person who commits an assault, as defined in section 708.1, and uses or displays a dangerous weapon in connection with the assault, is guilty of an aggravated misdemeanor. This subsection does not apply if section 708.6 or 708.8 applies.

4. A person who commits an assault, as defined in section 708.1, and who causes serious injury, is guilty of a class “D” felony.

5. A person who commits an assault, as defined in section 708.1, and who uses any object to penetrate the genitalia or anus of another person, is guilty of a class “C” felony.

6. Any other assault, except as otherwise provided, is a simple misdemeanor.

2003 Acts, ch 132, §2  
Definition of forcible felony, §702.11  
NEW subsection 5 and former subsection 5 renumbered as 6

## CHAPTER 708B

## BIOLOGICAL AGENTS OR DISEASES

**708B.1 Anthrax.**

1. *Unlawful possession.* Any person who knowingly possesses bacillus anthracis or any substance containing bacillus anthracis is guilty of a class “C” felony.

2. *Unlawful distribution.* Any person who knowingly distributes bacillus anthracis or any substance containing bacillus anthracis to any other person, which may or may not cause exposure to bacillus anthracis, is guilty of a class “B”

felony.

3. *Exceptions.* This section shall not apply to a person who possesses or distributes bacillus anthracis or any substance containing bacillus anthracis which is being used solely for a purpose which is lawfully authorized under federal law.

2003 Acts, ch 44, §115  
Section transferred from §126.24 in Code Supplement 2003, pursuant to authorization in 2003 Acts, ch 44, §115

## CHAPTER 709

## SEXUAL ABUSE

**709.15 Sexual exploitation by a counselor, therapist, or school employee.**

1. As used in this section:

a. “*Counselor or therapist*” means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services.

b. “*Emotionally dependent*” means that the nature of the patient’s or client’s or former patient’s or client’s emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold consent to sexual conduct, as described in subsection 2, by the counselor or therapist.

For the purposes of subsection 2, a former patient or client is presumed to be emotionally dependent for one year following the termination of the provision of mental health services.

c. “*Former patient or client*” means a person who received mental health services from the counselor or therapist.

d. “*Mental health service*” means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction.

e. “*Patient or client*” means a person who receives mental health services from the counselor or therapist.

f. “*School employee*” means a practitioner as defined in section 272.1.

g. “*Student*” means a person who is currently enrolled in or attending a public or nonpublic ele-

mentary or secondary school, or who was a student enrolled in or attended a public or nonpublic elementary or secondary school within thirty days of any violation of subsection 3.

2. Sexual exploitation by a counselor or therapist occurs when any of the following are found:

a. A pattern or practice or scheme of conduct to engage in any of the conduct described in paragraph “b” or “c”.

b. Any sexual conduct, with an emotionally dependent patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

c. Any sexual conduct with a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the patient or client or former patient or client which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

Sexual exploitation by a counselor or therapist does not include touching which is part of a necessary examination or treatment provided a patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged.

3. Sexual exploitation by a school employee occurs when any of the following are found:

*a.* A pattern or practice or scheme of conduct to engage in any of the conduct described in paragraph “*b*”.

*b.* Any sexual conduct with a student for the purpose of arousing or satisfying the sexual desires of the school employee or the student. Sexual conduct includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

Sexual exploitation by a school employee does not include touching that is necessary in the performance of the school employee’s duties while acting within the scope of employment.

4. *a.* A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph “*a*”, commits a class “D” felony.

*b.* A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph “*b*”, commits an aggravated misdemeanor.

*c.* A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph “*c*”, commits a serious misdemeanor. In lieu of the sentence provided for under section 903.1, subsection 1, paragraph “*b*”, the offender may be required to attend a sexual abuser treatment program.

5. *a.* A school employee who commits sexual exploitation in violation of subsection 3, paragraph “*a*”, commits a class “D” felony.

*b.* A school employee who commits sexual exploitation in violation of subsection 3, paragraph “*b*”, commits an aggravated misdemeanor.

2003 Acts, ch 180, §65  
Section amended

#### **709.19 No-contact order upon defendant’s release from jail or prison.**

1. Upon the filing of an affidavit by a victim, or a parent or guardian on behalf of a minor who is a victim, of a crime that is a sexual offense in violation of section 709.2, 709.3, 709.4, 709.8, 709.9, 709.11, 709.12, 709.14, 709.15, or 709.16, that states that the presence of or contact with the de-

fendant whose release from jail or prison is imminent or who has been released from jail or prison continues to pose a threat to the safety of the victim, persons residing with the victim, or members of the victim’s immediate family, the court shall enter a temporary no-contact order which shall require the defendant to have no contact with the victim, persons residing with the victim, or members of the victim’s immediate family.

2. A temporary restraining order issued under this section shall expire at such time as the court directs, not to exceed ten days from the date of issuance. The court, for good cause shown before expiration of the order, may extend the expiration date of the order for up to ten days, or for a longer period agreed to by the adverse party.

3. Upon motion of the party, the court shall issue a no-contact order which shall require the defendant to have no contact with the victim, persons residing with the victim, or members of the victim’s immediate family if the court, after a hearing, finds by a preponderance of the evidence, that the defendant poses a threat to the safety of the victim, persons residing with the victim, or members of the victim’s immediate family.

4. A no-contact order shall set forth the reasons for the issuance of the order, be specific in terms, and describe in reasonable detail the purpose of the order.

5. The court shall set the duration of the no-contact order for the period it determines is necessary to protect the safety of the victim, persons residing with the victim, or members of the victim’s immediate family, but the duration shall not be set for a period in excess of one year from the date of the issuance of the order. The victim, at any time within ninety days before the expiration of the order, may apply for a new no-contact order under this section.

6. Violation of a no-contact order issued under this section constitutes contempt of court and may be punished by contempt proceedings.

2003 Acts, ch 108, §113  
Subsection 1 amended

## CHAPTER 714B

### PRIZE PROMOTIONS

#### **714B.10 Exemptions.**

This chapter does not apply to the following:

1. Advertising by sponsors registered pursuant to chapter 557B, licensed pursuant to chapter 99B, or regulated pursuant to chapter 99D, 99F, or 99G.

2. Advertising in connection with the sale or purchase of books, recordings, videocassettes, periodicals, and similar goods through a membership group or club which is regulated by the federal trade commission pursuant to code of federal

regulations, Title 16, part 4525.1, concerning use of negative option plans by sellers in commerce.

3. Advertising in connection with the sale or purchase of goods ordered through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive the goods and who, after the receipt of the goods, is given an opportunity to examine the goods and to receive a full refund of

charges for the goods upon return of the goods undamaged.

4. Advertising in connection with sales by a catalog seller. For purposes of this section “*catalog seller*” means a person at least fifty percent of whose annual revenues are derived from the sale of merchandise sold in connection with the distribution of catalogs of at least twenty-four pages,

which contain written descriptions or illustrations and sale prices for each item of merchandise and which are distributed in more than one state with a total annual distribution of at least two hundred fifty thousand.

2003 Acts, ch 178, §116, 121; 2003 Acts, ch 179, §142  
Subsection 1 amended

## CHAPTER 715A

### FORGERY AND RELATED FRAUDULENT CRIMINAL ACTS

#### 715A.6 Credit cards.

1. A person commits a public offense by using a credit card for the purpose of obtaining property or services with knowledge of any of the following:

- a. The credit card is stolen or forged.
- b. The credit card has been revoked or canceled.
- c. For any other reason the use of the credit card is unauthorized.

It is an affirmative defense to prosecution under paragraph “c” if the person proves by a preponderance of the evidence that the person had the intent and ability to meet all obligations to the issuer arising out of the use of the credit card.

2. An offense under this section is a class “C” felony if the value of the property or services secured or sought to be secured by means of the credit card is greater than ten thousand dollars. If the value of the property or services secured or sought to be secured by means of the credit card is greater than one thousand dollars but not more than ten thousand dollars, an offense under this section is a class “D” felony, otherwise the offense is an aggravated misdemeanor.

3. For purposes of this section, the value of the property or services is the highest value of the property or services determined by any reasonable standard at the time the violation occurred. Any reasonable standard includes but is not limited to market value within the community, actual value, or replacement value. If property or services are secured by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the acts are attributable to a single scheme, plan, or conspiracy, the acts may be considered as a single act and the value may be the total value of all property or services involved.

2003 Acts, ch 12, §1, 2  
Subsection 2 amended  
NEW subsection 3

#### 715A.8 Identity theft.

1. For purposes of this section, “*identification information*” means the name, address, date of

birth, telephone number, driver’s license number, nonoperator’s identification number, social security number, place of employment, employee identification number, parent’s legal surname prior to marriage, demand deposit account number, savings or checking account number, or credit card number of a person.

2. A person commits the offense of identity theft if the person fraudulently uses or attempts to fraudulently use identification information of another person, with the intent to obtain credit, property, services, or other benefit.

3. If the value of the credit, property, or services exceeds one thousand dollars, the person commits a class “D” felony. If the value of the credit, property, or services does not exceed one thousand dollars, the person commits an aggravated misdemeanor.

4. A violation of this section is an unlawful practice under section 714.16.

2003 Acts, ch 49, §1  
Subsection 2 amended

#### 715A.10 Illegal use of scanning device or reencoder.

1. A person commits a class “D” felony if the person does any of the following:

a. Uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card, and with the intent to defraud the authorized user, the issuer of the authorized user’s payment card, or a merchant.

b. Uses a reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded, and with the intent to defraud the authorized user, the issuer of the authorized user’s payment card, or a merchant.

2. A second or subsequent violation of this section is a class “C” felony.

3. As used in this section:

a. “*Merchant*” means an owner or operator of a retail mercantile establishment or an agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator. A “*merchant*” also means a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.

b. “*Payment card*” means a credit card, charge card, debit card, or any other card that is issued to

an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

c. “*Reencoder*” means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.

d. “*Scanning device*” means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.

2003 Acts, ch 12, §3  
NEW section

## CHAPTER 716

### DAMAGE AND TRESPASS TO PROPERTY

#### **716.6B Unauthorized computer access — penalties — civil cause of action.**

1. A person who knowingly and without authorization accesses a computer, computer system, or computer network commits the following:

a. An aggravated misdemeanor if computer data is accessed that contains a confidential record, as defined in section 22.7, operational or support data of a public utility, as defined in section 476.1, operational or support data of a rural water district incorporated pursuant to chapter 357A or 504A, operational or support data of a municipal utility organized pursuant to chapter 388 or 389, operational or support data of a public airport, or

a trade secret, as defined in section 550.2.

b. A serious misdemeanor if computer data is copied, altered, or deleted.

c. A simple misdemeanor for any access which is not an aggravated or serious misdemeanor.

2. The prosecuting attorney or an aggrieved person may institute civil proceedings against any person in district court seeking relief from conduct constituting a violation of this section or to prevent, restrain, or remedy such a violation.

2003 Acts, ch 75, §1  
Computer terminology, see §702.1A  
Subsection 1, paragraph a amended

## CHAPTER 717

### INJURY TO LIVESTOCK

#### **717.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “*Law enforcement officer*” means a regularly employed member of a police force of a city or county, including a sheriff, who is responsible for the prevention and detection of crime and the enforcement of the criminal laws of this state.

2. “*Livestock*” means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus; farm deer as defined in section 170.1; or poultry.

3. “*Livestock care provider*” means a person

designated by a local authority to provide care to livestock which is rescued by the local authority pursuant to section 717.2A.

4. “*Local authority*” means a city as defined in section 362.2 or a county as provided in chapter 331.

5. “*Maintenance*” means to provide on-site or off-site care to neglected livestock.

6. “*Sustenance*” means food, water, or a nutritional formulation customarily used in the production of livestock.

2003 Acts, ch 149, §21, 23  
Subsection 2 amended

## CHAPTER 717A

### OFFENSES RELATING TO AGRICULTURAL PRODUCTION

#### 717A.2 Animal facilities — civil action — criminal penalties.

1. A person shall not, without the consent of the owner, do any of the following:

*a.* Willfully destroy property of an animal facility, or kill or injure an animal maintained at an animal facility, including by an act of violence or the transmission of a disease including but not limited to any disease designated by the department of agriculture and land stewardship pursuant to section 163.2.

*b.* Exercise control over an animal facility including property of the animal facility, or an animal maintained at an animal facility, with intent to deprive the animal facility of an animal or property.

*c.* Enter onto or into an animal facility, or remain on or in an animal facility, if the person has notice that the facility is not open to the public, if the person has an intent to do one of the following:

(1) Disrupt operations conducted at the animal facility, if the operations directly relate to agricultural production, animal maintenance, educational or scientific purposes, or veterinary care.

(2) Kill or injure an animal maintained at the animal facility.

A person has notice that an animal facility is not open to the public if the person is provided notice before entering onto or into the facility, or the person refuses to immediately depart from the facility after being informed to leave. The notice may be in the form of a written or verbal communication by the owner, a fence or other enclosure designed to exclude intruders or contain animals, or a sign posted which is reasonably likely to come to the attention of an intruder and which indicates that entry is forbidden.

2. A person suffering damages resulting from an action which is in violation of subsection 1 may bring an action in the district court against the

person causing the damage to recover all of the following:

*a.* An amount equaling three times all actual and consequential damages.

*b.* Court costs and reasonable attorney fees.

3. A person violating this section is guilty of the following penalties:

*a.* A person who violates subsection 1, paragraph “*a*”, is guilty of a class “C” felony if the injury to or death of an animal or damage to property exceeds fifty thousand dollars, a class “D” felony if the injury to or death of an animal or damage to property exceeds five hundred dollars but does not exceed fifty thousand dollars, an aggravated misdemeanor if the injury to or death of an animal or damage to property exceeds one hundred dollars but does not exceed five hundred dollars, a serious misdemeanor if the injury to or death of an animal or damage to property exceeds fifty dollars but does not exceed one hundred dollars, or a simple misdemeanor if the injury to or death of an animal or damage to property does not exceed fifty dollars.

*b.* A person who violates subsection 1, paragraph “*b*”, is guilty of a class “D” felony.

*c.* A person who violates subsection 1, paragraph “*c*”, is guilty of an aggravated misdemeanor.

4. *a.* This section does not prohibit any conduct of a person holding a legal interest in an animal or property which is superior to the interest held by a person suffering from damages resulting from the conduct.

*b.* This section does not apply to a governmental agency that is taking lawful action against an animal or animal facility.

*c.* This section does not apply to a licensed veterinarian practicing veterinary medicine as provided in chapter 169 and according to customary standards of care.

2003 Acts, ch 44, §106

Subsection 3, paragraph a amended

## CHAPTER 717D

### ANIMAL CONTEST EVENTS

#### 717D.1 Definitions.

As used in this chapter:

1. “*Animal*” means a nonhuman vertebrate.

2. “*Contest animal*” means a bull, bear, chicken, or dog.

3. “*Contest device*” means equipment designed to enhance a contest animal’s entertainment value during training or a contest event, including a de-

vice to improve the contest animal’s competitiveness.

4. “*Contest event*” means a function organized for the entertainment or profit of spectators where a contest animal is injured, tormented, or killed, if the contest animal is a bull involved in a bullfight or bull baiting, a bear involved in bear baiting, a chicken involved in cock fighting, or a dog involved

in dog fighting.

5. “*Establishment*” means the location where a contest event occurs or is to occur, regardless of whether a contest animal is present at the establishment or the contest animal is witnessed by means of an electronic signal transmitted to the location.

6. “*Livestock*” means the same as defined in section 717.1.

7. “*Local authority*” means the same as defined in section 717B.1.

8. “*Promoter*” means a person who charges admission for entry into an establishment or organizes, holds, advertises, or otherwise conducts a

contest event.

9. “*Spectator*” means a person who attends an establishment for purposes of witnessing a contest event.

10. “*Trainer*” means a person who trains a contest animal for purposes of engaging in a contest event, regardless of where the contest event is located. A trainer includes a person who uses a contest device.

11. “*Transporter*” means a person who moves a contest animal for delivery to a training location or a contest event location.

2003 Acts, ch 108, §114  
NEW unnumbered paragraph 1

## CHAPTER 725

### VICE

#### **725.9 Possession of gambling devices prohibited — exception for manufacturing.**

1. “*Antique slot machine*” means a slot machine which is twenty-five years old or older.

2. “*Antique pinball machine*” means a pinball machine which is twenty-five years old or older.

3. “*Gambling device*” means a device used or adapted or designed to be used for gambling and includes, but is not limited to, roulette wheels, klondike tables, punchboards, faro layouts, keno layouts, numbers tickets, slot machines, pinball machines, push cards, jar tickets and pull-tabs. However, “gambling device” does not include an antique slot machine, antique pinball machine, or any device regularly manufactured and offered for sale and sold as a toy, except that any use of such a toy, antique slot machine or antique pinball machine for gambling purposes constitutes unlawful gambling.

4. A person who, in any manner or for any purpose, except under a proceeding to destroy the device, has in possession or control a gambling device is guilty of a serious misdemeanor.

5. This chapter does not prohibit the possession of gambling devices by a manufacturer or distributor if the possession is solely for sale out of the state in another jurisdiction where possession of the device is legal or for sale in the state or use in the state if the use is licensed pursuant to either chapter 99B or chapter 99G.

2003 Acts, ch 178, §117, 121; 2003 Acts, ch 179, §142  
See chapter 99A  
Subsection 5 amended

#### **725.15 Exceptions for legal gambling.**

Sections 725.5 to 725.10 and 725.12 do not apply to a game, activity, ticket, or device when lawfully possessed, used, conducted, or participated in pursuant to chapter 99B, 99F, or 99G.

2003 Acts, ch 178, §118, 121; 2003 Acts, ch 179, §142  
Section amended

#### **725.16 Gambling penalty.**

A person who commits an offense declared in chapter 99B to be a misdemeanor shall be guilty of a serious misdemeanor.

2003 Acts, ch 147, §4, 7  
Section amended

## CHAPTER 728

### OBSCENITY

#### **728.12 Sexual exploitation of a minor.**

1. It shall be unlawful to employ, use, persuade, induce, entice, coerce, solicit, knowingly permit, or otherwise cause or attempt to cause a minor to engage in a prohibited sexual act or in the simulation of a prohibited sexual act. A person must know, or have reason to know, or intend that the act or simulated act may be photographed, filmed, or otherwise preserved in a negative, slide, book, magazine, computer, computer disk, or other

print or visual medium, or be preserved in an electronic, magnetic, or optical storage system, or in any other type of storage system. A person who commits a violation of this subsection commits a class “C” felony. Notwithstanding section 902.9, the court may assess a fine of not more than fifty thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

2. It shall be unlawful to knowingly promote

any material visually depicting a live performance of a minor engaging in a prohibited sexual act or in the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits a class “D” felony. Notwithstanding section 902.9, the court may assess a fine of not more than twenty-five thousand dollars for each offense under this subsection in addition to imposing any other authorized sentence.

3. It shall be unlawful to knowingly purchase or possess a negative, slide, book, magazine, computer, computer disk, or other print or visual medium, or an electronic, magnetic, or optical storage system, or any other type of storage system which depicts a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A person who commits a violation of this subsection commits an aggravated misdemeanor for a first offense and a class “D” felony for a second or subsequent offense. For purposes of this subsection, an offense is considered a second or subsequent of-

fense if, prior to the person’s having been convicted under this subsection, any of the following apply:

a. The person has a prior conviction or deferred judgment under this subsection.

b. The person has a prior conviction, deferred judgment, or the equivalent of a deferred judgment in another jurisdiction for an offense substantially similar to the offense defined in this subsection. The court shall judicially notice the statutes of other states that define offenses substantially similar to the offense defined in this subsection and that therefore can be considered corresponding statutes.

4. This section does not apply to law enforcement officers, court personnel, licensed physicians, licensed psychologists, or attorneys in the performance of their official duties.

2003 Acts, ch 65, §1, 2  
Subsections 1 and 2 amended  
Subsection 3, unnumbered paragraph 1 amended

## CHAPTER 802

### LIMITATION OF CRIMINAL ACTIONS

#### **802.2A Incest — sexual exploitation by a counselor, therapist, or school employee.**

1. An information or indictment for incest under section 726.2 committed on or with a person who is under the age of eighteen shall be found within ten years after the person upon whom the offense is committed attains eighteen years of age. An information or indictment for any other incest shall be found within ten years after its commission.

2. An indictment or information for sexual exploitation by a counselor, therapist, or school employee under section 709.15 committed on or with a person who is under the age of eighteen shall be found within ten years after the person upon whom the offense is committed attains eighteen years of age. An information or indictment for any other sexual exploitation shall be found within ten years of the date the victim was last treated by the

counselor or therapist, or within ten years of the date the victim was enrolled in or attended the school.

2003 Acts, ch 180, §66  
Subsection 2 amended

#### **802.5 Extension for fraud, fiduciary breach.**

If the periods prescribed in sections 802.3 and 802.4 have expired, prosecution may nevertheless be commenced for any offense a material element of which is either fraud or a breach of fiduciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has legal duty to represent an aggrieved party and who is not a party to the offense, but in no case shall this provision extend the period of limitation otherwise applicable by more than three years.

2003 Acts, ch 108, §115  
Section amended

## CHAPTER 803

### JURISDICTION OF PUBLIC OFFENSES AND PLACE OF TRIAL

#### **803.3 Place of trial — special provisions.**

The following special provisions apply:

1. If conduct or results which constitute elements of an offense occur in two or more counties, prosecution of the offense may be had in any of such counties. In such cases, where a dominant

number of elements occur in one county, that county shall have the primary right to proceed with prosecution of the offender.

2. If an offense commenced outside the state is consummated within this state, trial of the offense shall be held in the county or counties in which the

offense is consummated or the interest protected by the involved penal statute is impaired.

3. If an offense is committed in or upon any conveyance in transit, and it cannot readily be determined in which county the offense was committed, trial of the offense may be held in any county through or over which the conveyance passed in the course of its journey.

4. If an offense is committed on the boundary of two or more counties, and it cannot readily be determined within which county the commission took place, trial of the offense may be held in any of the counties concerned.

5. If a simple misdemeanor is committed in a city which is located in two or more counties, venue shall be in the county in which the seat of government of the city is located.

6. If the offense is a traffic offense, or a scheduled offense under section 805.8A, 805.8B, or 805.8C, section 805.13 shall apply.

7. *a.* If a person is charged with a violation of the tax laws arising out of individual tax liability,

venue is in the county of residence of the person charged with the offense, unless the person is a nonresident of this state or the residence of the person cannot be established, in which event venue is in Polk county.

*b.* If a person is charged with a violation of the tax laws arising out of a business, venue is in any county where business was conducted. If a specific county cannot be established as a situs, venue is in Polk county.

*c.* If a person is charged with a violation of section 453B.12, venue is in the county of the residence of the person charged with the offense or the county in which the drugs were found.

*d.* If a person is charged with a violation of the tax laws in which venue is set under multiple provisions of this section, venue is in any county in which one of the charges may be prosecuted.

2003 Acts, ch 113, §2

7 NEW subsection 5 and former subsections 5 and 6 renumbered as 6 and

## CHAPTER 804

### COMMENCEMENT OF ACTIONS — ARREST — DISPOSITIONS OF PRISONERS

#### **804.28 Department of public safety prisoners.**

The sheriff of any county shall accept for custody in the county jail of the sheriff's respective county any person handed over to the sheriff for safekeeping and lodging by any member of the department of public safety. The county shall not be liable for medical treatment for injuries incurred by a per-

son before the person is transferred to the custody of the sheriff. Any expenses payable by the state pursuant to this section shall be paid out of any moneys in the state treasury not otherwise appropriated. The expenses shall be paid on claims filed with the department of administrative services.

2003 Acts, ch 145, §286

Terminology change applied

## CHAPTER 805

### CITATIONS IN LIEU OF ARREST

#### **805.6 Uniform citation and complaint.**

1. *a.* The commissioner of public safety, the director of transportation, and the director of natural resources, acting jointly, shall adopt a uniform, combined citation and complaint which shall be used for charging all traffic violations in Iowa under state law or local regulation or ordinance, and which shall be used for charging all other violations which are designated by sections 805.8A, 805.8B, and 805.8C to be scheduled violations. The filing fees and court costs in cases of parking meter and overtime parking violations which are denied are as stated in section 602.8106, subsection 1. The court costs in scheduled violation cases where a court appearance is not required are as stated in section 602.8106, subsection 1. The court costs in scheduled violation cases where a court

appearance is required are as stated in section 602.8106, subsection 1. This subsection does not prevent the charging of any of those violations by information, by private complaint filed under chapter 804, or by a simple notice of fine where permitted by section 321.236, subsection 1. Each uniform citation and complaint shall be serially numbered and shall be in quintuplicate, and the officer shall deliver the original and a copy to the court where the defendant is to appear, two copies to the defendant, and a copy to the law enforcement agency of the officer. The court shall forward an abstract of the uniform citation and complaint in accordance with section 321.491 when applicable.

The uniform citation and complaint shall contain spaces for the parties' names; the address of

the alleged offender; the registration number of the offender's vehicle; the information required by section 805.2, a warning which states, "I hereby swear and affirm that the information provided by me on this citation is true under penalty of providing false information"; and a statement that providing false information is a violation of section 719.3; a list of the scheduled fines prescribed by sections 805.8A, 805.8B, and 805.8C, either separately or by group, and a statement of the court costs payable in scheduled violation cases, whether or not a court appearance is required or is demanded; a brief explanation of sections 805.9 and 805.10; and a space where the defendant may sign an admission of the violation when permitted by section 805.9; and the uniform citation and complaint shall require that the defendant appear before a court at a specified time and place. The uniform citation and complaint also may contain a space for the imprint of a credit card, and may contain any other information which the commissioner of public safety and the director of natural resources may determine.

Notwithstanding other contrary requirements of this section, a uniform citation and complaint may be originated from a computerized device. The officer issuing the citation through a computerized device shall obtain electronically the signature of the person cited as provided in section 805.3 and shall give two copies of the citation to the person cited and shall provide a record of the citation to the court where the person cited is to appear and to the law enforcement agency of the officer by an electronic process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or copy of the citation.

*b.* The uniform citation and complaint shall contain the following:

(1) A promise to appear as provided in section 805.3.

(2) The following statement:

I hereby give my unsecured appearance bond in the amount of . . . . . dollars and enter my written appearance. I agree that if I fail to appear in person or by counsel to defend against the offense charged in this citation the court is authorized to enter a conviction and render judgment against me for the amount of my appearance bond in satisfaction of the penalty plus court costs.

(3) A space immediately below the items in subparagraphs (1) and (2) for the signature of the person being charged which shall serve for each of the items in subparagraphs (1) and (2).

*c.* Unless the officer issuing the citation arrests the alleged offender, or permits admission or requires submission of bail as provided in section 805.9, subsection 3, the officer shall enter in the blank contained in the statement required by paragraph "b" one of the following amounts and

shall require the person to sign the written appearance:

(1) If the offense is one to which an assessment of a minimum fine is applicable and the entry is otherwise not prohibited by this section, an amount equal to one and one-half times the minimum fine plus court costs.

(2) If the offense is one to which a scheduled fine is applicable, an amount equal to one and one-half times the scheduled fine plus court costs.

(3) If the violation is for any offense for which a court appearance is mandatory, and an assessment of a minimum fine is not applicable, the amount of one hundred dollars plus court costs.

*d.* The written appearance defined in paragraph "b" shall not be used for any offense other than a simple misdemeanor and shall not be used for any offense under section 321.218 or 321A.32.

2. In addition to those violations which are required by subsection 1 to be charged upon a uniform citation and complaint, a violation of chapter 321 which is punishable as a simple, serious, or aggravated misdemeanor may be charged upon a uniform citation and complaint, whether or not the alleged offender is arrested by the officer making the charge.

3. The uniform citation and complaint shall contain a place for citing a person in violation of section 453A.2, subsection 2.

4. Supplies of the uniform citation and complaint for municipal corporations and county agencies shall be paid for out of the budget of the municipal corporation or county receiving the fine resulting from use of the citation and complaint. Supplies of the uniform citation and complaint form used by other agencies shall be paid for out of the budget of the agency concerned and not out of the budget of the judicial branch.

5. The uniform citation and complaint shall contain a place for the verification of the officer issuing the complaint. The complaint may be verified before the chief officer of the law enforcement agency, or the chief officer's designee. The chief officer of each law enforcement agency of the state may designate specific individuals to administer oaths and certify verifications.

6. The commissioner of public safety and the director of the department of natural resources, acting jointly, shall design and publish a compendium of scheduled violations and scheduled fines, containing other information which they deem appropriate, and shall distribute copies to all courts and law enforcement officers and agencies of the state upon request. The cost of the publication shall be paid out of the budget of the department of public safety and out of the budget of the department of natural resources, each budget being liable for half of those costs. Copies shall be made available to individuals upon request, and a charge may be collected which does not exceed the cost of printing.

7. Supplies of uniform citation and complaint

forms existing or on order on July 1, 1995, may be used until exhausted.

2003 Acts, ch 6, §5  
Scheduled fine for purposes of calculating unsecured appearance bond, see §805.8A, subsection 1, paragraph a  
Subsection 1, paragraph c, subparagraph (3) stricken and former subparagraph (4) renumbered as (3)

### **805.8A Motor vehicle and transportation scheduled violations.**

#### *1. Parking violations.*

*a.* For parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, the scheduled fine is five dollars, except if the local authority has established the fine by ordinance pursuant to section 321.236, subsection 1. The scheduled fine for a parking violation pursuant to section 321.236 increases by five dollars, as authorized by ordinance pursuant to section 321.236, subsection 1, if the parking violation is not paid within thirty days of the date upon which the violation occurred. For purposes of calculating the unsecured appearance bond required under section 805.6, the scheduled fine shall be five dollars, or if the amount of the fine is greater than five dollars, the unsecured appearance bond shall be the amount of the fine established by the local authority pursuant to section 321.236, subsection 1. However, violations charged by a city or county upon simple notice of a fine instead of a uniform citation and complaint as permitted by section 321.236, subsection 1, paragraph "a", are not scheduled violations, and this section shall not apply to any offense charged in that manner. For a parking violation under section 321.362 or 461A.38, the scheduled fine is ten dollars.

*b.* For a parking violation under section 321L.2A, subsection 2, the scheduled fine is twenty dollars.

*c.* For violations under section 321L.2A, subsection 3, sections 321L.3, 321L.4, subsection 2, and section 321L.7, the scheduled fine is one hundred dollars.

#### *2. Title or registration violations.*

*a.* For violations under sections 321.32, 321.34, 321.37, 321.38, and 321.41, the scheduled fine is ten dollars.

*b.* For violations under sections 321.17, 321.47, 321.55, 321.98, and 321.115, the scheduled fine is thirty dollars.

*c.* For violations under sections 321.25, 321.45, 321.46, 321.48, 321.52, 321.57, 321.62, 321.67, and 321.104, the scheduled fine is fifty dollars.

*d.* For a violation under section 321.99, the scheduled fine is one hundred dollars.

#### *3. Equipment violations.*

*a.* For violations under sections 321.317, 321.386, 321.387, 321.388, 321.389, 321.390, 321.392, 321.393, 321.422, 321.432, 321.436, 321.439, 321.440, 321.441, 321.442, and 321.444, the scheduled fine is ten dollars.

*b.* For improperly used or nonused, or defec-

tive or improper equipment, other than brakes, driving lights and brake lights, under section 321.437, the scheduled fine is ten dollars.

*c.* For violations under sections 321.382, 321.404A, and 321.438, the scheduled fine is fifteen dollars.

*d.* For violations of sections 321.383, 321.384, 321.385, 321.398, 321.402, 321.403, 321.404, 321.409, 321.415, 321.419, 321.420, 321.421, 321.423, and 321.433, the scheduled fine is twenty dollars.

*e.* For a violation of section 321.430, the scheduled fine is thirty-five dollars.

*f.* For violations under sections 321.234A, 321.247, 321.381, and 321.381A, the scheduled fine is fifty dollars.

#### *4. Driver's license violations.*

*a.* For violations under sections 321.174A, 321.180, 321.180B, 321.193, and 321.194, the scheduled fine is thirty dollars.

*b.* For a violation of section 321.216, the scheduled fine is seventy-five dollars.

*c.* For violations under sections 321.174, 321.216B, 321.216C, 321.219, and 321.220, the scheduled fine is one hundred dollars.

#### *5. Speed violations.*

*a.* For excessive speed violations in excess of the limit under section 321.236, subsections 5 and 11, sections 321.285, and 461A.36, the scheduled fine shall be the following:

(1) Ten dollars for speed not more than five miles per hour in excess of the limit.

(2) Twenty dollars for speed greater than five but not more than ten miles per hour in excess of the limit.

(3) Thirty dollars for speed greater than ten but not more than fifteen miles per hour in excess of the limit.

(4) Forty dollars for speed greater than fifteen but not more than twenty miles per hour in excess of the limit.

(5) Forty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

*b.* Notwithstanding paragraph "a", for excessive speed violations in speed zones greater than fifty-five miles per hour, the scheduled fine shall be:

(1) Ten dollars for speed not more than five miles per hour in excess of the limit.

(2) Twenty dollars for speed greater than five but not more than ten miles per hour in excess of the limit.

(3) Forty dollars for speed greater than ten but not more than fifteen miles per hour in excess of the limit.

(4) Sixty dollars for speed greater than fifteen but not more than twenty miles per hour in excess of the limit.

(5) Sixty dollars plus two dollars for each mile per hour of excessive speed over twenty miles per hour over the limit.

c. Excessive speed in whatever amount by a school bus is not a scheduled violation under any section listed in this subsection.

d. Excessive speed in conjunction with a violation of section 321.278 is not a scheduled violation, whatever the amount of excess speed.

e. For a violation under section 321.295, the scheduled fine is thirty dollars.

6. *Operating violations.*

a. For a violation under section 321.236, subsections 3, 4, 9, and 12, the scheduled fine is twenty dollars.

b. For violations under section 321.275, subsections 1 through 7, sections 321.277A, 321.315, 321.316, 321.318, 321.363, and 321.365, the scheduled fine is twenty-five dollars.

c. For violations under sections 321.288, 321.297, 321.299, 321.303, 321.304, subsections 1 and 2, sections 321.305, 321.306, 321.311, 321.312, 321.314, 321.323, 321.340, 321.353, 321.354, and 321.395, the scheduled fine is thirty-five dollars.

d. For violations under sections 321.302 and 321.366, the scheduled fine is fifty dollars.

7. *Failure to yield or obey violations.*

a. For a violation by an operator of a motor vehicle under section 321.257, subsection 2, the scheduled fine is thirty-five dollars.

b. For violations under sections 321.298, 321.307, 321.308, 321.313, 321.319, 321.320, 321.321, 321.327, 321.329, and 321.333, the scheduled fine is thirty-five dollars.

8. *Traffic sign or signal violations.* For violations under section 321.236, subsections 2 and 6, sections 321.256, 321.294, 321.304, subsection 3, and section 321.322, the scheduled fine is thirty-five dollars.

9. *Bicycle or pedestrian violations.* For violations by a pedestrian or a bicyclist under section 321.234, subsections 3 and 4, section 321.236, subsection 10, section 321.257, subsection 2, section 321.275, subsection 8, section 321.325, 321.326, 321.328, 321.331, 321.332, 321.397, or 321.434, the scheduled fine is fifteen dollars.

9A. *Electric personal assistive mobility device violations.* For violations under section 321.235A, the scheduled fine is fifteen dollars.

10. *School bus violations.*

a. For violations by an operator of a school bus under sections 321.285 and 321.372, subsections 1 and 2, the scheduled fine is thirty-five dollars. However, an excessive speed violation by a school bus of more than ten miles per hour in excess of the limit is not a scheduled violation.

b. For a violation under section 321.372, subsection 3, the scheduled fine is one hundred dollars.

11. *Emergency vehicle violations.*

a. For violations under sections 321.231, 321.367, and 321.368, the scheduled fine is thirty-five dollars.

b. For a violation under section 321.323A or

321.324, the scheduled fine is fifty dollars.

12. *Restrictions on vehicles.*

a. For violations under sections 321.309, 321.310, 321.394, 321.461, and 321.462, the scheduled fine is twenty-five dollars.

b. For height, weight, length, width, load violations, and towed vehicle violations under section 321.437, the scheduled fine is twenty-five dollars.

c. For violations under sections 321.454, 321.455, 321.456, 321.457, and 321.458, the scheduled fine is one hundred dollars.

d. For violations under section 321.466, the scheduled fine is twenty dollars for each two thousand pounds or fraction thereof of overweight.

e. Violations of the schedule of axle and tandem axle and gross or group of axle weight violations in section 321.463 shall be scheduled violations subject to the provisions, procedures, and exceptions contained in sections 805.6 through 805.11, irrespective of the amount of the fine under that schedule. Violations of the schedule of weight violations shall be chargeable, where the fine charged does not exceed one thousand dollars, only by uniform citation and complaint. Violations of the schedule of weight violations, where the fine charged exceeds one thousand dollars shall, when the violation is admitted and section 805.9 applies, be chargeable upon uniform citation and complaint, indictment, or county attorney's information, but otherwise shall be chargeable only upon indictment or county attorney's information.

In all cases of charges under the schedule of weight violations, the charge shall specify the amount of fine charged under the schedule. Where a defendant is convicted and the fine under the foregoing schedule of weight violations exceeds one thousand dollars, the conviction shall be of an indictable offense although section 805.9 is employed and whether the violation is charged upon uniform citation and complaint, indictment, or county attorney's information.

f. For a violation under section 321E.16, other than the provisions relating to weight, the scheduled fine is one hundred dollars.

13. *Motor carrier violations.*

a. For violations under sections 321.54, 326.22, and 326.23, the scheduled fine is twenty dollars.

b. For a violation under section 321.449, the scheduled fine is twenty-five dollars.

c. For violations under sections 321.208A, 321.364, 321.450, 321.460, and 452A.52, the scheduled fine is one hundred dollars.

d. For violations of section 325A.3, subsection 5, or section 325A.8, the scheduled fine is fifty dollars.

e. For violations of chapter 325A, other than a violation of section 325A.3, subsection 5, or section 325A.8, the scheduled fine is two hundred fifty dollars.

f. For failure to have proper carrier identifica-

tion markings under section 327B.1, the scheduled fine is fifty dollars.

*g. For failure to have proper evidence of interstate authority carried or displayed under section 327B.1, and for failure to register, carry, or display evidence that interstate authority is not required under section 327B.1, the scheduled fine is two hundred fifty dollars.*

*14. Miscellaneous violations.*

*a. Failure to obey a peace officer.* For a violation under section 321.229, the scheduled fine is thirty-five dollars.

*b. Abandoning a motor vehicle.* For a violation under section 321.91, the scheduled fine is one hundred dollars.

*c. Seat belt or restraint violations.* For violations under sections 321.445 and 321.446, the scheduled fine is twenty-five dollars.

*d. Litter and debris violations.* For violations under sections 321.369 and 321.370, the scheduled fine is thirty-five dollars.

*e. Open container violations.* For violations under sections 321.284 and 321.284A, the scheduled fine is one hundred dollars.

*f. Proof of financial responsibility.* If, in connection with a motor vehicle accident, a person is charged and found guilty of a violation of section 321.20B, subsection 1, the scheduled fine is five hundred dollars; otherwise, the scheduled fine for a violation of section 321.20B, subsection 1, is two hundred fifty dollars. Notwithstanding section 805.12, fines collected pursuant to this paragraph shall be submitted to the state court administrator and distributed fifty percent to the victim compensation fund established in section 915.94, twenty-five percent to the county in which such fine is imposed, and twenty-five percent to the general fund of the state.

*g. Radar-jamming devices.* For a violation under section 321.232, the scheduled fine is fifty dollars.

*h. Railroad crossing violations.*

(1) For violations under sections 321.341, 321.342, 321.343, and 321.344, the scheduled fine is one hundred dollars.

(2) For a violation under section 321.344B, the scheduled fine is two hundred dollars.

*i. Road work zone violations.* The scheduled fine for any moving traffic violation under chapter 321, as provided in this section, shall be doubled if the violation occurs within any road work zone, as defined in section 321.1.

2003 Acts, ch 108, §116 – 118; 2003 Acts, ch 178, §15  
Subsection 1, paragraph a amended  
Subsection 3, paragraph e amended  
Subsection 4, paragraph b amended  
Subsection 10, paragraph b amended

### 805.13 Venue.

1. Traffic violations, whether or not scheduled, and all other scheduled violations may be tried before the nearest magistrate in the judicial district in which the offense is committed, or if the offense occurred in a city which is located in two counties, the violation shall be tried in the county in which the seat of government of the city is located.

2. Upon written consent of the defendant and the officer issuing the citation, traffic violations, whether or not scheduled, and any other scheduled violations, other than those for which a court appearance is required under section 805.10 may be prosecuted in any county in the state irrespective of where committed, and in such event the documents in the case shall be sent to the court or traffic and scheduled violations office designated by the defendant and the officer.

2003 Acts, ch 113, §3  
Subsection 1 amended

## CHAPTER 809A

### FORFEITURE REFORM ACT

#### 809A.14 In personam proceedings.

1. A judicial in personam forfeiture proceeding brought by a prosecuting attorney pursuant to an in personam civil action alleging conduct giving rise to forfeiture is subject to the provisions of this section. If a forfeiture is authorized by this chapter, it shall be ordered by the court in the in personam action. This action shall be in addition to or in lieu of in rem forfeiture procedures.

2. The court, on application of the prosecuting attorney, may enter any order authorized by section 809A.12, or any other appropriate order to protect the state's interest in property forfeited or subject to forfeiture.

3. The court may issue a temporary restrain-

ing order on application of the prosecuting attorney, if the state demonstrates both of the following:

*a.* Probable cause exists to believe that in the event of a final judgment, the property involved would be subject to forfeiture under this chapter.

*b.* Provision of notice would jeopardize the availability of the property for forfeiture.

4. Notice of the issuance of a temporary restraining order and an opportunity for a hearing shall be given to persons known to have an interest in the property. A hearing shall be held at the earliest possible date in accordance with rule of civil procedure 1.1507, and shall be limited to the following issues:

*a.* Whether a probability exists that the state will prevail on the issue of forfeiture.

*b.* Whether the failure to enter the order will result in the property being destroyed, conveyed, encumbered, removed from the jurisdiction of the court, concealed, or otherwise made unavailable for forfeiture.

*c.* Whether the need to preserve the availability of property outweighs the hardship on any owner or interest holder against whom the order is to be entered.

5. On a determination that a person committed conduct giving rise to forfeiture under this chapter, the court shall do both of the following:

*a.* Enter a judgment of forfeiture of the property found to be subject to forfeiture described in the complaint.

*b.* Authorize the prosecuting attorney or designee or any law enforcement officer to seize all property ordered forfeited which was not previously seized or is not under seizure.

6. Except as provided in section 809A.12, a person claiming an interest in property subject to forfeiture under this chapter shall not intervene in a trial or appeal of a criminal action or in an in personam civil action involving the forfeiture of the property.

7. Following the entry of an in personam forfeiture order, the prosecuting attorney may proceed with an in rem action to resolve the remaining interests in the property. The following procedures shall apply:

*a.* The prosecuting attorney shall give notice of pending forfeiture, in the manner provided in section 809A.8, to all owners and interest holders who have not previously been given notice.

*b.* An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim as described in section 809A.11, within thirty days after initial notice of pending forfeiture or after notice under paragraph “*a*”, whichever is earlier.

*c.* If the state does not recognize the claimed exemption, the prosecuting attorney shall file a complaint and the court shall hold an in rem forfeiture hearing as provided for in section 809A.13.

*d.* In accordance with the findings made at the hearing, the court may amend the order of forfeiture if it determines that any claimant has established by a preponderance of the evidence that the claimant has an interest in the property which is exempt under the provisions of section 809A.5.

2003 Acts, ch 108, §119

Subsection 4, unnumbered paragraph 1 amended

### **809A.17 Allocation of forfeited property.**

1. A person having control over forfeited property shall communicate that fact to the attorney general or the attorney general’s designee.

2. Forfeited property not needed as evidence in a criminal case shall be delivered to the department of justice, or, upon written authorization of the attorney general or the attorney general’s designee, the property may be destroyed, sold, or delivered to an appropriate agency for disposal in accordance with this section.

3. Forfeited property may be used by the department of justice in the enforcement of the criminal law. The department may give, sell, or trade property to any other state agency or to any other law enforcement agency within the state if, in the opinion of the attorney general, it will enhance law enforcement within the state.

4. Forfeited property which is not used by the department of justice in the enforcement of the law may be requisitioned by the department of public safety or any law enforcement agency within the state for use in enforcing the criminal laws of this state. Forfeited property not requisitioned may be delivered to the director of the department of administrative services to be disposed of in the same manner as property received pursuant to section 8A.325.

5. Notwithstanding subsection 1, 2, 3, or 4, the following apply:

*a.* Forfeited property which is a controlled substance or a simulated, counterfeit, or imitation controlled substance shall be disposed of as provided in section 124.506.

*b.* Forfeited property which is a weapon or ammunition shall be deposited with the department of public safety to be disposed of in accordance with the rules of the department. All weapons or ammunition may be held for use in law enforcement, testing, or comparison by the criminalistics laboratory, or destroyed. Ammunition and firearms which are not illegal and are not offensive weapons as defined by section 724.1 may be sold by the department as provided in section 809.21.

*c.* Material in violation of chapter 728 shall be destroyed.

*d.* Property subject to the rules of the natural resource commission shall be delivered to that commission for disposal in accordance with its rules.

2003 Acts, ch 145, §277, 286

Terminology change applied

Subsection 4 amended

## CHAPTER 811

### PRETRIAL RELEASE — BAIL

#### **811.2A Pretrial release.**

A person, who has been released under a plan of

pretrial release or on the person’s own recognition and who is subsequently arrested for a new

criminal offense while under the plan of pretrial release or released on the person's own recognizance, shall not be eligible for another release pursuant to pretrial release guidelines or released on the person's own recognizance, if all of the following apply:

1. The arrest for the new criminal offense is based on a set of facts or an event that is different

than involved in the earlier arrest.

2. The new criminal offense is classified as greater than a serious misdemeanor.

However, a person may be admitted to bail if eligible pursuant to section 811.1.

2003 Acts, 1st Ex, ch 2, §49, 209  
NEW section

## CHAPTER 815

### COSTS — COMPENSATION AND FEES — INDIGENT DEFENSE

#### **815.11 Appropriations for indigent defense.**

Costs incurred under chapter 229A, 665, or 822, or section 232.141, subsection 3, paragraph "c", or section 598.23A, 814.9, 814.10, 814.11, 815.4, 815.7, 815.10, or 908.11 on behalf of an indigent shall be paid from funds appropriated by the general assembly to the office of the state public de-

fender in the department of inspections and appeals for those purposes. Costs incurred in any administrative proceeding or in any other proceeding under chapter 598, 600A, 633, or 915 or other provisions of the Code or administrative rules are not payable from these funds.

2003 Acts, ch 51, §5  
Section amended

## CHAPTER 820

### UNIFORM CRIMINAL EXTRADITION ACT

#### **820.24 Expenses — how paid.**

When the punishment of the crime shall be the confinement of the criminal in the penitentiary, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the director of the department of administrative services; and in all other cases they shall be paid out of the county treasury in the county

wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and all necessary and actual traveling expenses incurred in returning the prisoner.

2003 Acts, ch 145, §286  
Terminology change applied

## CHAPTER 901

### JUDGMENT AND SENTENCING PROCEDURES

#### **901.4 Presentence investigation report confidential — distribution.**

The presentence investigation report is confidential and the court shall provide safeguards to ensure its confidentiality, including but not limited to sealing the report, which may be opened only by further court order. At least three days prior to the date set for sentencing, the court shall serve all of the presentence investigation report upon the defendant's attorney and the attorney for the state, and the report shall remain confidential except upon court order. However, the court may conceal the identity of the person who provided confidential information. The report of a medical examination or psychological or psychiatric evaluation shall be made available to the attorney for

the state and to the defendant upon request. The reports are part of the record but shall be sealed and opened only on order of the court. If the defendant is committed to the custody of the Iowa department of corrections and is not a class "A" felon, a copy of the presentence investigation report shall be forwarded to the director with the order of commitment by the clerk of the district court and to the board of parole at the time of commitment. Pursuant to section 904.602, the presentence investigation report may also be released by the department of corrections or a judicial district department of correctional services to another jurisdiction for the purpose of providing interstate probation and parole compact services or evaluations, or to a substance abuse or mental health ser-

vices provider when referring a defendant for services. The defendant or the defendant's attorney may file with the presentence investigation report, a denial or refutation of the allegations, or both, contained in the report. The denial or refutation shall be included in the report. If the person is sentenced for an offense which requires registration under chapter 692A, the court shall release the report to the department which is responsible under section 692A.13A for performing the assessment of risk.

2003 Acts, 1st Ex, ch 2, §50, 209  
Section amended

### 901.5 Pronouncing judgment and sentence.

After receiving and examining all pertinent information, including the presentence investigation report and victim impact statements, if any, the court shall consider the following sentencing options. The court shall determine which of them is authorized by law for the offense, and of the authorized sentences, which of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

At the time fixed by the court for pronouncement of judgment and sentence, the court shall act accordingly:

1. If authorized by section 907.3, the court may defer judgment and sentence for an indefinite period in accordance with chapter 907.

2. If the defendant is not an habitual offender as defined by section 902.8, the court may pronounce judgment and impose a fine.

3. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both, and suspend the execution of the sentence or any part of it as provided in chapter 907.

4. The court may pronounce judgment and impose a fine or sentence the defendant to confinement, or both.

5. If authorized by section 907.3, the court may defer the sentence and assign the defendant to the judicial district department of correctional services.

6. The court may pronounce judgment and sentence the defendant to confinement and then reconsider the sentence as provided by section 902.4 or 903.2.

7. The court shall inform the defendant of the mandatory minimum sentence, if one is applicable.

7A. *a.* The court may order the defendant to have no contact with the victim of the offense, persons residing with the victim, members of the victim's immediate family, or witnesses to the offense if the court finds that the presence of or contact with the defendant poses a threat to the safety of

the victim, persons residing with the victim, members of the victim's immediate family, or witnesses to the offense.

*b.* The duration of the no-contact order may extend for a period of five years from the date the judgment is entered or the deferred judgment is granted, or up to the maximum term of confinement, whichever is greater. The court may order the no-contact order regardless of whether the defendant is placed on probation.

Upon the filing of an affidavit by the victim, a person residing with the victim, a member of the victim's immediate family, or a witness to the offense which states that the defendant continues to pose a threat to the safety of the victim, persons residing with the victim, members of the victim's immediate family, or witnesses to the offense within ninety days prior to the expiration of the no-contact order, the court shall modify and extend the no-contact order for an additional period of up to five years, unless the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, members of the victim's immediate family, or witnesses to the offense. The number of modifications extending the no-contact order permitted by this subsection is not limited.

*c.* The court order shall contain the court's directives restricting the defendant from having contact with the victim of the offense, persons residing with the victim, members of the victim's immediate family, or witnesses to the offense. The order shall state whether the defendant is to be taken into custody by a peace officer for a violation of the terms stated in the order.

*d.* Violation of a no-contact order issued under this section is punishable by summary contempt proceedings. A hearing in a contempt proceeding brought pursuant to this subsection shall be held not less than five days and not more than fifteen days after the issuance of a rule to show cause, as set by the court, unless the defendant is already in custody at the time of the alleged violation in which case the hearing shall be held not less than five days and not more than forty-five days after the issuance of the rule to show cause.

*e.* For purposes of this subsection, "*victim*" means a person who has suffered physical, emotional, or financial harm as the result of a public offense committed in this state.

8. The court may order the defendant to complete any treatment indicated by a substance abuse evaluation ordered pursuant to section 901.4A or any other section.

8A. *a.* The court shall order DNA profiling of a defendant convicted of an offense that requires profiling under section 13.10.

*b.* Notwithstanding section 13.10, the court may order the defendant to provide a physical specimen to be submitted for DNA profiling if appropriate. In determining the appropriateness of ordering DNA profiling, the court shall consider

the deterrent effect of DNA profiling, the likelihood of repeated offenses by the defendant, and the seriousness of the offense.

9. If the defendant is being sentenced for an aggravated misdemeanor or a felony, the court shall publicly announce the following:

*a.* That the defendant's term of incarceration may be reduced from the maximum sentence because of statutory earned time, work credits, and program credits.

*b.* That the defendant may be eligible for parole before the sentence is discharged.

*c.* In the case of multiple sentences, whether the sentences shall be served consecutively or concurrently.

10. In addition to any sentence imposed pursuant to chapter 902 or 903, the court shall order the state department of transportation to revoke the defendant's driver's license or motor vehicle operating privilege for a period of one hundred eighty days, or to delay the issuance of a driver's license for one hundred eighty days after the person is first eligible if the defendant has not been issued a driver's license, and shall send a copy of the order in addition to the notice of conviction required under section 124.412, 126.26, or 453B.16, to the state department of transportation, if the defendant is being sentenced for any of the following offenses:

*a.* A controlled substance offense under section 124.401, 124.401A, 124.402, or 124.403.

*b.* A drug or drug-related offense under section 126.3.

*c.* A controlled substance tax offense under chapter 453B.

If the person's operating privileges are suspended or revoked at the time of sentencing, the order shall provide that the one hundred eighty-day revocation period shall not begin until all other suspensions or revocations have terminated. Any order under this section shall also provide that the department shall not issue a temporary restricted license to the defendant during the revocation period, without further order by the court.

11. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the provisions of 21 U.S.C. § 862, regarding the denial of federal benefits to drug traffickers and possessors convicted under state or federal law, and may enter an order specifying the range and scope of benefits to be denied to the defendant, according to the provisions of 21 U.S.C. § 862. For the purposes of this subsection, "*federal benefit*" means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or through the appropriation of funds of the United States, but does not include any retirement, welfare, social security, health, disability, veterans, public housing, or

similar benefit for which payments or services are required for eligibility. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to the denial of federal benefits program of the United States department of justice, along with any other forms and information required by the department.

12. In addition to any sentence or other penalty imposed against the defendant for an offense under chapter 124, the court shall consider the denial of state benefits to the defendant, and may enter an order specifying the range and scope of benefits to be denied to the defendant, comparable to the federal benefits denied under subsection 11. For the purposes of this subsection, "*state benefit*" means the issuance of any grant, contract, loan, professional license, or commercial license provided by a state agency, department, program, or otherwise through the appropriation of funds of the state, but does not include any retirement, welfare, health, disability, veterans, public housing, or similar benefit. The supreme court may adopt rules establishing sentencing guidelines consistent with this subsection and comparable to the guidelines for denial of federal benefits in 21 U.S.C. § 862. The clerk of the district court shall send a copy of any order issued pursuant to this subsection to each state agency, department, or program required to deny benefits pursuant to such an order.

2003 Acts, ch 109, §1; 2003 Acts, ch 156, §8; 2003 Acts, ch 179, §77  
NEW subsection 7A  
Subsection 13 stricken

#### **901.5B Reopening of sentence — sentences subject to maximum earned time accumulation of fifteen percent.**

1. A defendant serving a sentence under section 902.12 prior to July 1, 2003, who is sentenced by the court to the custody of the director of the department of corrections, may have the judgment and sentence reopened for resentencing if all of the following apply:

*a.* The county attorney from the county which prosecuted the defendant files a motion in the sentencing court to reopen the sentence of the defendant. The county attorney shall notify the victim pursuant to section 915.13 of the filing of the motion. The motion shall specify that the county attorney has informed the victim about the filing of the motion, and that the victim has thirty days from the date of the filing of the motion to file a written objection with the court.

*b.* No written objection is filed or if a written objection is filed, and upon hearing the court grants the motion.

2. Upon the court granting the motion to reopen the sentence, the court shall order that the defendant be eligible for consideration of parole or

work release in the same manner as a defendant serving a sentence under section 902.12.

3. For purposes of calculating earned time under section 903A.2, the sentencing date for a defendant whose sentence has been reopened under this section shall be the date of the original sentencing order.

4. The filing of a motion or reopening of a sentence under this section shall not constitute grounds to stay any other court proceedings, or to toll or restart the time for filing of any posttrial motion or any appeal.

2003 Acts, ch 156, §9  
NEW section

## CHAPTER 901B

### INTERMEDIATE CRIMINAL SANCTIONS

#### 901B.1 Corrections continuum — intermediate criminal sanctions program.

1. The corrections continuum consists of the following:

a. LEVEL ONE. Noncommunity-based corrections sanctions including the following:

(1) Self-monitored sanctions. Self-monitored sanctions which are not monitored for compliance including, but not limited to, fines and community service.

(2) Other than self-monitored sanctions. Other than self-monitored sanctions which are monitored for compliance by other than the district department of correctional services including, but not limited to, mandatory mediation, victim and offender reconciliation, and noncommunity-based corrections supervision.

b. LEVEL TWO. Probation and parole options consisting of the following:

(1) Monitored sanctions. Monitored sanctions are administrative supervision sanctions which are monitored for compliance by the district department of correctional services and include, but are not limited to, low-risk offender-diversion programs.

(2) Supervised sanctions. Supervised sanctions are regular probation or parole supervision and any conditions established in the probation or parole agreement or by court order.

(3) Intensive supervision sanctions. Intensive supervision sanctions provide levels of supervision above sanctions in subparagraph (2) but are less restrictive than sanctions under paragraph "c" and include electronic monitoring, day reporting, day programming, live-out programs for persons on work release or who have violated chapter 321J, and institutional work release under section 904.910.

c. LEVEL THREE. Quasi-incarceration sanctions. Quasi-incarceration sanctions are those supported by residential facility placement or twenty-four hour electronic monitoring including, but not limited to, the following:

- (1) Residential treatment facilities.
- (2) Operating while intoxicated offender treatment facilities.
- (3) Work release facilities.

(4) House arrest with electronic monitoring.

(5) A substance abuse treatment facility as established and operated by the Iowa department of public health or the department of corrections.

d. LEVEL FOUR. Short-term incarceration designed to be of short duration, including, but not limited to, the following:

(1) Twenty-one day shock incarceration for persons who violate chapter 321J.

(2) Jail for less than thirty days.

(3) Violators' facilities.

(4) Prison with sentence reconsideration.

e. LEVEL FIVE. Incarceration which consists of the following:

(1) Prison.

(2) Jail for thirty days or longer.

2. "Intermediate criminal sanctions program" means a program structured around the corrections continuum in subsection 1, describing sanctions and services available in each level of the continuum in the district and containing the policies of the district department of correctional services regarding placement of a person in a particular level of sanction and the requirements and conditions under which a defendant will be transferred between levels in the corrections continuum under the program.

3. Each judicial district and judicial district department of correctional services shall implement an intermediate criminal sanctions program by July 1, 2001. An intermediate criminal sanctions program shall consist of only levels two, three, and sublevels one and three of level four of the corrections continuum and shall be operated in accordance with an intermediate criminal sanctions plan adopted by the chief judge of the judicial district and the director of the judicial district department of correctional services. The plan adopted shall be designed to reduce probation revocations to prison through the use of incremental, community-based sanctions for probation violations.

The plan shall be subject to rules adopted by the department of corrections. The rules shall include provisions for transferring individuals between levels in the continuum. The provisions shall include a requirement that the reasons for the trans-

fer be in writing and that an opportunity for the individual to contest the transfer be made available.

A copy of the program and plan shall be filed with the chief judge of the judicial district, the department of corrections, and the division of criminal and juvenile justice planning of the department of human rights by July 1, 2001.

4. *a.* The district department of correctional services shall place an individual committed to it under section 907.3 to the sanction and level of supervision which is appropriate to the individual based upon a current risk assessment evaluation. Placements may be to levels two and three of the corrections continuum. The district department may, with the approval of the Iowa department of public health and the department of corrections, place an individual in a level three substance abuse treatment facility established pursuant to

section 135.130, to assist the individual in complying with a condition of probation. The district department may, with the approval of the department of corrections, place an individual in a level four violator facility established pursuant to section 904.207 only as a penalty for a violation of a condition imposed under this section.

*b.* The district department may transfer an individual along the intermediate criminal sanctions program operated pursuant to subsection 3 as necessary and appropriate during the period the individual is assigned to the district department. However, nothing in this section shall limit the district department's ability to seek a revocation of the individual's probation pursuant to section 908.11.

2003 Acts, 1st Ex, ch 2, §51, 209

Subsection 1, paragraph c, subparagraph (5) amended

## CHAPTER 902

### FELONIES

**902.3A Determinate sentencing and additional term of years for class "D" felons.** Repealed by 2003 Acts, ch 156, § 22.

**902.4 Reconsideration of felon's sentence.**

For a period of one year from the date when a person convicted of a felony, other than a class "A" felony or a felony for which a minimum sentence of confinement is imposed, begins to serve a sentence of confinement, the court, on its own motion or on the recommendation of the director of the Iowa department of corrections, may order the person to be returned to the court, at which time the court may review its previous action and reaffirm it or substitute for it any sentence permitted by law. Copies of the order to return the person to the court shall be provided to the attorney for the state, the defendant's attorney, and the defendant. Upon a request of the attorney for the state, the defendant's attorney, or the defendant if the defendant has no attorney, the court may, but is not required to, conduct a hearing on the issue of reconsideration of sentence. The court shall not disclose its decision to reconsider or not to reconsider the sentence of confinement until the date reconsideration is ordered or the date the one-year period expires, whichever occurs first. The district court retains jurisdiction for the limited purposes of conducting such review and entering an appropriate order notwithstanding the timely filing of a notice of appeal. The court's final order in the proceeding shall be delivered to the defendant personally or by regular mail. The court's decision to take the action or not to take the action is not subject to appeal. However, for the purposes of ap-

peal, a judgment of conviction of a felony is a final judgment when pronounced.

2003 Acts, ch 151, §59

Section amended

**902.11 Minimum sentence — eligibility of prior forcible felon for parole or work release.**

A person serving a sentence for conviction of a felony, who has a criminal record of one or more prior convictions for a forcible felony or a crime of a similar gravity in this or any other state, shall be denied parole or work release unless the person has served at least one-half of the maximum term of the defendant's sentence. However, the mandatory sentence provided for by this section does not apply if either of the following apply:

1. The sentences for the prior forcible felonies expired at least five years before the date of conviction for the present felony.

2. The sentence being served is on a conviction for operating a motor vehicle while under the influence of alcohol or a drug under chapter 321J.

2003 Acts, ch 156, §10

Unnumbered paragraph 1 amended

**902.12 Minimum sentence for certain felonies — eligibility for parole or work release.**

A person serving a sentence for conviction of the following felonies shall be denied parole or work release unless the person has served at least seven-tenths of the maximum term of the person's sentence:

1. Murder in the second degree in violation of section 707.3.

2. Attempted murder in violation of section 707.11.

3. Sexual abuse in the second degree in violation of section 709.3.
4. Kidnapping in the second degree in violation of section 710.3.
5. Robbery in the first or second degree in violation of section 711.2 or 711.3.
6. Vehicular homicide in violation of section 707.6A, subsection 1 or 2, if the person was also

convicted under section 321.261, subsection 3, based on the same facts or event that resulted in the conviction under section 707.6A, subsection 1 or 2.

2003 Acts, ch 156, §11, 12  
 Unnumbered paragraph 1 amended  
 Subsection 5, unnumbered paragraph 2 amended and renumbered as subsection 6

## CHAPTER 903

### MISDEMEANORS

#### 903.2 Reconsideration of misdemeanor's sentence.

For a period of thirty days from the date when a person convicted of a misdemeanor begins to serve a sentence of confinement, the court may order the person to be returned to the court, at which time the court may review its previous action and reaffirm it or substitute for it any sentence permitted by law. The sentencing court retains jurisdiction for the limited purposes of conducting such review and entering an appropriate order notwithstanding the timely filing of a notice of appeal or an application for discretionary review. The court's final order in the proceeding shall be delivered to the defendant personally or by regular mail. Such action is discretionary with the court and its decision to take the action or not to take the action is not subject to appeal. The other provisions of this section notwithstanding, for the purposes of appeal a judgment of conviction is a final judgment when pronounced.

2003 Acts, ch 151, §60  
 Section amended

#### 903.4 Providing place of confinement.

All persons sentenced to confinement for a period of one year or less shall be confined in a place to be furnished by the county where the conviction was had unless the person is presently committed to the custody of the director of the Iowa department of corrections, in which case the provisions of section 901.8 apply. All persons sentenced to confinement for a period of more than one year shall be committed to the custody of the director of the Iowa department of corrections to be confined in a place to be designated by the director and the cost of the confinement shall be borne by the state. The director may contract with local governmental units for the use of detention or correctional facilities maintained by the units for the confinement of such persons.

2003 Acts, ch 156, §13  
 Section amended

## CHAPTER 903A

### REDUCTION OF SENTENCES

#### 903A.2 Earned time.

1. Each inmate committed to the custody of the director of the department of corrections is eligible to earn a reduction of sentence in the manner provided in this section. For purposes of calculating the amount of time by which an inmate's sentence may be reduced, inmates shall be grouped into the following two sentencing categories:

*a.* Category "A" sentences are those sentences which are not subject to a maximum accumulation of earned time of fifteen percent of the total sentence of confinement under section 902.12. To the extent provided in subsection 5, category "A" sentences also include life sentences imposed under section 902.1. An inmate of an institution under the control of the department of corrections who is serving a category "A" sentence is eligible for a re-

duction of sentence equal to one and two-tenths days for each day the inmate demonstrates good conduct and satisfactorily participates in any program or placement status identified by the director to earn the reduction. The programs include but are not limited to the following:

- (1) Employment in the institution.
- (2) Iowa state industries.
- (3) An employment program established by the director.
- (4) A treatment program established by the director.
- (5) An inmate educational program approved by the director.

An inmate serving a category "A" sentence is eligible for an additional reduction of sentence of up to three hundred sixty-five days of the full term of

the sentence of the inmate for exemplary acts. In accordance with section 903A.4, the director shall by policy identify what constitutes an exemplary act that may warrant an additional reduction of sentence.

*b.* Category “B” sentences are those sentences which are subject to a maximum accumulation of earned time of fifteen percent of the total sentence of confinement under section 902.12. An inmate of an institution under the control of the department of corrections who is serving a category “B” sentence is eligible for a reduction of sentence equal to fifteen eighty-fifths of a day for each day of good conduct by the inmate.

2. Earned time accrued pursuant to this section may be forfeited in the manner prescribed in section 903A.3.

3. Time served in a jail or another facility prior to actual placement in an institution under the control of the department of corrections and credited against the sentence by the court shall accrue for the purpose of reduction of sentence under this section. Time which elapses during an escape shall not accrue for purposes of reduction of sentence under this section.

4. Time which elapses between the date on which a person is incarcerated, based upon a determination of the board of parole that a violation of parole has occurred, and the date on which the violation of parole was committed shall not accrue for purposes of reduction of sentence under this section.

5. Earned time accrued by inmates serving life sentences imposed under section 902.1 shall not reduce the life sentence, but shall be credited against the inmate’s sentence if the life sentence is commuted to a term of years under section 902.2.

2003 Acts, 1st Ex, ch 2, §52, 209  
Subsection 1, paragraph a amended

### 903A.3 Loss or forfeiture of earned time.

1. Upon finding that an inmate has violated an institutional rule, or has had an action or appeal dismissed under section 610A.2, the independent administrative law judge may order forfeiture of any or all earned time accrued and not forfeited up to the date of the violation by the inmate and may order forfeiture of any or all earned time accrued and not forfeited up to the date the action or appeal is dismissed, unless the court entered such an order under section 610A.3. The independent administrative law judge has discretion within the guidelines established pursuant to section 903A.4, to determine the amount of time that should be forfeited based upon the severity of the violation. Prior violations by the inmate may be considered by the administrative law judge in the decision.

2. The orders of the administrative law judge are subject to appeal to the superintendent or warden of the institution, or the superintendent’s or warden’s designee, who may either affirm, modify, remand for correction of procedural errors, or reverse an order. However, sanctions shall not be increased on appeal.

3. The director of the Iowa department of corrections or the director’s designee may restore all or any portion of previously forfeited earned time for acts of heroism or for meritorious actions. The director shall establish by rule the requirements as to which activities may warrant the restoration of earned time and the amount of earned time to be restored.

4. The inmate disciplinary procedure, including but not limited to the method of awarding or forfeiting time pursuant to this chapter, is not a contested case subject to chapter 17A.

2003 Acts, 1st Ex, ch 2, §53, 209  
Subsection 2 amended

## CHAPTER 903B

### HORMONAL INTERVENTION THERAPY FOR SEX OFFENDERS

#### 903B.1 Hormonal intervention therapy — certain sex offenses.

1. A person who has been convicted of a serious sex offense may, upon a first conviction and in addition to any other punishment provided by law, be required to undergo medroxyprogesterone acetate treatment as part of any conditions of release imposed by the court or the board of parole. The treatment prescribed in this section may utilize an approved pharmaceutical agent other than medroxyprogesterone acetate. Upon a second or subsequent conviction, the court or the board of parole shall require the person to undergo medroxypro-

gesterone acetate or other approved pharmaceutical agent treatment as a condition of release, unless, after an appropriate assessment, the court or board determines that the treatment would not be effective. In determining whether a conviction is a first or second conviction under this section, a prior conviction for a criminal offense committed in another jurisdiction which would constitute a violation of section 709.3, subsection 2, if committed in this state, shall be considered a conviction under this section. This section shall not apply if the person voluntarily undergoes a permanent surgical alternative approved by the court or

the board of parole.

2. If a person is placed on probation and is not in confinement at the time of sentencing, the presentence investigation shall include a plan for initiation of treatment as soon as is reasonably possible after the person is sentenced. If the person is in confinement prior to release on probation or parole, treatment shall commence prior to the release of the person from confinement. Conviction of a serious sex offense shall constitute exceptional circumstances warranting a presentence investigation under section 901.2.

3. If the serious sex offense is a felony, the court may include, in addition to any other punishment provided by law, that the person receive a special sentence committing the person into the custody of the director of the Iowa department of corrections for the rest of the person's life, with eligibility for parole as provided in chapter 906. The special sentence imposed under this subsection shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying serious sex offense and shall be supervised as if on parole, shall include the same treatment terms and conditions as required in subsection 1, and may include any other terms and conditions deemed appropriate to protect the public and promote the rehabilitation of the person. Notwithstanding section 906.15, a person receiving an additional special sentence pursuant to this subsection shall not be discharged from parole.

4. For purposes of this section, a "serious sex offense" means any of the following offenses in which the victim was a child who was, at the time the offense was committed, twelve years of age or younger:

- a. Sexual abuse in the first degree, in violation of section 709.2.
- b. Sexual abuse in the second degree, in violation of section 709.3.
- c. Sexual abuse in the third degree, in violation of section 709.4.
- d. Lascivious acts with a child, in violation of section 709.8.
- e. Assault with intent, in violation of section 709.11.
- f. Indecent contact with a minor, in violation of

section 709.12.

g. Lascivious conduct with a minor, in violation of section 709.14.

h. Sexual exploitation in violation of section 709.15.

i. Sexual exploitation of a minor, in violation of section 728.12, subsections 1 and 2.

5. The department of corrections, in consultation with the board of parole, shall adopt rules which provide for the initiation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment prior to the parole or work release of a person who has been convicted of a serious sex offense and who is required to undergo treatment as a condition of release by the board of parole. The department's rules shall also establish standards for the supervision of the treatment by the judicial district department of correctional services during the period of release. Each district department of correctional services shall adopt policies and procedures which provide for the initiation or continuation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of release for each person who is required to undergo the treatment by the court or the board of parole. The board of parole shall, in consultation with the department of corrections, adopt rules which relate to initiation or continuation of medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of any parole or work release. Any rules, standards, and policies and procedures adopted shall provide for the continuation of the treatment until the agency in charge of supervising the treatment determines that the treatment is no longer necessary.

6. A person who is required to undergo medroxyprogesterone acetate treatment, or treatment utilizing another approved pharmaceutical agent, pursuant to this section, shall be required to pay a reasonable fee to pay for the costs of providing the treatment. A requirement that a person pay a fee shall include provision for reduction, deferral, or waiver of payment if the person is financially unable to pay the fee.

2003 Acts, ch 180, §67  
Subsection 4, paragraph h amended

## CHAPTER 904

### DEPARTMENT OF CORRECTIONS

#### **904.108 Director — duties, powers.**

- 1. The director shall:
  - a. Supervise the operations of the institutions under the department's jurisdiction and may delegate the powers and authorities given the director by statute to officers or employees of the department.

b. Supervise state agents whose duties relate primarily to the department.

c. Establish and maintain a program to oversee women's institutional and community corrections programs and to provide community support to ensure continuity and consistency of programs. The person responsible for implementing this sec-

tion shall report to the director.

*d.* Establish and maintain acceptable standards of treatment, training, education, and rehabilitation in the various state penal and corrective institutions which shall include habilitative services and treatment for offenders with mental retardation. For the purposes of this paragraph, "habilitative services and treatment" means medical, mental health, social, educational, counseling, and other services which will assist a person with mental retardation to become self-reliant. However, the director may also provide rehabilitative treatment and services to other persons who require the services. The director shall identify all individuals entering the correctional system who are persons with mental retardation, as defined in section 222.2, subsection 4. Identification shall be made by a qualified professional in the area of mental retardation. In assigning an offender with mental retardation, or an offender with an inadequately developed intelligence or with impaired mental abilities, to a correctional facility, the director shall consider both the program needs and the security needs of the offender. The director shall consult with the department of human services in providing habilitative services and treatment to offenders with mental illness or mental retardation. The director may enter into agreements with the department of human services to utilize mental health institutions and share staff and resources for purposes of providing habilitative services and treatment, as well as providing other special needs programming. Any agreement to utilize mental health institutions and to share staff and resources shall provide that the costs of the habilitative services and treatment shall be paid from state funds. Not later than twenty days prior to entering into any agreement to utilize mental health institution staff and resources, other than the use of a building or facility, for purposes of providing habilitative services and treatment, as well as other special needs programming, the directors of the departments of corrections and human services shall each notify the chairpersons and ranking members of the joint appropriations subcommittees that last handled the appropriation for their respective departments of the pending agreement. Use of a building or facility shall require approval of the general assembly if the general assembly is in session or, if the general assembly is not in session, the legislative council may grant temporary authority, which shall be subject to final approval of the general assembly during the next succeeding legislative session.

*e.* Employ, assign, and reassign personnel as necessary for the performance of duties and responsibilities assigned to the department. Employees shall be selected on the basis of fitness for work to be performed with due regard to training and experience and are subject to chapter 8A, subchapter IV.

*f.* Establish standards of mental fitness which shall govern the initial recruitment, selection, and appointment of correctional officers. To promote these standards, the director shall by rule require a battery of psychological tests to determine cognitive skills, personality characteristics and suitability of all applicants for a correctional career.

*g.* Examine all state institutions which are penal, reformatory, or corrective to determine their efficiency for adequate care, custody, and training of their inmates and report the findings to the board.

*h.* Prepare a budget for the department, subject to the approval of the board, and other reports as required by law.

*i.* Develop long-range correctional planning and an ongoing five-year corrections master plan. The director shall annually report to the general assembly to inform its members as to the status and content of the planning and master plan.

*j.* Supervise rehabilitation camps within the state as may be established by the director. Persons committed to institutions under the department may be transferred to the facilities of the camp system and upon transfer shall be subject to the same laws as pertain to the transferring institution.

*k.* Adopt rules subject to the approval of the board, pertaining to the internal management of institutions and agencies under the director's charge and necessary to carry out the duties and powers outlined in this section.

*l.* Adopt rules, policies, and procedures, subject to the approval of the board, pertaining to the supervision of parole and work release.

*m.* Provide routine administrative and support services to the board of parole.

*n.* Cooperate with Iowa state university of science and technology to provide, for purposes of agricultural research, development, and testing, the use of resources, including property, facilities, labor, and services, connected with institutions listed in section 904.102. However, use of the resources by the university is subject to approval by the director. Before granting approval, the director shall require that the university compensate the department for the use of the resources, on terms specified by the director.

*o.* Establish and maintain a correctional training program.

2. The director, with the express approval of the board, may establish for any inmate sentenced pursuant to section 902.3 a furlough program under which inmates sentenced to and confined in any institution under the jurisdiction of the department may be temporarily released. A furlough for a period not to exceed fourteen days may be granted when an immediate member of an inmate's family is seriously ill or has died, when an inmate is to be interviewed by a prospective employer, or when an inmate is authorized to partici-

pate in a training program not available within the institution. Furloughs for a period not to exceed fourteen days may also be granted in order to allow inmates to participate in programs or activities that serve rehabilitative objectives.

3. The director may establish a sales bonus system for the sales representatives for prison industry products. If a sales bonus system is established, the system shall not affect the status of the sales representatives under chapter 8A, subchapter IV.

4. The director may expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed one hundred fifty dollars for each item. The director shall establish rules in accordance with chapter 17A to carry out the purpose of this subsection.

5. The director may obtain assistance for the department for construction, facility planning, and project accomplishment with the department of administrative services and by contracting under chapter 28E for data processing with the department of human services or the department of administrative services.

6. The director may charge an inmate a correctional fee for custodial expenses incurred or which may be incurred while the inmate is in the custody of the department. The custodial expenses may include, but are not limited to, board and room, medical and dental fees including any necessary transportation fee not to exceed five dollars per visit, education costs, clothing costs, and the costs of supervision, services, and treatment to the inmate. The correctional fee shall not exceed the actual cost of keeping the inmate in custody. The correctional fees collected pursuant to this subsection shall be credited as a reimbursement to the appropriate correctional institution. This subsection does not limit the right of the director to obtain any other remedy authorized by law.

2003 Acts, ch 88, §1; 2003 Acts, ch 145, §278, 279, 286  
Terminology change applied  
Subsection 1, paragraph e amended  
Subsection 3 amended  
Subsection 6 amended

#### **904.116 Institutional appropriations and expenditures — legislative oversight.**

1. The department of corrections shall not revise the allocations to the correctional institutions under the control of the department from the amounts allocated to the institutions, unless notice of the revisions is given prior to their effective date to the legislative services agency. The notice shall include information on the department's rationale for making the changes and details concerning the workload and performance measures upon which the revisions are based.

2. The department of corrections shall report

to the legislative services agency on a monthly basis the current expenditures and full-time equivalent positions of the department's various allocations with a comparison of actual to budgeted expenditures and full-time equivalent positions.

The department of corrections shall furnish performance measure data designed to enable comparison of this data with historical expenditure information, and shall assist the legislative services agency in developing information to be used in legislative oversight of all programs operated by the department.

2003 Acts, ch 35, §45, 49  
Terminology change applied

#### **904.117 Interstate compact fund.**

An interstate compact fund is established under the control of the department. All interstate compact fees collected by the department pursuant to section 907B.5 shall be deposited into the fund and the moneys shall be used by the department to offset the costs of complying with the interstate compact for adult offender supervision in chapter 907B. Notwithstanding section 8.33, moneys remaining in the fund at the end of a fiscal year shall not revert to the general fund of the state. Notwithstanding section 12C.7, interest and earnings deposited in the fund shall be credited to the fund.

2003 Acts, 1st Ex, ch 2, §54, 209  
NEW section

#### **904.302 Farm operations administrator.**

The director may appoint a farm operations administrator for institutions under the control of the departments of corrections and human services. If appointed, the farm operations administrator, subject to the direction of the director shall do all of the following:

1. Manage and supervise all farming and nursery operations at institutions, farms and gardens of the departments of corrections and human services.

2. Determine priorities on the use of agricultural resources and labor for farming and nursery operations, and cooperate with Iowa state university of science and technology in all approved uses connected with the institution.

3. Develop an annual operations plan for crop and livestock production and utilization that will provide work experience and contribute to developing vocational skills of the institutions' inmates and residents. The department of human services must approve the parts of the plan that affect farm operations on property of institutions having programs of the department of human services.

4. Coordinate farm lease arrangements, farm input purchases, farm product distribution, machinery maintenance and replacement, and renovation of farm buildings, fences and livestock facilities.

5. Develop and maintain accounting records, budgeting and cash flow systems, and inventory records.

6. Advise and instruct institution staff and inmates in application of agricultural technology.

7. Implement actions to restore and maintain productivity of soil resources at the institutions through crop rotation, minimum tillage, contouring, terracing, waterways, pasture renovation, windbreaks, buffer zones, and wildlife habitat in accordance with United States department of agriculture natural resources conservation service plans and recommendations.

8. Pay property taxes levied against land leased by the department of corrections or department of human services as provided in section 427.1, subsection 1.

9. Administer the revolving farm fund created in section 904.706.

10. Do any other farm management duties assigned by the director.

2003 Acts, ch 130, §3, 5  
Subsection 8 is effective July 1, 2003, and applies to leases entered into on or after that date; 2003 Acts, ch 130, §5  
NEW subsection 8 and former subsections 8 and 9 renumbered as 9 and 10

#### **904.303 Officers and employees — compensation.**

The director shall determine the number and compensation of subordinate officers and employees for each institution subject to chapter 8A, subchapter IV. Subject to this chapter, the officers and employees shall be appointed and discharged by the superintendent who shall keep in the record of each subordinate officer and employee, the date of employment, the compensation, and the date of and the reasons for each discharge.

The superintendents and employees of the correctional institutions shall receive salaries or compensation as determined by the director, shall receive a midshift meal when on duty, and shall be provided uniforms if uniforms are required to be worn when on duty. The uniforms shall be maintained and replaced by the department at no cost to the employees and shall remain the property of the department.

2003 Acts, ch 145, §280  
Unnumbered paragraph 1 amended

#### **904.311 Contingent fund — inmate tort claim fund.**

The director may permit the superintendent of each institution to retain a stated amount of funds in possession as a contingent fund for the payment of freight, postage, commodities purchased on authority of the director on a cash basis, salaries, inmate allowances, and bills granting discount for cash. If necessary, the director shall make proper requisition upon the director of the department of administrative services for a warrant on the treasurer of state to secure the contingent fund for each institution.

There is established in the office of the director an inmate tort claim fund. This fund shall be used to reimburse inmates for the damage or loss of per-

sonal property caused by the department. Reimbursement for a single loss may be up to one hundred dollars. Section 8.33 notwithstanding, moneys in the fund shall not revert but shall remain in the fund. The fund shall be replenished from the general appropriation to the institutions as necessary to meet the obligations of the fund.

Tort claims denied at the institution shall be forwarded to the state appeal board for its consideration as if originally filed with that body. This procedure shall be used in lieu of the procedure in chapter 669 for inmate tort claims of less than one hundred dollars.

2003 Acts, ch 145, §286  
Terminology change applied

#### **904.312B Purchase of bio-based hydraulic fluids, greases, and other industrial lubricants.**

The department when purchasing hydraulic fluids, greases, and other industrial lubricants shall give preference to purchasing bio-based hydraulic fluids, greases, and other industrial lubricants as provided in section 8A.316.

2003 Acts, ch 145, §281  
Section amended

#### **904.313 Emergency purchases.**

The purchase of materials or equipment for penal or correctional institutions under the department is exempted from the requirements of centralized purchasing and bidding by the department of administrative services if the materials or equipment are needed to make an emergency repair at an institution or the security of the institution would be jeopardized because the materials or equipment could not be purchased soon enough through centralized purchasing and bidding and, in either case, if the director approves the emergency purchase.

2003 Acts, ch 145, §286  
Terminology change applied

#### **904.314 Plans and specifications for improvements.**

The director shall cause plans and specifications to be prepared by the department of administrative services for all improvements authorized and costing over twenty-five thousand dollars. An appropriation for any improvement costing over twenty-five thousand dollars shall not be expended until the adoption of suitable plans and specifications, prepared by a competent architect and accompanied by a detailed statement of the amount, quality, and description of all material and labor required for the completion of the improvement.

A plan shall not be adopted, and an improvement shall not be constructed, which contemplates an expenditure of money in excess of the appropriation.

2003 Acts, ch 145, §286  
Terminology change applied

**904.315 Contracts for improvements.**

The director of the department of administrative services shall, in writing, let all contracts for authorized improvements costing in excess of twenty-five thousand dollars under chapter 8A, subchapter III. Upon prior authorization by the director, improvements costing five thousand dollars or less may be made by the superintendent of any institution.

A contract is not required for improvements at a state institution where the labor of inmates is to be used if the contract is not for a construction, reconstruction, demolition, or repair project or improvement with an estimated cost in excess of twenty-five thousand dollars.

2003 Acts, ch 145, §282

Unnumbered paragraph 1 amended

**904.316 Payment for improvements.**

The director of the department of administrative services shall not authorize payment for construction purposes until satisfactory proof has been furnished to the director of the department of administrative services by the proper officer or supervising architect, that the contract has been complied with by the parties. Payments shall be made in a manner similar to that in which the current expenses of the institutions are paid.

2003 Acts, ch 145, §286

Terminology change applied

**904.503 Transfers — persons with mental illness.**

1. The director may transfer at the expense of the department an inmate of one institution to another institution under the director's control if the director is satisfied that the transfer is in the best interests of the institutions or inmates.

The director may transfer at the expense of the department an inmate under the director's jurisdiction from any institution supervised by the director to another institution under the control of an administrator of a division of the department of human services with the consent and approval of the administrator and may transfer an inmate to any other institution for mental or physical examination or treatment retaining jurisdiction over the inmate when so transferred.

If the juvenile court waives its jurisdiction over a child over thirteen and under eighteen years of age pursuant to section 232.45 so that the child may be prosecuted as an adult and if the child is convicted of a public offense in the district court and committed to the custody of the director under section 901.7, the director may request transfer of the child to the state training school under this section. If the administrator of a division of the department of human services consents and approves the transfer, the child may be retained in temporary custody by the state training school until attaining the age of eighteen, at which time the child shall be returned to the custody of the direc-

tor of the department of corrections to serve the remainder of the sentence imposed by the district court. If the child becomes a security risk or becomes a danger to other residents of the state training school at any time before reaching eighteen years of age, the administrator of the division of the department of human services may immediately return the child to the custody of the director of the department of corrections to serve the remainder of the sentence.

2. When the director has cause to believe that an inmate in a state correctional institution is mentally ill, the Iowa department of corrections may cause the inmate to be transferred to the Iowa medical and classification center, or to another appropriate facility within the department, for examination, diagnosis, or treatment. The inmate shall be confined at that center or facility or a state hospital for persons with mental illness until the expiration of the inmate's sentence or until the inmate is pronounced in good mental health. If the inmate is pronounced in good mental health before the expiration of the inmate's sentence, the inmate shall be returned to the state correctional institution until the expiration of the inmate's sentence.

3. When the director has reason to believe that a prisoner in a state correctional institution, whose sentence has expired, is mentally ill, the director shall cause examination to be made of the prisoner by competent physicians who shall certify to the director whether the prisoner is in good mental health or mentally ill. The director may make further investigation and if satisfied that the prisoner is mentally ill, the director may cause the prisoner to be transferred to one of the hospitals for persons with mental illness, or may order the prisoner to be confined in the Iowa medical and classification center.

2003 Acts, 1st Ex, ch 2, §55, 209

Subsection 2 amended

**904.507A Liability for escapee expenses.**

If a person escapes from a state correctional institution including but not limited to those institutions listed in section 904.102, all necessary and legal expenses incurred by that person while absent from the state institution shall be paid out of any moneys in the state treasury not otherwise appropriated. The expenses shall be paid on claims filed with the department of administrative services.

2003 Acts, ch 145, §286

Terminology change applied

**904.508 Property of inmate — inmate savings fund.**

1. The superintendent of each institution shall receive and care for any property an inmate may possess on the inmate's person upon entering the institution, and on the discharge of the inmate, return the property to the inmate or the inmate's legal representatives, unless the property has been previously disposed of according to the inmate's

written designation or policies prescribed by the board. The superintendent may place an inmate's money at interest, keeping an account of the money and returning the remaining money upon discharge.

2. Pursuant to section 904.702, the director shall establish and maintain an inmate savings fund in an interest-bearing account for the deposit of all or part of an inmate's allowances and amounts, except amounts directed to be deposited in the inmate telephone fund established in section 904.508A, sent to the inmate from a source other than the department. All or part of an inmate's allowances and amounts, except amounts directed to be deposited in the inmate telephone fund established in section 904.508A, from a source other than the department shall be deposited into the savings fund, until the inmate's deposit is equal to one hundred dollars as provided in section 906.9. If an inmate's deposits are equal to or in excess of one hundred dollars, the inmate may voluntarily withdraw from the savings fund. The director shall notify the inmate of this right to withdraw and shall provide the inmate with a written request form to facilitate the withdrawal. If the inmate withdraws and the inmate's deposits exceed the amount due as provided in section 906.9, the director shall disburse the excess amount as provided for allowances under section 904.702, except the director shall not deposit the excess amount in the inmate savings fund. If the inmate chooses to continue to participate in the savings fund, the inmate's deposits shall be returned to the inmate upon discharge, parole, or placement on work release. Otherwise, the inmate's deposits shall be disposed of as provided in subsection 3. An inmate's deposits into the savings fund may be used to provide the money due the inmate upon discharge, parole, or placement on work release, as required under section 906.9. Interest earned from the savings fund shall be placed in a separate account, and may be used for purchases approved by the director to directly and collectively benefit inmates.

3. Upon the death of an inmate, the superintendent of the institution shall immediately take possession of the decedent's property left at the institution, including the inmate's deposits into the inmate savings fund, and shall deliver the property to the person designated by the inmate to be contacted in case of an emergency. However, if the property left by the decedent cannot be delivered to the designated person, delivery may be made to the surviving spouse or an heir of the decedent. If the decedent's property cannot be delivered to the designated person and no surviving spouse or heir is known, the superintendent shall deliver the property to the treasurer of state for disposition as unclaimed property pursuant to chapter 556, after deducting expenses incurred in disposing of the

decedent's body or property.

2003 Acts, 1st Ex, ch 2, §56, 209  
Subsection 2 amended

#### **904.508A Inmate telephone fund.**

The department is authorized to establish and maintain an inmate telephone fund for the deposit of moneys received for inmate telephone calls. All funds deposited in this fund shall be used for the benefit of inmates. The director shall adopt rules providing for the disbursement of moneys from the fund.

2003 Acts, 1st Ex, ch 2, §57, 209  
Section amended

#### **904.513 Assignment of OWI violators to treatment facilities.**

1. *a.* The department of corrections, in cooperation with the judicial district departments of correctional services, shall establish in each judicial district a continuum of programming for the supervision and treatment of offenders convicted of violating chapter 321J who are sentenced to the custody of the director. The continuum shall include a range of sanctioning options that include, but are not limited to, prisons and residential facilities.

*b.* (1) The department of corrections shall develop standardized assessment criteria for the assignment of offenders pursuant to this chapter.

(2) Offenders convicted of violating chapter 321J, sentenced to the custody of the director, and awaiting placement in a community residential substance abuse treatment program for such offenders shall be placed in an institutional substance abuse program for such offenders within sixty days of admission to the institution or as soon as practical. When placing offenders convicted of violating chapter 321J in community residential substance abuse treatment programs for such offenders, the department shall give priority as appropriate to the placement of those offenders currently in institutional substance abuse programs for such offenders. The department shall work with each judicial district to enable such offenders to enter community residential substance abuse treatment programs at a level comparable to their prior institutional program participation.

(3) Assignment shall be for the purposes of risk management and substance abuse treatment and may include education or work programs when the offender is not participating in other program components.

(4) Assignment may also be made on the basis of the offender's treatment program performance, as a disciplinary measure, for medical needs, and for space availability at community residential facilities. If there is insufficient space at a community residential facility, the court may order an offender to be released to the supervision of the judicial district department of correctional services,

held in jail, or committed to the custody of the director of the department of corrections for assignment to an appropriate correctional facility until there is sufficient space at a community residential facility.

2. Upon request by the director a county shall provide temporary confinement for offenders allegedly violating the conditions of assignment to a program under this chapter, if space is available in the county. The department shall negotiate a reimbursement rate with each county. The amount to be reimbursed shall be determined by multiplying the number of days a person is confined by the average daily cost of confining a person in the county facility as negotiated with the department. A county holding offenders in jail due to insufficient space in a community residential facility shall be reimbursed. Payment shall be made upon submission of a voucher executed by the sheriff and approved by the director.

3. The department shall adopt rules for the implementation of this section. The rules shall include the requirement that the treatment programs established pursuant to this chapter meet the licensure standards of the division of substance abuse for the department of public health. The rules shall also include provisions for the funding of the program by means of self-contribution by the offenders, insurance reimbursement on behalf of offenders, or other forms of funding, program structure, criteria for the evaluation of offenders and programs, and all other issues the director shall deem appropriate.

2003 Acts, 1st Ex, ch 2, §58, 209

Subsection 1, paragraph b, subparagraph (4) amended

#### **904.701 Services required — gratuitous allowances — hard labor — rules.**

1. An inmate of an institution shall be required to perform hard labor which is suited to the inmate's age, gender, physical and mental condition, strength, and attainments in the institution proper, in the industries established in connection with the institution, or at such other places as may be determined by the director. Substantially equivalent hard labor programs shall be available to both male and female inmates. When an inmate of an institution is working outside the institution proper, the inmate shall be deemed at all times to be in the actual custody of the superintendent of the institution. Inmates performing hard labor on chain gangs at a location other than within or on the grounds of a correctional institution shall be attired in brightly colored uniforms that readily identify them as inmates of correctional institutions. Inmates performing other types of hard labor at locations other than within or on the grounds of a correctional institution may also be required by the department to wear the brightly colored uniforms. Inmates not required to wear brightly colored uniforms while performing hard

labor shall be otherwise clearly designated as inmates of correctional institutions. The employment of inmates in hard labor shall not displace employed workers, shall not be applied to skills, crafts, or trades in which a local surplus of labor exists, and shall not impair existing contracts for employment or services.

2. The director may when practicable pay the inmate an allowance as the director deems proper in view of the circumstances, and in view of the cost attending the maintenance of the inmate. The allowance is a gratuitous payment and is not a wage arising out of an employment relationship. The payment shall not exceed the amount paid to free labor for a like or equivalent service.

3. For purposes of this section, "*hard labor*" means physical or mental labor which is performed for a period of time which shall average, as nearly as possible, forty hours each week, and may include useful and productive work, chain gangs, menial labor, treatment or education programs, any training necessary to perform any work required, and, if possible, work providing an inmate with marketable vocational skills. "*Hard labor*" does not include labor which is dangerous to an inmate's life or health, is unduly painful, or is required to be performed under conditions that would violate occupational safety and health standards applicable to such labor if performed by a person who is not an inmate.

4. Notwithstanding subsection 1, an inmate who has been determined by the director to be unsuitable for the performance of hard labor due to the inmate's age, gender, physical or mental condition, strength, or security status shall not be required to perform hard labor.

5. The department shall adopt rules to implement this section.

Reports concerning progress made in implementing inmate labor requirements; 2002 Acts, 2nd Ex, ch 1003, §158, 172; 2003 Acts, ch 174, §7  
Section not amended; footnote revised

#### **904.702 Deductions from inmate accounts.**

If allowances are paid pursuant to section 904.701, the director shall establish an inmate account, for deposit of those allowances and for deposit of moneys sent to the inmate from a source other than the department of corrections. The director may deduct an amount, not to exceed ten percent of the amount of the allowance, unless the inmate requests a larger amount, to be deposited into the inmate savings fund as required under section 904.508, subsection 2. In addition to deducting a portion of the allowance, the director may also deduct from an inmate account any amount, except amounts directed to be deposited in the inmate telephone fund established in section 904.508A, sent to the inmate from a source other than the department of corrections to deposit in the inmate savings fund as required under

section 904.508, subsection 2, until the amount in the fund equals the amount due the inmate upon discharge, parole, or placement on work release. The director shall deduct from the inmate account an amount established by the inmate's restitution plan of payment. The director shall also deduct from any remaining account balance an amount sufficient to pay all or part of any judgment against the inmate, including but not limited to judgments for taxes and child support, and court costs and fees assessed either as a result of the inmate's confinement or amounts required to be paid under section 610A.1. Written notice of the amount of the deduction shall be given to the inmate, who shall have five days after receipt of the notice to submit in writing any and all objections to the deduction to the director, who shall consider the objections prior to transmitting the deducted amount to the clerk of the district court. The director need give only one notice for each action or appeal under section 610A.1 for which periodic deductions are to be made. The director shall next deduct from any remaining account balance an amount sufficient to pay all or part of any costs assessed against the inmate for misconduct or damage to the property of others. The director may deduct from the inmate's account an amount sufficient to pay for the inmate's share of the costs of health services requested by the inmate and for the treatment of injuries inflicted by the inmate on the inmate or others. The director may deduct and disburse an amount sufficient for industries' programs to qualify under the eligibility requirements established in the Justice Assistance Act of 1984, Pub. L. No. 98-473, including an amount to pay all or part of the cost of the inmate's incarceration. The director may pay all or any part of remaining allowances paid pursuant to section 904.701 directly to a dependent of the inmate, or may deposit the allowance to the account of the inmate, or may deposit a portion and allow the inmate a portion for the inmate's personal use.

The director, the institutional division, and the department shall not be liable to any person for any damages caused by the withdrawal or failure to withdraw money or the payment or failure to make any payment under this section.

2003 Acts, 1st Ex, ch 2, §59, 209  
Unnumbered paragraph 1 amended

#### **904.705 Industries — forestry nurseries.**

The director may establish industries at or in connection with any of the institutions under the director's control and may make contractual agreements with the United States, other states, state departments and agencies, and subdivisions of the state, for purchase of industry products.

The director may with the assistance of the department of natural resources establish and operate forestry nurseries on state-owned land under

the control of the department. Residents of the adult correctional institutions shall provide the labor for the operation. Nursery stock shall be sold in accordance with the rules of the natural resource commission. The department shall pay the costs of establishing and operating the forestry nurseries out of the revolving farm fund created in section 904.706. The department of natural resources shall pay the costs of transporting, sorting, and distributing nursery stock to and from or on state-owned land under the control of the department of natural resources. Receipts from the sale of nursery stock produced under this section shall be divided between the department and the department of natural resources in direct proportion to their respective costs as a percentage of the total costs. However, property taxes due and payable on the land shall be deducted before receipts of sale are divided between the two departments if land subject to this section is leased to an entity other than an entity which is exempt from property taxation under section 427.1. The department shall deposit its receipts in the revolving farm fund created in section 904.706.

2003 Acts, ch 130, §4, 5  
2003 amendments to subsection 2 apply to leases entered into on or after July 1, 2003; 2003 Acts, ch 130, §5  
Unnumbered paragraph 2 amended

#### **904.706 Revolving farm fund.**

A revolving farm fund is created in the state treasury in which the department shall deposit receipts from agricultural products, nursery stock, agricultural land rentals, and the sale of livestock. However, before any agricultural operation is phased out, the department which proposes to discontinue this operation shall notify the governor, chairpersons and ranking members of the house and senate appropriations committees, and co-chairpersons and ranking members of the subcommittee in the senate and house of representatives which has handled the appropriation for this department in the past session of the general assembly. Before the department sells farmland under the control of the department, the director shall notify the governor, chairpersons and ranking members of the house and senate appropriations committees, and cochairpersons and ranking members of the joint appropriations subcommittee that handled the appropriation for the department during the past session of the general assembly. The department may pay from the fund for the operation, maintenance, and improvement of farms and agricultural or nursery property under the control of the department. A purchase order for five thousand dollars or less payable from the fund is exempt from the general purchasing requirements of chapter 8A, subchapter III. Notwithstanding section 8.33, unencumbered or unobligated receipts in the revolving farm fund at the end of a fiscal year shall not revert to the gen-

eral fund of the state.

Notwithstanding section 8.36, the department shall annually prepare a financial statement covering the previous calendar year to provide for an accounting of the funds in the revolving farm fund. The financial statement shall be filed with the legislative services agency on or before February 1 each year.

As used in this section, “department” means the Iowa department of corrections and the Iowa department of human services.

The farm operations administrator appointed under section 904.302 shall perform the functions described under section 904.302 for agricultural operations on property of the Iowa department of human services.

The Iowa department of human services shall enter into an agreement under chapter 28D with the Iowa department of corrections to implement this section.

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §283  
Terminology change applied  
Unnumbered paragraph 1 amended

#### **904.808 State purchasing requirements — exceptions.**

1. A product possessing the performance characteristics of a product listed in the price lists prepared pursuant to section 904.807 shall not be purchased by any department or agency of state government from a source other than Iowa state industries, except:

*a.* When the purchase is made under emergency circumstances, which shall be explained in writing by the public body or officer who made or authorized the purchase if the state director so requests; or

*b.* When the state director releases, in writing, the obligation of the department or agency to pur-

chase the product from Iowa state industries, after determining that Iowa state industries is unable to meet the performance characteristics of the purchase request for the product, and a copy of the release is attached to the request to the director of the department of administrative services for payment for a similar product, or when Iowa state industries is unable to furnish needed products, comparable in both quality and price to those available from alternative sources, within a reasonable length of time. Any disputes arising between a purchasing department or agency and Iowa state industries regarding similarity of products, or comparability of quality or price, or the availability of the product, shall be referred to the director of the department of administrative services, whose decision shall be subject to appeal as provided in section 8A.313. However, if the purchasing department is the department of administrative services, any matter which would be referred to the director under this paragraph shall be referred to the executive council in the same manner as if the matter were to be heard by the director of the department of administrative services. The decision of the executive council is final.

2. The state director shall adopt and update as necessary rules setting specific delivery schedules for each of the products manufactured by Iowa state industries. These delivery schedules shall not apply where a different delivery schedule is specifically negotiated by Iowa state industries and a particular purchaser.

3. A department or agency of the state shall cooperate and enter into agreements, if possible, for the provision of products and services under an inmate work program established by the state director under section 904.703.

2003 Acts, ch 145, §284  
Subsection 1, paragraph b amended

## CHAPTER 904A

### BOARD OF PAROLE

#### **904A.4B Executive director of the board of parole — duties.**

The chief administrative officer of the board of parole shall be the executive director. The executive director shall be appointed by the chairperson, subject to the approval of the board and shall serve at the pleasure of the board. The executive director shall do all of the following:

1. Advise the board on matters relating to parole, work release, and executive clemency, and advise the board on matters involving automation and word processing.

2. Carry out all directives of the board.

3. Hire and supervise all of the board’s staff pursuant to the provisions of chapter 8A, subchapter IV.

4. Act as the board’s liaison with the general assembly.

5. Prepare a budget for the board, subject to the approval of the board, and prepare all other reports required by law.

6. Develop long-range parole and work release planning, in cooperation with the department of corrections.

2003 Acts, ch 145, §285  
Subsection 3 amended

## CHAPTER 905

### COMMUNITY-BASED CORRECTIONAL PROGRAM

#### 905.6 Duties of director.

The director employed by the district board under section 905.4, subsection 2, shall be qualified in the administration of correctional programs. The director shall:

1. Perform the duties and have the responsibilities delegated by the district board or specified by the Iowa department of corrections pursuant to this chapter.
2. Manage the district department's community-based correctional program, in accordance with the policies of the district board and the Iowa department of corrections.
3. Employ, with approval of the district board, and supervise the employees of the district department, including reserve peace officers, if a force of reserve peace officers has been established.
4. Prepare all budgets and fiscal documents, and certify for payment all expenses and payrolls lawfully incurred by the district department. The director may invest funds which are not needed for current expenses, jointly with one or more cities, city utilities, counties, or rural water districts created under chapter 357A pursuant to a joint investment agreement. All investment of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.
5. Act as secretary to the district board, prepare its agenda and record its proceedings. The district shall provide a copy of minutes from each meeting of the district board to the legislative services agency.
6. Develop and submit to the district board a plan for the establishment, implementation, and operation of a community-based correctional program in that judicial district, which program conforms to the guidelines drawn up by the Iowa department of corrections under this chapter and which conform to rules, policies, and procedures pertaining to the supervision of parole and work release adopted by the director of the Iowa department of corrections concerning the community-based correctional program.
7. Negotiate and, upon approval by the district board, implement contracts or other arrangements for utilization of local treatment and service resources authorized by section 905.4, subsection 9.
8. Administer the batterers' treatment program for domestic abuse offenders required in section 708.2B.
9. Notify the board of parole, thirty days prior to release, of the release from a residential facility operated by the district department of a person

serving a sentence under section 902.12.

2003 Acts, ch 35, §45, 49; 2003 Acts, ch 156, §14  
Terminology change applied  
NEW subsection 9

#### 905.8 State funds allocated — long-range planning — reports to legislative services agency.

The Iowa department of corrections shall provide for the allocation among judicial districts in the state of state funds appropriated for the establishment, operation, support, and evaluation of community-based correctional programs and services. However, state funds shall not be allocated under this section to a judicial district unless the Iowa department of corrections has reviewed and approved that district department's community-based correctional program for compliance with the requirements of this chapter and the guidelines adopted under section 905.7.

The deputy director of the department of corrections responsible for community-based correctional programs shall reallocate funds allocated by the department among the judicial districts as necessary to assure an equitable allocation of district departmental staff throughout the state and to comply with section 905.10.

The deputy director of the department of corrections responsible for community-based correctional programs shall comply with section 904.108, subsection 1, paragraph "i".

The department of corrections shall not revise the allocations to the district departments of correctional services from the amounts allocated to the district departments, unless notice of the revisions is given prior to their effective date to the legislative services agency. The notice shall include information on the department's rationale for making the changes and details concerning the workload and performance measures upon which the revisions are based.

The department of corrections shall report to the legislative services agency on a quarterly basis the current expenditures of the department's various allocations to the district departments of correctional services with a comparison of actual to budgeted expenditures.

The department of corrections shall use the department of management's budget system in developing the budget information for the eight district departments of correctional services, and each of the district departments shall be treated as a separate budget unit with each program modality classified as a separate organization code.

The department of corrections shall furnish per-

formance measure data designed to enable comparison of this data with historical expenditure information, and shall assist the legislative services agency in developing information to be used in legislative oversight of all district department programs operated by the department.

2003 Acts, ch 35, §45, 49  
Terminology change applied

**905.11 Residential facility residency — minimum.**

A person who is serving a sentence under sec-

tion 902.12, the maximum term of which exceeds ten years, and who is released on parole or work release shall reside in a residential facility operated by the district department for a period of not less than one year.

2003 Acts, ch 156, §15  
NEW section

## CHAPTER 906

### PAROLES AND WORK RELEASE

**906.4 Standards for release on parole or work release — community service — academic achievement.**

A parole or work release shall be ordered only for the best interest of society and the offender, not as an award of clemency. The board shall release on parole or work release any person whom it has the power to so release, when in its opinion there is reasonable probability that the person can be released without detriment to the community or to the person. A person's release is not a detriment to the community or the person if the person is able and willing to fulfill the obligations of a law-abiding citizen, in the board's determination.

A person on parole or work release who is serving a sentence under section 902.12 shall begin parole or work release in a residential facility operated by a judicial district department of correctional services.

Notwithstanding section 13.10, the board may order the defendant to provide a physical specimen to be submitted for DNA profiling as a condition of parole or work release, if appropriate. In determining the appropriateness of ordering DNA profiling, the board shall consider the deterrent effect of DNA profiling, the likelihood of repeated offenses by the defendant, and the seriousness of the offense.

The board may establish as a condition of a person's parole or work release that the person perform a specified number of hours of unpaid community service. The board shall not make community service a uniform or mandatory requirement for all or substantially all parolees or work release inmates but shall exercise discretion in ordering community service as a condition of parole or work release. The board shall report to the general assembly on the implementation of community service as a condition of parole or work release. The report shall be submitted on or before January 1, 1991.

The board may, effective July 1, 1997, subject to such exceptions as may be deemed necessary by

the board, require each inmate who is physically and mentally capable to demonstrate functional literacy competence at or above the sixth grade level or make progress towards completion of the requirements for a high school equivalency diploma under chapter 259A prior to release of the inmate on parole or work release.

2003 Acts, ch 156, §16  
For future amendment to unnumbered paragraph 2 effective upon appropriation or receipt of funds, see 2002 Acts, ch 1080, §4, 6  
NEW unnumbered paragraph 2

**906.5 Record reviewed — rules.**

1. The board shall establish and implement a plan by which the board systematically reviews the status of each person who has been committed to the custody of the director of the Iowa department of corrections and considers the person's prospects for parole or work release. The board at least annually shall review the status of a person other than a class "A" felon, a class "B" felon serving a sentence of more than twenty-five years, or a felon serving an offense punishable under section 902.9, subsection 1, or a felon serving a mandatory minimum sentence other than a class "A" felon, and provide the person with notice of the board's parole or work release decision.

Not less than twenty days prior to conducting a hearing at which the board will interview the person, the board shall notify the department of corrections of the scheduling of the interview, and the department shall make the person available to the board at the person's institutional residence as scheduled in the notice. However, if health, safety, or security conditions require moving the person to another institution or facility prior to the scheduled interview, the department of corrections shall so notify the board.

2. It is the intent of the general assembly that the board shall implement a plan of early release in an effort to assist in controlling the prison population and assuring prison space for the confinement of offenders whose release would be detrimental to the citizens of this state. The board shall

report to the legislative services agency on a monthly basis concerning the implementation of this plan and the number of inmates paroled pursuant to this plan and the average length of stay of those paroled.

3. At the time of a review conducted under this section, the board shall consider all pertinent information regarding the person, including the circumstances of the person's offense, any presentence report which is available, the previous social history and criminal record of the person, the person's conduct, work, and attitude in prison, and the reports of physical and mental examinations

that have been made.

4. A person while on parole or work release is under the supervision of the district department of correctional services of the district designated by the board of parole. The department of corrections shall prescribe rules for governing persons on parole or work release. The board may adopt other rules not inconsistent with the rules of the department of corrections as the board deems proper or necessary for the performance of its functions.

2003 Acts, ch 35, §45, 49  
Terminology change applied

## CHAPTER 907

### DEFERRED JUDGMENT, DEFERRED OR SUSPENDED SENTENCE, AND PROBATION

#### **907.3 Deferred judgment, deferred sentence or suspended sentence.**

Pursuant to section 901.5, the trial court may, upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, exercise any of the options contained in this section. However, this section does not apply to a forcible felony or to a violation of chapter 709 committed by a person who is a mandatory reporter of child abuse under section 232.69 in which the victim is a person who is under the age of eighteen.

1. With the consent of the defendant, the court may defer judgment and may place the defendant on probation upon conditions as it may require. Upon a showing that the defendant is not cooperating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon fulfillment of the conditions of probation and the payment of fees imposed and not waived by the judicial district department of correctional services under section 905.14, the defendant shall be discharged without entry of judgment. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

However, this subsection shall not apply if any of the following is true:

*a.* The offense is a violation of section 709.8 and the child is twelve years of age or under.

*b.* The defendant previously has been convicted of a felony. "*Felony*" means a conviction in a court of this or any other state or of the United States, of an offense classified as a felony by the law under which the defendant was convicted at

the time of the defendant's conviction.

*c.* Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief, two or more times anywhere in the United States.

*d.* Prior to the commission of the offense the defendant had been granted a deferred judgment or similar relief in a felony prosecution anywhere in the United States within the preceding five years, measured from the date of granting of deferment of judgment to the date of commission of the offense.

*e.* The defendant committed an assault as defined in section 708.1, against a peace officer in the performance of the peace officer's duty.

*f.* The defendant is a corporation.

*g.* The offense is a violation of section 321J.2 and the person has been convicted of a violation of that section or the person's driver's license has been revoked under chapter 321J, and any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially correspond-

ing to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

*h.* Prior to the commission of the offense the defendant had been granted a deferred judgment or deferred sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or was granted similar relief anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A, and the current offense is a violation of section 708.2A.

*i.* The offense is a conviction for or plea of guilty to a violation of section 236.8 or a finding of contempt pursuant to section 236.8 or 236.14.

*j.* The offense is a violation of section 707.6A, subsection 1; or a violation of section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

*k.* The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

*l.* The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

2. At the time of or after pronouncing judgment and with the consent of the defendant, the court may defer the sentence and assign the defendant to the judicial district department of correctional services. The court may assign the defendant to supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate. However, the court shall not defer the sentence for a violation of any of the following:

*a.* Section 708.2A, if the defendant has previously received a deferred judgment or sentence for a violation of section 708.2 or 708.2A which was issued on a domestic abuse assault, or if similar relief was granted anywhere in the United States concerning that jurisdiction's statutes which substantially correspond to domestic abuse assault as provided in section 708.2A.

*b.* Section 236.8 or for contempt pursuant to section 236.8 or 236.14.

*c.* Section 321J.2, subsection 1, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection

1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

*d.* Section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

*e.* The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

*f.* The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

Upon a showing that the defendant is not fulfilling the conditions of probation, the court may revoke probation and impose any sentence authorized by law. Before taking such action, the court shall give the defendant an opportunity to be heard on any matter relevant to the proposed action. Upon violation of the conditions of probation, the court may proceed as provided in chapter 908.

3. By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require including commitment to an alternate jail facility or a community correctional residential treatment facility to be followed by a term of probation as specified in section 907.7, or commitment of the defendant to the judicial district department of correctional services for supervision or services under section 901B.1 at the level of sanctions which the district department determines to be appropriate and the payment of fees imposed under section 905.14. A person so committed who has probation revoked shall be given credit for such time served. However, the court shall not suspend any of the following sentences:

*a.* The minimum term of two days imposed pursuant to section 708.2A, subsection 6, paragraph "a", or a sentence imposed under section 708.2A, subsection 6, paragraph "b".

*b.* A sentence imposed pursuant to section 236.8 or 236.14 for contempt.

*c.* A mandatory minimum sentence of incarceration imposed pursuant to a violation of section 321J.2, subsection 1; furthermore, the court shall not suspend any part of a sentence not involving incarceration imposed pursuant to section 321J.2, subsection 2, beyond the mandatory minimum if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a speci-

men of the defendant's blood, breath, or urine withdrawn in accordance with chapter 321J exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of section 321J.2, subsection 1, or a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of section 321J.2, subsection 1, or for a violation of a statute in another state substantially corresponding to section 321J.2, subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under chapter 321J results in bodily injury to a person other than the defendant.

*d.* A sentence imposed pursuant to section 707.6A, subsection 1; or section 707.6A, subsection 4, involving operation of a motor vehicle while intoxicated.

*e.* The offense is a violation of section 124.401, subsection 1, paragraph "a" or "b", and the controlled substance is methamphetamine.

*f.* A mandatory minimum sentence or fine imposed for a violation of section 462A.14.

2003 Acts, ch 156, §17 – 19  
Subsection 1, paragraph m stricken  
Subsection 2, paragraph g stricken  
Subsection 3, paragraph g stricken

#### 907.4 Deferred judgment docket.

A deferment of judgment under section 907.3 shall be entered promptly by the clerk of the district court, or the clerk's designee, into the deferred judgment database of the state, which shall serve as the deferred judgment docket. The docket shall contain a permanent record of the deferred judgment including the name and date of birth of the defendant, the district court docket number, the nature of the offense, and the date of the deferred judgment. Before granting deferred judgment in any case, the court shall search the deferred judgment docket and shall consider any prior record of a deferred judgment against the defendant. The permanent record provided for in this section is a confidential record exempted from public access under section 22.7 and shall be available only to justices of the supreme court, judges of the court of appeals, district judges, district associate judges, judicial magistrates, clerks of the district court, judicial district departments of correctional services, county attorneys, and the department of corrections requesting information pursuant to this section, or the designee of a justice, judge, magistrate, clerk, judicial district department of correctional services, or county attorney,

ney, or department.

2003 Acts, ch 151, §61; 2003 Acts, 1st Ex, ch 2, §60, 209  
See Code editor's note to §2.9  
Section amended

#### 907.9 Discharge from probation.

1. At any time that the court determines that the purposes of probation have been fulfilled and the fees imposed under section 905.14 have been paid or on condition that unpaid supervision fees be paid, the court may order the discharge of a person from probation.

2. At any time that a probation officer determines that the purposes of probation have been fulfilled and the fees imposed under section 905.14 have been paid or on condition that unpaid supervision fees be paid, the officer may order the discharge of a person from probation after approval of the district director and notification of the sentencing court and the county attorney who prosecuted the case.

3. The sentencing judge may order a hearing on its own motion, or shall order a hearing upon the request of the county attorney, for review of such discharge. If the sentencing judge is no longer serving or unable to order such hearing, the chief judge of the district or the chief judge's designee shall order any hearing pursuant to this section. Following the hearing, the court shall approve or rescind such discharge. If a hearing is not ordered within thirty days after notification by the probation officer, the person shall be discharged and the probation officer shall notify the state court administrator of such discharge.

4. At the expiration of the period of probation and if the fees imposed under section 905.14 have been paid or on condition that unpaid supervision fees be paid, the court shall order the discharge of the person from probation, and the court shall forward to the governor a recommendation for or against restoration of citizenship rights to that person. A person who has been discharged from probation shall no longer be held to answer for the person's offense. Upon discharge from probation, if judgment has been deferred under section 907.3, the court's criminal record with reference to the deferred judgment shall be expunged. The record maintained by the state court administrator as required by section 907.4 shall not be expunged. The court's record shall not be expunged in any other circumstances.

5. A probation officer or the director of the judicial district department of correctional services who acts in compliance with this section is acting in the course of the person's official duty and is not personally liable, either civilly or criminally, for the acts of a person discharged from probation by the officer after such discharge, unless the discharge constitutes willful disregard of the person's duty.

2003 Acts, 1st Ex, ch 2, §61, 209  
Subsections 1, 2, and 4 amended

## CHAPTER 907B

## INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

**907B.2 Interstate compact for adult offender supervision.**

The national interstate compact for adult offender supervision is enacted into law and entered into by this state with any other state or jurisdiction legally joining the compact in the form substantially as follows:

ARTICLE I  
DEFINITIONS

As used in this compact, unless the context clearly requires otherwise:

1. *Adult*. “*Adult*” means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

2. *Bylaws*. “*Bylaws*” means those bylaws established by the interstate commission for its governance, or for directing or controlling the interstate commission’s actions or conduct.

3. *Compact administrator*. “*Compact administrator*” means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state’s supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

4. *Compacting state*. “*Compacting state*” means any state which has enacted the enabling legislation for this compact.

5. *Commissioner*. “*Commissioner*” means the voting representative of each compacting state appointed pursuant to article II of this compact.

6. *Interstate commission*. “*Interstate commission*” means the interstate commission for adult offender supervision established by this compact.

7. *Member*. “*Member*” means the commissioner of a compacting state or a designee, who shall be a person officially connected with the commissioner.

8. *Noncompacting state*. “*Noncompacting state*” means any state which has not enacted the enabling legislation for this compact.

9. *Offender*. “*Offender*” means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

10. *Person*. “*Person*” means any individual, corporation, business enterprise, or other legal entity, either public or private.

11. *Rules*. “*Rules*” means acts of the interstate commission, duly promulgated pursuant to article VII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

12. *State*. “*State*” means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

13. *State council*. “*State council*” means the resident members of the state council for interstate adult offender supervision created by each state under article III of this compact.

ARTICLE II  
THE COMPACT COMMISSION

1. The compacting states hereby create the interstate commission for adult offender supervision. The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

2. The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. The commission shall include at least one commissioner from a minority group.

3. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations; such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the interstate commission shall be ex officio members. The interstate commission may provide in its bylaws for such additional, ex officio, nonvoting members as it deems necessary.

4. Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

5. The interstate commission shall meet at least once each calendar year. The chairperson

may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

6. The interstate commission shall establish an executive committee which shall include commission officers, members, and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff, administers enforcement and compliance with the provisions of the compact, its bylaws, and as directed by the interstate commission, and performs other duties as directed by commission or set forth in the bylaws.

#### ARTICLE III THE STATE COUNCIL

Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and compact administrators. Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary. In addition to appointment of its commissioner to the interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state, including but not limited to development of policy concerning operations and procedures of the compact within that state.

#### ARTICLE IV POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

1. To adopt a seal and suitable bylaws governing the management and operation of the inter-

state commission.

2. To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise, and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission.

4. To enforce compliance with compact provisions, interstate commission rules, and bylaws, using all necessary and proper means, including but not limited to the use of judicial process.

5. To establish and maintain offices.

6. To purchase and maintain insurance and bonds.

7. To borrow, accept, or contract for services of personnel, including but not limited to members and their staffs.

8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions, including but not limited to an executive committee as required by article II which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder.

9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

13. To establish a budget and make expenditures and levy dues as provided in article IX of this compact.

14. To sue and be sued.

15. To provide for dispute resolution among compacting states.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the interstate commission.

18. To coordinate education, training, and

public awareness regarding the interstate movement of offenders for officials involved in such activity.

19. To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE V  
ORGANIZATION AND OPERATION OF THE  
INTERSTATE COMMISSION

1. *Bylaws.* The interstate commission shall, by a majority of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

a. Establishing the fiscal year of the interstate commission.

b. Establishing an executive committee and such other committees as may be necessary.

c. Providing reasonable standards and procedures:

(1) For the establishment of committees.

(2) Governing any general or specific delegation of any authority or function of the interstate commission.

d. Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting.

e. Establishing the titles and responsibilities of the officers of the interstate commission.

f. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission.

g. Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations.

h. Providing transition rules for startup administration of the compact.

i. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

2. *Officers and staff.*

a. The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided

that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

b. The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

3. *Corporate records of the interstate commission.* The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

4. *Qualified immunity, defense and indemnification.*

a. The members, officers, executive director, and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

b. The interstate commission shall defend the commissioner of a compacting state, or the commissioner's representatives or employees, or the interstate commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from intentional wrongdoing on the part of such person.

c. The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee, or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities.

ties, provided that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VI  
ACTIVITIES OF THE INTERSTATE COMMISSION

1. The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

2. Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

3. Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

4. The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

5. The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

6. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall

promulgate rules consistent with the principles contained in the federal Government in the Sunshine Act, 5 U.S.C. § 552(6), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

*a.* Relate solely to the interstate commission's internal personnel practices and procedures.

*b.* Disclose matters specifically exempted from disclosure by statute.

*c.* Disclose trade secrets or commercial or financial information which is privileged or confidential.

*d.* Involve accusing any person of a crime, or formally censuring any person.

*e.* Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

*f.* Disclose investigatory records compiled for law enforcement purposes.

*g.* Disclose information contained in or related to examination, operating, or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity.

*h.* Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity.

*i.* Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.

7. For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote, reflected in the vote of each member on the question. All documents considered in connection with any action shall be identified in such minutes.

8. The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

ARTICLE VII  
RULEMAKING FUNCTIONS OF THE  
INTERSTATE COMMISSION

1. The interstate commission shall promul-

gate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

2. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the federal Advisory Committee Act, 5 U.S.C. app. 2, § 1 et seq., as may be amended.

3. All rules and amendments shall become binding as of the date specified in each rule or amendment.

4. If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

5. When promulgating a rule, the interstate commission shall do all of the following:

*a.* Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule.

*b.* Allow persons to submit written data, facts, opinions, and arguments, which information shall be publicly available.

*c.* Provide an opportunity for an informal hearing.

*d.* Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.

6. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the United States district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence, as defined in the federal Administrative Procedure Act, in the rulemaking record, the court shall hold the rule unlawful and set it aside.

7. Subjects to be addressed within twelve months after the first meeting must at a minimum include:

*a.* Notice to victims and opportunity to be heard.

*b.* Offender registration and compliance.

*c.* Violations and returns.

*d.* Transfer procedures and forms.

*e.* Eligibility for transfer.

*f.* Collection of restitution and fees from offenders.

*g.* Data collection and reporting.

*h.* The level of supervision to be provided by the receiving state.

*i.* Transition rules governing the operation of the compact and the interstate commission during

all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact.

*j.* Mediation, arbitration and dispute resolution. The existing rules governing the operation of the previous compact superseded by this compact shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

8. Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE VIII  
OVERSIGHT, ENFORCEMENT, AND DISPUTE  
RESOLUTION BY THE  
INTERSTATE COMMISSION

1. *Oversight.*

*a.* The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

*b.* The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

2. *Dispute resolution.*

*a.* The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

*b.* The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and noncompacting states.

*c.* The interstate commission shall enact a by-law or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. *Enforcement.* The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in article XI, subsection 2, of this compact.

ARTICLE IX  
FINANCE

1. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

2. The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff, which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state, and shall promulgate a rule binding upon all compacting states which governs the assessment.

3. The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

4. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE X  
COMPACTING STATES, EFFECTIVE DATE  
AND AMENDMENT

1. Any state, as defined in article I of this compact, is eligible to become a compacting state.

2. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2002, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees will be invited to participate in interstate commission activities on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

3. Amendments to the compact may be proposed by the interstate commission for enactment

by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI  
WITHDRAWAL, DEFAULT, AND TERMINATION,  
AND JUDICIAL ENFORCEMENT

1. *Withdrawal.*

*a.* Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law.

*b.* The effective date of withdrawal is the effective date of the repeal.

*c.* The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state.

*d.* The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

*e.* The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

*f.* Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

2. *Default.*

*a.* If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(1) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission.

(2) Remedial training and technical assistance as directed by the interstate commission.

(3) Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice of the state, the majority and minority leaders of the defaulting state's legislature, and the executive council. The grounds for default include, but are not limited to, failure of a

compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of suspension.

b. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice, and the majority and minority leaders of the defaulting state's legislature, and the executive council of such termination.

c. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

d. The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state.

e. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

3. *Judicial enforcement.* The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the United States district court where the interstate commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules, and bylaws, against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney fees.

4. *Dissolution of compact.*

a. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

b. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs

of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

#### ARTICLE XII SEVERABILITY AND CONSTRUCTION

1. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

2. The provisions of this compact shall be liberally constructed to effectuate its purposes.

#### ARTICLE XIII BINDING EFFECT OF COMPACT AND OTHER LAWS

1. *Other laws.*

a. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

b. All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

2. *Binding effect of the compact.*

a. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the compacting states.

b. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

c. Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

2003 Acts, ch 108, §120 - 122  
Article I, subsection 7 amended  
Article IV, subsection 10 amended  
Article VII, subsection 7, paragraph j amended

#### 907B.4 Interstate compact fee.

The department of corrections may assess a fee, not to exceed one hundred dollars, for an application to transfer out of the state under the interstate compact for adult offender supervision. The fee may be waived by the department. The moneys collected pursuant to this section shall be depos-

ited into the interstate compact fund established in section 904.117 and shall be used to offset the costs of complying with the interstate compact for

adult offender supervision.

2003 Acts, 1st Ex, ch 2, §62, 209  
NEW section

## CHAPTER 910

### RESTITUTION

#### 910.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Criminal activities*” means any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered and any other crime committed after July 1, 1982, which is admitted or not contested by the offender, whether or not prosecuted. However, “*criminal activities*” does not include simple misdemeanors under chapter 321.

2. “*Local anticrime organization*” means an entity organized for the primary purpose of crime prevention which has been officially recognized by the chief of police of the city in which the organization is located or the sheriff of the county in which the organization is located.

3. “*Pecuniary damages*” means all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, “*pecuniary damages*” includes damages for wrongful death and expenses incurred for psychiatric or psychological services or counseling or other counseling for the victim which became necessary as a direct result of the criminal activity.

4. “*Restitution*” means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender’s plan of restitution. “*Restitution*” also includes fines, penalties, and surcharges, the contribution of funds to a local anticrime organization which provided assistance to law enforcement in an offender’s case, the payment of crime victim compensation program reimbursements, payment of restitution to public agencies pursuant to section 321J.2, subsection 9, paragraph “b”, court costs including correctional fees approved pursuant to section 356.7, court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when the offender cannot reasonably pay all or part of the court costs including correctional fees approved pursuant to section 356.7, or court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender.

5. “*Victim*” means a person who has suffered pecuniary damages as a result of the offender’s

criminal activities. However, for purposes of this chapter, an insurer is not a victim and does not have a right of subrogation. The crime victim compensation program is not an insurer for purposes of this chapter, and the right of subrogation provided by section 915.92 does not prohibit restitution to the crime victim compensation program.

2003 Acts, ch 44, §107  
Subsection 4 amended

#### 910.3 Determination of amount of restitution.

The county attorney shall prepare a statement of pecuniary damages to victims of the defendant and, if applicable, any award by the crime victim compensation program and expenses incurred by public agencies pursuant to section 321J.2, subsection 9, paragraph “b”, and shall provide the statement to the presentence investigator or submit the statement to the court at the time of sentencing. The clerk of court shall prepare a statement of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and court costs including correctional fees claimed by a sheriff or municipality pursuant to section 356.7, which shall be provided to the presentence investigator or submitted to the court at the time of sentencing. If these statements are provided to the presentence investigator, they shall become a part of the presentence report. If pecuniary damage amounts are not available at the time of sentencing, the county attorney shall provide a statement of pecuniary damages incurred up to that time to the clerk of court. The statement shall be provided no later than thirty days after sentencing. If a defendant believes no person suffered pecuniary damages, the defendant shall so state. If the defendant has any mental or physical impairment which would limit or prohibit the performance of a public service, the defendant shall so state. The court may order a mental or physical examination, or both, of the defendant to determine a proper course of action. At the time of sentencing or at a later date to be determined by the court, the court shall set out the amount of restitution including the amount of public service to be performed as restitution and the persons to whom restitution must be paid. If the full amount of restitution cannot be determined at the time of sentencing, the court shall issue a temporary order determining a reasonable

amount for restitution identified up to that time. At a later date as determined by the court, the court shall issue a permanent, supplemental order, setting the full amount of restitution. The court shall enter further supplemental orders, if necessary. These court orders shall be known as the plan of restitution.

2003 Acts, ch 113, §4  
Section amended

### **910.3B Restitution for death of victim.**

1. In all criminal cases in which the offender is convicted of a felony in which the act or acts committed by the offender caused the death of another person, in addition to the amount determined to be payable and ordered to be paid to a victim for pecuniary damages, as defined under section 910.1, and determined under section 910.3, the court shall also order the offender to pay at least one hundred fifty thousand dollars in restitution to the victim's estate if the victim died testate. If the victim died intestate the court shall order the offender to pay the restitution to the victim's heirs at law as determined pursuant to section 633.210. The obligation to pay the additional amount shall not be dischargeable in any proceeding under the federal Bankruptcy Act. Payment of the additional amount shall have the same priority as payment of a victim's pecuniary damages under section 910.2, in the offender's plan for restitution.

2. An award under this section does not preclude or supersede the right of a victim's estate or heirs at law to bring a civil action against the offender for damages arising out of the same facts or event. However, no evidence relating to the entry of the judgment against the offender pursuant to this section or the amount of the award ordered pursuant to this section shall be permitted to be introduced in any civil action for damages arising out of the same facts or event.

3. An offender who is ordered to pay a victim's estate or heirs at law under this section is precluded from denying the elements of the felony offense which resulted in the order for payment in any subsequent civil action for damages arising out of the same facts or event.

2003 Acts, 1st Ex, ch 2, §63, 209  
Section amended

### **910.9 Collection of payments — payment by clerk of court.**

An offender making restitution pursuant to a restitution plan of payment shall make the payment monthly to the clerk of court of the county from which the offender was sentenced, unless the restitution plan of payment provides otherwise. If the restitution plan authorizes payment to an entity other than the clerk of court, that entity shall regularly file a partial or full satisfaction of judgment with the clerk of court concerning amounts collected by that entity.

The clerk of court shall maintain a record of all receipts and disbursements of restitution payments and shall disburse all moneys received to the victims designated in the plan of restitution. If there is more than one victim, disbursements to the victims shall be on the basis of the victim's percentage of the total owed by the offender to all victims, except that the clerk of court may decide the allocation of payments owed to a victim of twenty-five dollars or less.

Fines, penalties, and surcharges, crime victim compensation program reimbursement, public agency restitution, court costs including correctional fees claimed by a sheriff or municipality pursuant to section 356.7, and court-appointed attorney fees ordered pursuant to section 815.9, including the expenses for public defenders, shall not be withheld by the clerk of court until all victims have been paid in full. Payments to victims shall be made by the clerk of court at least quarterly. Payments by a clerk of court shall be made no later than the last business day of the quarter, but may be made more often at the discretion of the clerk of court. The clerk of court receiving final payment from an offender shall notify all victims that full restitution has been made. Each office or individual charged with supervising an offender who is required to perform community service as full or partial restitution shall keep records to assure compliance with the portions of the plan of restitution and restitution plan of payment relating to community service and, when the offender has complied fully with the community service requirement, notify the sentencing court.

2003 Acts, ch 113, §5  
Unnumbered paragraph 3 amended

## **CHAPTER 915**

### **VICTIM RIGHTS**

#### **915.13 Notification by county attorney.**

1. The county attorney shall notify a victim registered with the county attorney's office of the following:

*a.* The scheduled date, time, and place of trial, and the cancellation or postponement of a court proceeding that was expected to require the vic-

tim's attendance, in any criminal case relating to the crime for which the person is a registered victim.

*b.* The possibility of assistance through the crime victim compensation program, and the procedures for applying for that assistance.

*c.* The right to restitution for pecuniary losses

suffered as a result of crime, and the process for seeking such relief.

*d.* The victim's right to make a victim impact statement, in any of the following formats:

(1) Written victim impact statement, delivered in court in the presence of the defendant. Notification shall include the procedures for filing such a statement.

(2) Oral victim impact statement, delivered in court in the presence of the defendant. The victim shall also be notified of the time and place for such statement.

(3) Video victim impact statement, delivered in court in the presence of the defendant. Notification shall include the procedures for making and filing the video recording.

(4) Audio victim impact statement, delivered in court in the presence of the defendant. Notification shall include the procedures for making and filing the audio recording.

*e.* The date on which the offender is released on bail or appeal, pursuant to section 811.5.

*f.* Except where the prosecuting attorney determines that disclosure of such information would unreasonably interfere with the investigation, at the request of the registered victim, notice of the status of the investigation shall be provided by law enforcement authorities investigating the case, until the alleged assailant is apprehended or the investigation is closed.

*g.* The right to be informed of any plea agreements related to the crime for which the person is a registered victim.

*h.* The filing of a motion to reopen a sentence of a defendant pursuant to section 901.5B. Notwithstanding section 915.10, the notice shall be served by certified mail. Notice shall include the scheduled date, time, and place of any hearing to reopen a sentence and that the victim has thirty days from the date of the service of the motion to file a written objection with the court.

2. The county attorney and the juvenile court shall coordinate efforts so as to prevent duplication of notification under this section and section 915.24.

2003 Acts, ch 156, §20

Subsection 1, NEW paragraph h

#### **915.14 Notification by clerk of the district court.**

The clerk of the district court shall notify a registered victim of all dispositional orders of the case in which the victim was involved and may advise the victim of any other orders regarding custody or confinement. If a motion to reopen the sentence has been filed pursuant to section 901.5B, the clerk of the district court shall notify a registered victim of the case in which the victim was involved. The notice shall include the scheduled date, time, and place of the hearing, and the clerk shall notify the victim of a cancellation or postponement of any

hearing regarding the motion to reopen.

2003 Acts, ch 156, §21

Section amended

#### **915.35 Child victim services.**

1. As used in this section, "victim" means a child under the age of eighteen who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony.

2. A professional licensed or certified by the state to provide immediate or short-term medical services or mental health services to a victim may provide the services without the prior consent or knowledge of the victim's parents or guardians.

3. Such a professional shall notify the victim if the professional is required to report an incidence of child abuse involving the victim pursuant to section 232.69.

4. *a.* A child protection assistance team involving the county attorney, law enforcement personnel, and personnel of the department of human services shall be established for each county by the county attorney. However, by mutual agreement, two or more county attorneys may establish a single child protection assistance team to cover a multicounty area. A child protection assistance team, to the greatest extent possible, may be consulted in cases involving a forcible felony against a child who is less than age fourteen in which the suspected offender is the person responsible for the care of a child, as defined in section 232.68. A child protection assistance team may also be utilized in cases involving a violation of chapter 709 or 726 or other crime committed upon a victim as defined in subsection 1.

*b.* A child protection assistance team may also consult with or include juvenile court officers, medical and mental health professionals, physicians or other hospital-based health professionals, court-appointed special advocates, guardians ad litem, and members of a multidisciplinary team created by the department of human services for child abuse investigations. A child protection assistance team may work cooperatively with the local community empowerment area board established under section 28.6. The child protection assistance team shall work with the department of human services in accordance with section 232.71B, subsection 3, in developing the protocols for prioritizing the actions taken in response to child abuse reports and for law enforcement agencies working jointly with the department at the local level in processes for child abuse reports. The department of justice may provide training and other assistance to support the activities of a child protection assistance team.

2003 Acts, ch 107, §4

Subsection 4 amended

#### **915.100 Victim restitution rights.**

1. Victims, as defined in section 910.1, have the right to recover pecuniary damages, as defined

in section 910.1.

2. The right to restitution includes the following:

*a.* In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to victims of the offender's criminal activities.

*b.* A judge may require a juvenile who has been found to have committed a delinquent act to compensate the victim of that act for losses due to the act.

*c.* In cases where the act committed by an offender causes the death of another person, in addition to the amount ordered for payment of the victim's pecuniary damages, the court shall also order the offender to pay at least one hundred fifty thousand dollars in restitution to the victim's estate or heirs at law, pursuant to the provisions of section 910.3B.

*d.* The clerk of court shall forward a copy of the plan of payment or the modified plan of payment to the victim or victims.

*e.* Victims shall be paid in full pursuant to an order of restitution, before fines, penalties, surcharges, crime victim compensation program re-

imbursement, public agency reimbursement, court costs, correctional fees, court-appointed attorney fees, expenses of a public defender, or contributions to local anticrime organizations are paid.

*f.* A judgment of restitution may be enforced by a victim entitled under the order to receive restitution, or by a deceased victim's estate, in the same manner as a civil judgment.

*g.* A victim in a criminal proceeding who is entitled to restitution under a court order may file a restitution lien.

*h.* If a convicted felon or the representative of a convicted felon receives or is owed any profit which is realized as a result of the commission of the crime, and the attorney general brings an action to recover such profits, the victim may be entitled to funds held in escrow, pursuant to the provisions of section 910.15.

*i.* The right to victim restitution for the pecuniary damages incurred by a victim as the result of a crime does not limit or impair the right of the victim to sue and recover damages from the offender in a civil action.

2003 Acts, 1st Ex, ch 2, §64, 209  
Subsection 2, paragraph c amended

## CODE EDITOR'S NOTES

### Code Section

- 2.9** The multiple amendments do not conflict, so they were harmonized to give effect to each as required by Code sections 2B.13 and 4.11. In some cases where the note for this section is referred to, the amendments are identical. Under Code section 2B.13, a strike or repeal prevails over an amendment to the same material and does not create a conflict.
- 7E.5(1)(d)** 2003 Acts, ch 145, §118, amends this paragraph effective July 1, 2003, by changing the name of the department of revenue and finance to “department of revenue” and by striking the words “financial management and assistance,” from the description of departmental responsibilities. 2003 Acts, ch 178, §96, amends the paragraph effective September 1, 2003, by adding the word “and” preceding the words “financial management and assistance” and by striking the words “, and the Iowa lottery”. The two amendments were harmonized to change the name of the department and to strike the words “, financial management and assistance, and the Iowa lottery”. The word “and” that was to be added under 2003 Acts, ch 178, §96, was omitted.
- 14B.103**  
**14B.105**  
**14B.206** 2003 Acts, ch 35, §45, amends these sections by making a terminology change effective April 14, 2003. 2003 Acts, ch 145, §291, repeals chapter 14B effective July 1, 2003. The chapter repeal was codified, but the terminology change was in effect from April 14, 2003, until July 1, 2003.
- 15E.192(3)(a)** 2003 Acts, ch 129, §1, amends this paragraph effective May 15, 2003. 2003 Acts, ch 129, §5, strikes the paragraph effective December 1, 2003. The strike was codified, but the amendment by 2003 Acts, ch 129, §1, was in effect from May 15, 2003, until December 1, 2003.
- 18.3(3)** 2003 Acts, ch 35, §31, amends this subsection effective April 14, 2003. 2003 Acts, ch 145, §291, repeals chapter 18 effective July 1, 2003. The chapter repeal was codified, but the amendment to this subsection was in effect from April 14, 2003, until July 1, 2003.
- 18.16A** 2003 Acts, ch 35, §45, amends this section by making a terminology change effective April 14, 2003. 2003 Acts, ch 145, §291, repeals chapter 18 effective July 1, 2003. The chapter repeal was codified, but the terminology change was in effect from April 14, 2003, until July 1, 2003.
- 18.16B** 2003 Acts, ch 35, §45, amends this section by making a terminology change effective April 14, 2003. 2003 Acts, ch 145, §291, repeals chapter 18 effective July 1, 2003. The chapter repeal was codified, but the terminology change was in effect from April 14, 2003, until July 1, 2003.
- 18.28** 2003 Acts, ch 35, §32, amends this section effective April 14, 2003. 2003 Acts, ch 145, §291, repeals chapter 18 effective July 1, 2003. The chapter repeal was codified, but the amendment to the section was in effect from April 14, 2003, until July 1, 2003.
- 18.28A** 2003 Acts, ch 35, §33, enacts this new section in chapter 18 effective April 14, 2003. 2003 Acts, ch 145, §291, repeals chapter 18 effective July 1, 2003. The chapter repeal was codified, but this new section was in effect from April 14, 2003, until July 1, 2003.
- 18.30** 2003 Acts, ch 35, §34, amends this section effective April 14, 2003. 2003 Acts, ch 145, §291, repeals chapter 18 effective July 1, 2003. The chapter repeal was codified, but the amendment to the section was in effect from April 14, 2003, until July 1, 2003.
- 18.50** 2003 Acts, ch 35, §35, amends this section effective April 14, 2003. 2003 Acts, ch 145, §291, repeals chapter 18 effective July 1, 2003. The chapter repeal was codified, but the amendment to the section was in effect from April 14, 2003, until July 1, 2003.

- 18.59(5)** 2003 Acts, ch 35, §36, amends this subsection effective April 14, 2003. 2003 Acts, ch 145, §291, repeals chapter 18 effective July 1, 2003. The chapter repeal was codified, but the amendment to this subsection was in effect from April 14, 2003, until July 1, 2003.
- 18.75** 2003 Acts, ch 35, §37, amends this section by striking subsection 6 and amending subsection 8 effective April 14, 2003. 2003 Acts, ch 145, §291, repeals chapter 18 effective July 1, 2003. The chapter repeal was codified, but the amendments to the section were in effect from April 14, 2003, until July 1, 2003.
- 29C.20(1)** 2003 Acts, ch 155, §1, amends both unnumbered paragraphs in subsection 1 by adding new language to each unnumbered paragraph. 2003 Acts, ch 179, §105, amends the subsection by adding new language and restructuring the tabulation of the subsection. The amendments do not conflict and were harmonized. Due to the new tabulation scheme for subsection 1, the new language added to unnumbered paragraph 1 by 2003 Acts, ch 155, §1, was codified as paragraph a, subparagraph (4), and the new language added to unnumbered paragraph 2 by 2003 Acts, ch 155, §1, was added to paragraph b.
- 97B.42C** 2003 Acts, ch 44, §31, changes the term “system” to “division”, meaning the Iowa public employees’ retirement system division of the department of personnel. 2003 Acts, ch 145, §286, directs the Code editor to change the word “division” to “system” anywhere in Code chapter 97B where the word “division” means the Iowa employees’ retirement system division of the department of personnel. Because 2003 Acts, ch 145, eliminates the department of personnel and establishes the Iowa public employees’ retirement system as an independent agency of state government, and because 2003 Acts, ch 145, was enacted after 2003 Acts, ch 44, the directive in 2003 Acts, ch 145, §286, to substitute “system” for “division” was implemented, effectively canceling the changes made by the other Act, with the resulting codified text appearing as if no amendment had occurred.
- 190C.1** 2003 Acts, ch 149, §13, amends the definition of “livestock” in subsection 12, and 2003 Acts, ch 108, §43, amends the definition of “regional organic association” in subsection 18. 2003 Acts, ch 104, §1, amends the entire section by striking the section and replacing it with new definitions. Because Code section 2B.13 requires that a strike prevail over an amendment to the same material and the fact that the definitions of “livestock” and “regional organic association” as amended by 2003 Acts, ch 104, §1, no longer contain the words and references amended in the other two Acts, the changes enacted in 2003 Acts, ch 104, §1, were codified.
- 294A.19** 2003 Acts, ch 35, §45, amends this section by making a terminology change effective April 14, 2003. 2003 Acts, ch 180, §70, repeals the section effective July 1, 2003. The repeal was codified, but the terminology change was in effect from April 14, 2003, until July 1, 2003.
- 294A.25(6)** 2003 Acts, ch 182, §21, amends this subsection effective May 30, 2003, to change a FY 2002 designation to a FY 2003 designation in language relating to expenditure of funds. 2003 Acts, ch 179, §118, strikes the subsection effective July 1, 2003. The strike was codified, but the change made by 2003 Acts, ch 182, §21, was in effect from May 30, 2003, until July 1, 2003.
- 321.34(10)** 2003 Acts, ch 7, §4, amends this subsection to change references to several types of trucks to the term “motor truck”. 2003 Acts, ch 105, §2, strikes the language in this subsection that 2003 Acts, ch 7, amends and replaces the language with a reference to subsection 12. Because 2003 Acts, ch 105, was the later enactment and because strikes prevail over amendments, the changes made by 2003 Acts, ch 105, §2, were implemented. Because 2003 Acts, ch 7, makes the “motor truck” reference change in subsection 12, the effect of the amendment to subsection 10 in that Act was not lost in this codification.

**CONVERSION TABLES OF SENATE AND HOUSE FILES  
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240	15	492	128	628	93
249	16	493	74	634	59
254	17	502	56	636	35
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290	7	504	12	644	163
304	127	505	75	647	91
311	5	509	63	648	92
319	100	516	110	650	113
329	158	529	111	652	171
339	28	534	145	654	164
341	19	541	103	655	181
342	20	543	135	656	105
343	6	545	76	659	29
344	50	547	86	662	182
349	51	548	87	665	130
380	52	549	180	667	175
381	32	551	88	671	136
386	141	557	89	672	165
387	101	558	123	674	142
389	53	560	118	675	166
390	71	565	124	676	131
391	159	576	129	677	125
392	72	577	146	680	120
394	160	583	161	681	150
395	54	584	162	682	143
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1047	1	20.21	1124	1	256F.1
	2	232.69[1b(4)]		2	256F.2
	3	257.11(3b)		3	256F.3 as amended by 2003 Acts-79-1
	4	257.11[3b(5)]		4	256F.4 as amended by 2002 Acts-1175-81 and 2003 Acts-79-2
	6	260C.47(1)		5	256F.5
	7	260C.47(1b)		6	256F.6
	8	260C.48(1)		7	256F.7
	9	206C.48(4)		8	256F.8
	10	272.1(11)		9	256F.9
	11	Repealing		10	256F.10
	12	Superseded by 2002 Acts-1152-21		11	256F.11 as amended by 2003 Acts-79-3
	13	279.12		12	257.31(5d) as amended by 2003 Acts-79-4
	14	Note under 279.13; stricken by 2003 Acts-19-4		13	Note under 282.18; stricken by 2003 Acts-79-5
	15	279.18(4)		14, 15	Omitted
	16	279.19A(10)		16	Note under 282.18
	17	Note under 279.19B; stricken by 2003 Acts-19-4	1140	34	321.375(1d)
	18	279.55		48	Note under 321.375
	20	Amended by 2003 Acts-19-5; note under 20.21, 232.69, 257.11, 260C.47, 260C.48, 272.1, 279.12, 279.13, 279.18, 279.19A, 279.19B, 279.55	1145	7	Repealing; note under 15E.192
				10	Note under 15E.192
			1152	21	Note under 272.33
			1175	81	256F.4(1, 3)

**TABLE OF DISPOSITION OF  
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1	1	257.8(1)	8 (cont.)	23	324A.7
	2	Omitted		24	325A.7A
2	1	321.323A(2)		25	325A.7B
3	1	321.34(23)		26	Note under 321.191
4	1	524.541		27	Note under 321M.9
5	1	Repealing		28	Omitted
	2	331.607(6)		29	Note under 321.24, 321.45, 321.50, 325A.7A, 325A.7B
	3	557.22			
	4	607A.9	9	1, 2	392.6
6	1	321.1(30)	10	1	554.3512(1)
	2	321.302	11	1, 2	Omitted
	3	321.486(1)	12	1	715A.6(2)
	4	321K.1(3)		2	715A.6(3)
	5	Repealing		3	715A.10
7	1	321.34(3)	13	1	298.3(3, 10)
	2	321.34(8)		2	Omitted
	3	321.34(8A)	14	1	692.1(13)
	4	Partially superseded by 2003 Acts-105-2 and applied at 321.34(10A)		2	692.8
	5	321.34(11a)		3	692.8A
	6	321.34(11Aa)		4	692.18
	7	321.34(11Ba)		5	Omitted
	8	321.34(12a)	15	1	184.6
	9	321.34(15)	16	1	124.401(1d)
8	1	Repealing	17	1	456A.17
	2	306C.2		2	Omitted
	3	306C.3	18	1	12C.1[2e(6)] as amended by 2003 Acts-179-58
	4	306C.8		2	12C.4 as amended by 2003 Acts-1st Ex-2-35
	5-7	Repealing		3	331.427(2)
	8	Note under 330.2		4	331.553(5)
	9	Note under 321.24; to be codified in 2005 Code		5	445.57
	10	Note under 321.45; to be codified in 2005 Code	19	1	279.13(4)
	11	321.48(2)		2	279.19B(3)
	12	Note under 321.50; to be codified in 2005 Code		3	279.23(3, 4)
	13	321.50(6)		4, 5	Note under 279.13, 279.19B
	14	321.191(10); to be repealed effective 7-1-2008	20	1	97A.6(5b)
	15	321.192		2	Omitted
	16	321.271	21	1	249A.4(7)
	17	321.449(1)	22	1	149.5
	18	321.449(4, 8)	23	1-3	Omitted
	19	321.450(4)	24	1	12B.11
	20	321E.7(2)		2	321.1(60)
	21	321M.9(1); 2003 amendments to be repealed effective 7-1-2005		3	321.39(2, 3)
	22	322.19(2a, b)		4	331.552(34)
				5	384.62
				6	384.67
				7	435.26A as amended by 2003 Acts-179-128 and 2003 Acts-1st Ex-2-26
			8		445.5(1)

Chapter	Section	Code Supp. 2003	Chapter	Section	Code Supp. 2003
24 (cont.)	9	Repealing	35 (cont.)	6	2A.6
	10	Omitted		7	2A.7
25	1	232.133(2)		8	2A.8
	2	602.4102(4, 5)		9	2.9
26	1	453A.2(6)		10	2.42(1, 2, 11 – 14)
	2	453A.5		11	2.45(2)
	3	453A.22(2)		12	2.56
	4	453A.22(3, 4); subsection 4 to be repealed effective 4-1-2004		13	2B.1
	5	Note under 453A.2, 453A.22		14	2B.5
	6	Note under 453A.22		15	2B.6
	7	Note under 453A.2, 453A.22		16	2B.10(5)
27	1	256.18A		17	2B.12(6f)
	2	280.12(3)		18	2B.13
28	1	322D.1(2)		19	2B.17(3, 5)
	2	322D.1(4b, e)		20	2B.21
	3	322D.1(5, 6)		21	7D.6
	4	322D.1(11)		22	Repealing
	5	322D.2		23	8.22A(1)
	6	322D.3(7, 9)		24	9F.4
	7	322D.10		25	9F.5
	8	Note under 322D.1 – 322D.3, 322D.10		26	Repealing
29	1	476.23(1)		27	17A.4(3)
	2	476.43(1)		28	17A.6(1)
	3	476.44(2)		29	17A.6(2, 3, 5)
	4	476.45		30	Repealing
	5	476.53(4b)		31 – 37	Superseded by 2003 Acts-145-291
	6	Note under 476.53		38	22.3A(2a)
30	1	455B.183A(1)		39	25B.5
	2	455B.187		40	97D.4(4)
	3	455B.190A(5c)		41	256.53
31	1	481A.68(2)		42	Repealing
32	1	70A.39 as amended by 2003 Acts-1st Ex-2-37		43	602.1204(3)
	2	142C.15(4c)		44, 45	Amendments applied
33	1	135.140 as amended by 2003 Acts-179-64		46	Amendments applied; note under ch 235B
	2	135.141		47	Repealing; note under ch 235B
	3	135.142		48	Omitted
	4	135.143		49	Note under ch 18, ch 235B
	5	135.144 as amended by 2003 Acts-179-65	36	1	279.7A
	6	135.145		2	331.342(4)
	7	29C.6(1)		3	331.342(11)
	8	Repealing		4	362.5(5)
	9	139A.2(18)		5	362.5(13)
	10	139A.3A	37	1	483A.1A(7d)
	11	Omitted	38	1	482.12(1a)
34	1	15.331B(1)	39	1 – 3	Note under 554D.104
35	1	2A.1	40	1	68A.203(1)
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	3	2A.3		3	68A.402(2, 5)
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	2	543D.19(1)	58	284.11(2)	
	3	543D.19(2)	59	321E.8	
44	1	6B.18(2)	60	321G.4	
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	4	Repealing	63	331.424C	
	5	10B.4A	64	446.9(1, 2)	
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	7	12C.23A(3d)	66	Repealing	
	8	Superseded by 2003 Acts-145-191	67	455B.183	
	9	15.108[6b(1)]	68	455B.187	
	10	15E.45(1, 3, 6, 8)	69	455D.11I(4)	
	11	15E.51(4)	70	457A.2(2)	
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	13	15E.193C(2)	72	459.102(44)	
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	15	16.132(5, 6)	74	459.303(2)	
	16	23A.2(2)	75	459.309	
	17	23A.2(2c)	76	459.501(2)	
	18, 19	Repealing	77	462A.12(6)	
	20	29B.22	78	476A.23(3b)	
	21	43.45(1)	79	476A.23(3)	
	22	43.45(2c)	80	490.202(2d)	
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	24	45.5(1)	82	490.727(2)	
	25	48A.29(1)	83	490.831(3a, b)	
	26	49.71	84	490.851(1)	
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	29	80.22	87	490.1324(2c)	
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	35	Repealing	93	542.13(17)	
	36	135.11(17)	94	542.19(1a)	
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	38	153.33(5)	96	554.9701	
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	40	Note under 159.6; to be codified in 2005 Code Supplement	98	554D.120(4)	
	41	Repealing	99	556.1(3)	
	42	159A.3(4)	100	598.7A(5)	
	43	Note under 173.3; to be codified in 2005 Code Supplement	101	600.13(1)	
	44	192.101A	102	602.8105(1e)	
	45	192.102	103	633.4105[2b(1)]	
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	3	556.11(4)		6	321J.12(5)
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	6	159.36		6	252A.5(1)
	7	Omitted		7	252A.6(1)
49	1	715A.8(2)		8	Note under 249A.12
50	1	452A.17[1a(3)]	63	1 - 5	Omitted
51	1	13B.4[4d(2)]	64	1	556.11(2a, c)
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52	1	459.102(30)		6	556.12(3 - 6)
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	9	124.304(1)		10	496C.19
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57	1	7A.2A		2	Repealing
58	1	523A.602(2b)		3	229.22(2)
59	1	499.43B		4	Repealing
60	1	321J.2(1b)	69	1	203.1(2, 6, 11)
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	6	203.10		6	272C.3(1k)
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	42	189.24		13	571.5
	43	189.28		14	Repealing
	44	189.29		15	581.1A
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72	1	15.104(1, 2)		2	483A.24A
73	1	15.349		3	Omitted
74	1, 2	Repealing	86	1	206.2(9, 12)
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89	1	135.24		52	Omitted
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91	1	29A.43		4	305.1
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	6	508.11		9	305.6
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	43	515B.16		9	633.2102
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	10	533C.301		4	Omitted
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	39	533C.904		3	437A.3(11)
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